BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Docket No. 260508-676589

Represented by
Gordon A. Graham, Agent

DATE: November 3, 2026

ORDER

Entitlement to special monthly compensation (SMC) at the intermediate rate between SMC(l) and SMC(m) is granted, subject to the laws and regulations governing the award of monetary benefits.

FINDINGS OF FACT

1. In December 2025, the agency of original jurisdiction (AOJ) implemented the award of SMC at the rate provided for by 38 U.S.C. § 1114(l) (SMC(l)), effective November 29, 2023, based on the need for aid and attendance.

2. The Veteran is also in receipt of SMC based on the loss of use of a creative organ as provided for by 38 U.S.C. § 1114(k) (SMC(k)).

3. The Veteran's additional service-connected disabilities support one intermediate-rate SMC increase pursuant to § 1114(p) above SMC(l), at the intermediate rate between SMC(l) and SMC(m), but do not support any more half steps.

4. The Veteran does not meet the threshold criteria for an additional monthly allowance of SMC at the rate under subsection (r)(1) of 38 U.S.C. § 1114.

CONCLUSION OF LAW

The criteria for entitlement to SMC at the intermediate rate between SMC(l) and SMC(m) have been met. 38 U.S.C. §§ 1114(k), (l), (n), (p), (r); 38 C.F.R. §§ 3.350(a)(1), (b), (d), (e), (f), (h)(2).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

The Veteran served on active duty from November 1999 to November 2003.

In January 2026, the Veteran submitted a VA Form 20-0995, Decision Review Request: Supplemental Claim, and requested readjudication of higher level SMC, most recently addressed in a December 2025 rating decision. In March 2026, the Agency of Original Jurisdiction (AOJ) issued the supplemental claim decision on appeal, which found that new and relevant evidence had been received and denied the claim based on the evidence of record at the time of that decision. Therefore, the Board may only consider the evidence of record at the time of the decision on appeal and any evidence submitted during an applicable evidentiary window.

In the May 2026 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Direct Review docket. Therefore, the Board may only consider the evidence of record at the time of the March 2026 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 claim, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

SMC

In general, SMC is available when, as the result of service-connected disability, a Veteran suffers additional hardships above and beyond those contemplated by VA's schedule for rating disabilities. *See* 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352; *see also* VA Gen. Coun. Prec. 5-89 (Mar. 23, 1989) (explaining that SMC is a supplementary statutory benefit based on noneconomic factors such as personal inconvenience, social inadaptability, or the profound nature of a disability). The rate of SMC varies according to the nature of the Veteran's service-connected disabilities. Basic levels of SMC are listed at 38 U.S.C. § 1114(k). Higher levels of SMC are provided at 38 U.S.C. § 1114(l), (m), (n), and (o).

Higher Level SMC

The Veteran asserts that a higher level of SMC at the M rate is warranted; and that SMC at the O or R1 rate also exists. *See* May 2026 VA Form 10182.

A December 2025 Board decision granted SMC based on the need for regular aid and attendance, based on impairments caused by the service-connected posttraumatic stress disorder (PTSD), neck disability, back disability, and bilateral knee disabilities. A December 2025 rating decision implemented the Board's decision and assigned an effective date of November 29, 2023. In January 2026, the Veteran submitted a supplemental claim, asserting that higher level SMC was warranted. A March 2026 rating decision denied higher level SMC. The Veteran disagreed and this appeal ensued. As such, the Board will adjudicate whether the Veteran is entitled to SMC at a rate higher than assigned.

The Board notes that the Veteran is currently in receipt of SMC (k), based on loss of use of a creative organ; SMC (s), based on the PTSD rated at 100 percent, with additional service-connected disabilities independently ratable at 60 percent or more; and SMC (l), based on account of being so helpless as to be in need of regular aid and attendance.

SMC(k) is payable in addition to the basic rate of compensation otherwise payable based on degree of disability, with certain monetary limits. 38 U.S.C. § 1114(k); 38 C.F.R. § 3.350(a). In this case, the Veteran is in receipt of SMC(k) for the loss of use of a creative organ. Because SMC(k) is payable in addition to basic

compensation and other levels of SMC subject to certain monetary limits, that does not limit the Veteran's entitlement to higher levels of SMC, other than the requirement to remain below certain statutory limits. 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352.

