BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Represented by
Gordon A. Graham, Agent

[redacted]
Docket No. 260709-691829
Advanced on the Docket

DATE: October 14, 2026

ORDER

Entitlement to an effective date of October 25, 2023, but no earlier, for service connection for loss of use of both feet is granted, subject to the laws and regulations governing the payment of monetary benefits.

Entitlement to an effective date of October 25, 2023, but no earlier, for the award of special monthly compensation (SMC) at a rate of 38 U.S.C. § 1114(o) is granted, subject to the laws and regulations governing the payment of monetary benefits.

FINDINGS OF FACT

1. A February 2025 rating decision effectuated the award of service connection for multiple sclerosis and assigned a 50 percent rating effective October 25, 2023; the Veteran continuously pursued a claim for an increased initial rating.

2. The Veteran's multiple sclerosis resulted in the loss of use of his bilateral feet.

3. Beginning October 25, 2023, as a result of his service-connected disabilities, the Veteran has two or more conditions that would qualify him for SMC under section 1114 (l), with no condition being considered twice in the determination.

CONCLUSIONS OF LAW

1. The criteria for an effective date of October 25, 2023, but no earlier, for the award of service connection for the Veteran's loss of use of both feet, as due to his service-connected multiple sclerosis have been met. 38 U.S.C. § 1155, 5110; 38 C.F.R. §§ 3.114, 3.155, 3.156, 3.400.

2. The criteria for entitlement to SMC under 38 U.S.C. § 1114 (o) have been met beginning October 25, 2023. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.351, 3.352, 4.3.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from June 1964 to June 1967.

In the July 2026 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Direct Review docket. The Veteran listed that he disagreed with multiple issues regarding entitlement to SMC at multiple rates as addressed in the June 2026 rating decision, but it was unclear what relief was sought. Based on a review of the July 2026 VA Form 10182 and the Veteran's representative's July 2026 brief on appeal, the Board has interpreted the issue of disagreement as entitlement to an earlier effective date for the award of service connection for loss of use of both feet and an earlier effective date for entitlement to SMC under 38 U.S.C. § 1114 (o).

In light of finding that the Veteran appealed the issues of entitlement to earlier effective dates for service connection for loss of use of both feet and entitlement to SMC under 38 U.S.C. § 1114 (o), the Board notes that the June 2026 rating decision denied entitlement to earlier effective dates for the awards of service connection for multiple sclerosis, erectile dysfunction, urinary incontinence, diabetes mellitus type II, diabetic peripheral neuropathy, and atrial fibrillation. However, a December 2025 rating decision granted entitlement to service connection for loss of use of both feet and entitlement to SMC under 38 U.S.C.

§ 1114 (o). The July 2026 VA Form 10182 is timely to the December 2025 rating decision. Thus, the Board will construe the Veteran's July 2026 VA Form 10182 as appealing the December 2025 rating decision.

Therefore, the Board may only consider the evidence of record at the time of the December 2025 agency of original jurisdiction (AOJ) decision on appeal. 38 C.F.R. § 20.301. Any evidence submitted after the AOJ decision on appeal cannot be considered by the Board. 38 C.F.R. §§ 20.300, 20.301, 20.801.

If the Veteran would like VA to consider any evidence that was submitted that the Board could not consider, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claims for entitlement to earlier effective dates for the award of service connection for loss of use of both feet and entitlement to SMC under 38 U.S.C. § 1114 (o), considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

Finally, in *Williams v. McDonough*, 37 Vet. App. 305 (2024), the Court of Appeals for Veterans Claims held that the Board must refrain from deciding a case until the point where a docket switch is no longer permitted. 38 C.F.R. § 20.202(c)(2). However, in his July 2026 VA Form 10182, the Veteran affirmatively waived his right to select a different Board review option. Accordingly, the Board finds that it may proceed with adjudication.

Entitlement to an earlier effective date for the award of service connection for loss of use of both feet.

The Veteran seeks an effective date earlier than July 10, 2025, for the award of service connection for loss of use of both feet. Based on a review of the record, the Board finds an effective date of October 25, 2023, but no earlier, is warranted.

Generally, the effective date for VA compensation is the date of receipt of the claim or the date entitlement arose, whichever is the later. 38 U.S.C. § 5110 (a); 38 C.F.R. § 3.400.