SMC at the (m) rate is warranted if the Veteran, as a result of service-connected disability, has suffered the anatomical loss or loss of use of both hands, or of both legs at a level, or with complications, preventing natural knee action with prosthesis in place, or of one arm and one leg at levels or with complications, preventing natural elbow and knee action with prosthesis in place, or has suffered blindness in both eyes having only light perception, or has suffered blindness in both eyes, rendering such Veteran so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(m); 38 C.F.R. § 3.350(c).

SMC at the (n) level is warranted if the Veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both arms at levels, or with complications, preventing natural elbow action with prosthesis in place, has suffered the anatomical loss of both legs so near the hip as to prevent the use of prosthetic appliances, or has suffered the anatomical loss of one arm and one leg with factors that prevent the use of prosthetic appliances, or has suffered anatomical loss of both eyes, or has suffered blindness without light perception in both eyes. 38 U.S.C. § 1114(n).

SMC provided by 38 U.S.C. § 1114(o) is payable for any of the following conditions: (i) Anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; (ii) Conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. § 1114 (l) through (n); (iii) 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; (iv) 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 at the (o) rate is warranted for combinations. Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement. 38 C.F.R. § 3.350(e)(3).

38 U.S.C. § 1114(p) allows for the assignment of either an intermediate-rate or the next higher rate of SMC above SMC(l), even when a Veteran does not otherwise meet the criteria for that next higher rate, when certain conditions are met. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f). The calculation of these intermediate-rate SMC, or half step, increases pursuant to § 1114(p) form the basis of the Veteran's argument.

An intermediate rate is, essentially, "a half-step" increase in the level of SMC compensation being paid. When a Veteran is in receipt of one of the rates payable under 38 U.S.C. §§ 1114(l) through (n) and has an additional single disability ratable at 50 percent or more, the next higher intermediate rate should be assigned. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3). The disability or disabilities independently ratable at 50 percent or more must be separate and distinct and involve different anatomical segments or bodily systems from those disabilities establishing entitlement to the SMC rating under 38 U.S.C. §§ 1114(l) through (n). *Id.* The maximum allowable rate under subsection (p) is equivalent to the rate assigned under 38 U.S.C. § 1114(o). 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f).

Similarly, when a Veteran is in receipt of one of the rates payable under 38 U.S.C. §§ 1114(l) through (n) and has an additional single permanent disability

independently rated at 100 percent, the Veteran should be assigned the next higher statutory rate under 38 U.S.C. § 1114 or, if already entitled to an intermediate rate, the next higher intermediate rate. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(4). Again, under no circumstances may a rate in excess of that allowable under 38 U.S.C. § 1114(o) be assigned. *Id.*

There are two parts to SMC(r): there is special aid and attendance that is identified by (r)(1), and a higher level of special aid and attendance that is discussed in (r)(2). *See* 38 U.S.C. § 1114(r); 38 C.F.R. §§ 3.350(h), 3.352.

To be awarded SMC (r)(1), under 38 U.S.C. § 1114, the Veteran must be entitled to SMC at the rate authorized under subsection (o), the maximum rate authorized under subsection (p), or at the intermediate rate authorized between the rates authorized under subsections (n) and (o) and at the rate authorized under subsection (k). The Veteran must also be in need of regular aid and attendance. *See* 38 U.S.C. § 1114(r).

For SMC(r)(2), once the aforementioned threshold is met, the Veteran must show that, in addition to the need for regular aid and attendance, he is in need a higher level of care as specified. See 38 U.S.C. § 1114(r)(2).

The Veteran's basic level of SMC begins at the (l) level based on the need for aid and attendance. This is one of five different ways a Veteran may qualify for the rate provided in 38 U.S.C. § 1114(l): (1) anatomical loss or loss of use of both feet; (2) anatomical loss or loss of use of one hand and one foot; (3) blindness in both eyes with visual acuity of 5/200 or less; (4) permanently bedridden; or (5) need of regular aid and attendance.

Here, the Veteran asserts that he is entitled to intermediate-rate SMC increases pursuant to § 1114(p), to the level of SMC(m). Further, that his current receipt of SMC(l) based on the need for aid and attendance, SMC(k) based on the loss of use of a creative organ, and intermediate-rate SMC increases pursuant to § 1114(p), as triggering an award of SMC(r)(1).

The Veteran does not assert anatomical loss or loss of use of both feet, or of one hand and one foot; that his visual acuity is 5/200 or less; or that he is permanently

bedridden. 38 U.S.C. § 1114(l); 38 C.F.R. § 3.352(a). Rather, his need for aid and attendance is established and he is already in receipt of SMC(l) based on that need. He cited this basic need for aid and attendance and the Federal Circuit's recent holding in *Barry v. McDonough*, 101 F.4th 1348, 1350 (Fed. Cir. 2024). In *Barry*, the Federal Circuit found that 38 C.F.R. § 3.350(f)(3) "does not limit how many SMC increases can be provided; instead, it is a mandatory entitlement that can apply multiple times, subject to a statutory cap." *Id.*

The Veteran is currently in receipt of a 100 percent rating for PTSD; a 50 percent rating for migraines; a 40 percent rating for a lumbar disability; a 30 percent rating for a neck disability; a 10 percent rating for a left knee disability; a 10 percent rating for a right knee disability; a 10 percent rating for tinnitus; a 10 percent rating for a left wrist disability; and a noncompensable rating for erectile dysfunction (ED).

The Veteran asserts that SMC(m) is warranted based on intermediate steps; the first step based on the lumbar disability and a left wrist disability; and the second step based on the neck disability, the bilateral knee disability, and tinnitus. *See* Appellate Brief. The Veteran also noted that the total schedular rating for PTSD, qualified as a standalone disability, entitling consideration for aid and attendance. *Id.*

Generally, beyond the context of *Barry*, the Veteran asserts, that his SMC level has been limited by the misapplication of 38 U.S.C. § 1114(p). He asserts that the proper application of § 1114(p) results in SMC at the M rate, to ultimately support the award of SMC(r)(1). But the Veteran's proposed application of § 1114(p) includes a problem.

The Veteran's argument for two intermediate-rate increases pursuant to § 1114(p) combines his service-connected disabilities out of order. 38 C.F.R. § 4.25 directs that disabilities be combined in order of severity, "first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity." For example, the Veteran's proposed first intermediate rate SMC increase above SMC(l) is based on the combination of the lumbar disability and a left wrist disability; and the second step based on the neck disability, the bilateral knee disability, and tinnitus. This error in the order of

operations selectively combines service-connected disabilities in pairs combining to 50 percent, out of order from the most severe to least severe sequence dictated by 38 C.F.R. § 4.25.

In the proper order of severity, the Veteran's first intermediate-rate SMC increase pursuant to § 1114(p) above SMC(l) is based on migraines, rated at 50 percent disabling. The next intermediate-rate SMC increase would be based on the lumbar spine disability and the neck disability, which combine to 60 percent. However, a review of the December 2025 Board decision shows that the Veteran's grant of aid and attendance was based on PTSD, the back, the neck, and the knees. In this regard, the Board decision found that his PTSD caused memory problems; and that the Veteran needed assistance with housework and shopping, due to the neck, back, and knee pain.

Here, the back, neck, and knees cannot be included in the intermediate-rate SMC increases because they are not separate and distinct from those disabilities establishing entitlement to the SMC rating under 38 U.S.C. §§ 1114(l) through (n). *See* 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3). Given such, the remaining disabilities are tinnitus and the left wrist, which combine to 20 percent, which does not meet the criteria for an intermediate-rate SMC increase pursuant to § 1114(p). Based on the foregoing, the Board finds that a higher-level SMC is warranted, at the intermediate rate between SMC(l) and SMC(m); however, the criteria for a higher level of SMC has not been shown. Accordingly, SMC at the intermediate rate between SMC(l) and SMC(m) is granted.

The Board now turns to the issue regarding whether SMC(o) or (r-1) is warranted.

The SMC rate payable under 38 U.S.C. § 1114(o) is warranted if the Veteran, as the result of service-connected disability, has suffered the anatomical loss or loss of use of both arms so near the shoulder as to prevent use of a prosthetic appliance or conditions entitling to two or more of the rates (no condition being considered twice) provided one of more of subsections (l) through (n), discussed above. This provides an alternate path to SMC(r)(1), because 38 C.F.R. § 3.350(h)(1) calls for a higher level of compensation, SMC(r)(1), when the Veteran is eligible for compensation under the maximum rate allowable under subsection (p) or subsection (o) and is in need of regular aid and attendance or a higher level of

care. 38 C.F.R. § 3.350(h)(1). Here, the Veteran is already in receipt of SMC(l) based on the need for aid and attendance, any second award of SMC at the (l) through (n) level results in the award of SMC(o), and the need for aid and attendance results in the award of SMC(r)(1).