For supplemental claims under the AMA, the effective date will be the date VA received a veteran's initial claim, or the date entitlement arose, whichever is later, if a veteran continuously pursues an issue by timely filing in succession any of the available review options as specified in § 3.2500(c) within one year of the issuance of the decision. 38 C.F.R. § 3.2500 (h)(1). With supplemental claims received more than one year after notice of a decision, the effective date will be fixed in accordance with the date of entitlement arose but will not be earlier than the date of receipt of the supplemental claim. 38 C.F.R. § 3.2500 (h)(2).

In a January 2025 Board decision, entitlement to service connection for multiple sclerosis was granted. This was effectuated in a February 2025 rating decision and a 50 percent rating was assigned effective October 25, 2023.

In March 2025, the Veteran filed a VA Form 10182 Notice of Disagreement with the initial rating for multiple sclerosis.

In a June 2025 Board decision, an initial rating in excess of 50 percent for multiple sclerosis was denied, and entitlement to SMC at a half step under 38 U.S.C. § 1114 (p) was granted. A June 2025 rating decision effectuated this decision and SMC at a half step was granted effective December 4, 2019.

In July 2025, the Veteran filed a claim for service connection for loss of use of the bilateral upper and lower extremities due to multiple sclerosis, and entitlement to SMC based on the need of aid and attendance due to chronic kidney disease and multiple sclerosis.

In a September 2025 rating decision, the AOJ continued an 80 percent rating for chronic kidney disease, a 50 percent rating for multiple sclerosis, a 40 percent rating for peripheral neuropathy of the left lower extremity involvement of the sciatic nerve, a 40 percent rating for peripheral neuropathy of the right lower extremity involvement of the sciatic nerve, a 20 percent rating for peripheral neuropathy of the left upper extremity, a 20 percent rating for peripheral neuropathy of the right upper extremity, a 20 percent rating for peripheral neuropathy of the left lower extremity involvement of the femoral nerve, and a 20 percent rating for peripheral neuropathy of the right lower extremity involvement

of the femoral nerve, and found entitlement to SMC based on the need of aid and attendance to be moot.

The Veteran filed a September 2025 VA Form 10182 Notice of Disagreement, appealing the issues of entitlement to service connection for the loss of use of the bilateral upper and lower extremities due to diabetic peripheral neuropathy and multiple sclerosis, and entitlement to aid and attendance due solely to both chronic kidney disease and multiple sclerosis.

In its November 2025 decision, the Board found that the claims had been continually pursued, and most recently included a July 2025 claim and September 2025 rating decision. The Board also found that entitlement to SMC under 38 U.S.C. § 1114(o) was warranted. As part of the analysis, the Board addressed whether the Veteran had loss of use of both feet.

Loss of use of a foot generally exists when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below the knee with use of a suitable prosthetic appliance. The determination is made based on actual remaining function of the foot and whether the acts "of balance and propulsion, etc." could be accomplished equally as well by an amputation stump with prosthesis. The Board specifically identified that November 2023, August 2024, and July 2025 VA multiple sclerosis examinations reflected that functional impairment of the Veteran's lower extremities did not exist, such that no effective function remained other than that which would be equally well served by an amputation with prosthesis. Additionally, these multiple sclerosis examinations documented that the Veteran constantly used a wheelchair. The Board found that SMC at the (l) rate was established based on the loss of use of both feet due to his confinement to a wheelchair.

A December 2025 rating decision implemented the grant of the November 2025 Board decision. Service connection for loss of use was granted with a 100 percent rating, effective July 10, 2025, the date of claim for an increased rating. Additionally, entitlement to SMC at an intermediate rate between (1) and (m), entitlement to special adapted housing, entitlement to automobile or other conveyance and adapted equipment, entitlement to aid and attendance for loss of

use of both feet, entitlement to aid and attendance under 38 U.S.C. § 1114(r)(1), entitlement to SMC at an intermediate rate between (n) and (o), entitlement to SMC at an intermediate rate between (m) and (n), entitlement to SMC at an intermediate rate between (1) and (m), and entitlement to SMC at a half step on account of loss of use of both feet.

As the Veteran's loss of use of both feet is due to his service-connected multiple sclerosis, the date entitlement to service connection arose cannot be earlier than the date of grant of service-connection for multiple sclerosis. The Board finds that the initial rating for the Veteran's multiple sclerosis and the intertwined issues of entitlement to SMC have been continuously pursued. *See Buie v. Shinseki*, 24 Vet. App. 242, 250 (2011); *Bradley v. Peake*, 22 Vet. App. 280, 294 (2008). Accordingly, the Board will consider the date of claim for loss of use of both feet as October 25, 2023, the effective date for the award of service connection for multiple sclerosis.

The next determination is the date entitlement arose. No current statue or regulation defines "date entitlement arose." However, the Court has interpreted it as the date the claimant met the requirements for the benefit sought; the Court indicated that it is determined on a "facts found" basis. *McGrath v. Gober*, 14 Vet. App. 28, 35 (2000). An effective date generally can be no earlier than the "facts found." *DeLisio v. Shinseki*, 25 Vet. App. 45 (2011). These "facts found" include the date the disability first manifested and the date entitlement to benefits was authorized by law and regulation. *See generally* 38 C.F.R. § 3.400. For instance, if a claimant filed a claim for benefits for a disability before he actually had the disability, the effective date for benefits can be no earlier than the date the disability first manifested. *Ellington v. Peake*, 541 F.3d 1364, 1369-70 (Fed. Cir. 2008). However, the date entitlement arose is not the date that the AOJ receives the evidence, but the date to which that evidence refers. *McGrath*, 14 Vet. App. at 35. It is possible that a particular piece of evidence will demonstrate that the Veteran suffered from the symptoms of a disability or rating level earlier than the date of the examination, opinion, or diagnosis. *DeLisio*, 25 Vet. App. at 56.

Here, as previously determined by the Board in the November 2025 decision, the record reflects that the Veteran has been confined to a wheelchair due to his

service-connected multiple sclerosis. His VA treatment records reflect that he used a wheelchair prior to October 2023.

Accordingly, as service connection for the Veteran's multiple sclerosis was awarded October 25, 2023, and as entitlement arose for loss of use of both feet prior to that date as secondary to multiple sclerosis, an effective date of October 25, 2023, for service connection for loss of use of both feet is warranted. An earlier effective date is not warranted as the effective date of a disability cannot be earlier than the effective date of the disability to which it is secondary.

For these reasons, the Board finds that an effective date for the award of service connection for loss of use of both feet of October 25, 2023, but no earlier, is warranted. To that extent only, the appeal is granted.

Entitlement to an earlier effective date earlier for the award of SMC pursuant to 38 U.S.C. § 1114(o).

The Veteran seeks earlier effective date for the award of SMC at a rate of 38 U.S.C. § 1114(o), which is currently effective July 10, 2025.

SMC is payable at a rate under 38 U.S.C. § 1114(o) for 1. anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; 2. conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. § 1114(l) through (n); 3. bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less; or 4. service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less. 38 C.F.R. § 3.350(e)(1).

SMC is payable at a rate under 38 U.S.C. § 1114(l) for anatomical loss or loss of use of both feet, one hand and one foot, blindness in both eyes with visual acuity of

5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(l); 38 C.F.R. § 3.350(b).

Here, in the November 2025 Board decision, SMC at the 38 U.S.C. § 1114(o) rate was granted pursuant to two separate conditions entitling SMC at the 38 U.S.C. § 1114(l) rate, the regular need of aid and attendance of another person and the loss of use of both feet.

Review of the record shows that SMC (l) based on the regular need of aid and attendance is effective December 4, 2019.

Separately, SMC (l), based on the loss of use of both feet, is premised on the award of service connection for loss of use of both feet. As such the effective date for the award of SMC(l) based on that cannot be earlier than the effective date for service connection for the loss of use of both feet. Accordingly, given the Board's decision above that an effective date of October 25, 2023, but no earlier, is warranted for the award of service connection for loss of use of both feet, the same effective date must be assigned for the award of SMC (l) based on the loss of use of both feet.

Therefore, as the Veteran is first in receipt of SMC (l) for two separate conditions beginning October 25, 2023, an effective date of October 25, 2023, for the award of SMC (o) must be assigned. Accordingly, an effective date for the award of SMC at a rate of 38 U.S.C. § 1114(o), of October 25, 2023, but no earlier, is warranted. To that extent only, the appeal is granted.



J. Kirby
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

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