Because the Veteran is already in receipt of SMC(l) based on the need for aid and attendance, the only remaining avenue for a second award of SMC(l) hinges on establishing loss of use of the Veteran's hands, deafness, and blindness, or the independent need for aid and attendance based on separate disabilities. The Veteran is not service connected for any visual disabilities, has not had anatomical loss of a hand or foot, and the evidence does not show that he is bedridden. There has been no assertion of such, and the evidence does not show otherwise.

A review of the Veteran's VA treatment records shows that the Veteran is enrolled in the VA Family Caregiver Assistance Program. His spouse has been certified as his home caregiver. Under the VA Family Caregiver Assistance Program, the Veteran and his caregiver must regularly verify the Veteran's caregiving needs. VA treatment records document that the Veteran needs assistance with bathing, personal hygiene, and dressing. Specific to dressing, the Veteran's caregiver provides help with socks and shoes, as well as with braces for the Veteran's ankles, knees, and back.

The record further documented that the Veteran needs assistance with preparing meals. Because of his memory issues, related to service-connected PTSD, the Veteran has left the stove on and forgotten to go back to the kitchen. Although the Veteran is capable of feeding himself, he does not cook or prepare meals. The Veteran needs assistance with housework due to neck, back and knee pain. The Veteran also needs assistance with shopping. He cannot be around crowds and does not go to stores, aside from occasionally with his caregiver at night when there are no crowds. The Veteran cannot drive, as he becomes anxious to the point of becoming impaired. Therefore, his caregiver does all the driving.

The Veteran also needs assistance managing his medications. He does not remember to take them as needed. He has also had suicidal ideations, resulting in thoughts of taking all his medications at once. As a result, his caregiver dispenses medications.

The Veteran also submitted an October 2024 report of examination completed by a private provider. The report stated that the Veteran required assistance for essentially all his activities of daily living, to include eating or self-feeding, transferring in or out of a bed or chair, toileting, and ambulating within the home or living area.

Beyond merely showing that the Veteran is able to leave his bed and the home, the evidence of record shows that, despite the need for aid and attendance based in part on the knees, the Veteran has not lost the use of his lower extremities. The ability to occasionally go the store, to shop, to walk, and to drive, suggests that he does not lack all remaining effective function. Regarding the wrist, there is no indication or assertion that the Veteran's disability picture is best characterized as suffering the anatomical loss or loss of use of both arms so near the shoulder as to prevent use of a prosthetic appliance.

For the purposes of SMC, loss of use of a hand or foot will be held to exist when no effective function remains other than that which would be equally well served by an amputation with prosthetic. The determination will be made on the basis of the actual remaining function of the hand, such as the acts of grasping, manipulation, etc., could be accomplished equally well by an amputation stump with prosthesis. 38 C.F.R. §§ 3.350(a)(2), 4.63. "The relevant inquiry concerning an SMC award is not whether amputation is warranted but whether the appellant has had effective function remaining other than that which would be equally well served by an amputation with use of a suitable prosthetic appliance." *Tucker v. West*, 11 Vet. App. 369 (1998).

Examples under 38 C.F.R. § 3.350(a)(2) which would constitute loss of use of a foot include extremely unfavorable ankylosis of the knee; complete ankylosis of two major joints of an extremity; shortening of the lower extremity of 3.5 inches or more; and, complete paralysis of the external popliteal (common peroneal) nerve and consequent foot drop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve.

While the Board acknowledges the impairment caused by the knees and the left wrist, there has been no assertion or evidence that reflect loss of use of any

extremity. Further, there has also been no assertion or indication that the migraines and/or tinnitus have caused the need for aid and attendance, such that a separate award of SMC(l) would be warranted. As such, the Board finds that the evidence does not support a second award of SMC(l). 38 U.S.C. § 1114(l), 38 C.F.R. § 3.350(b); *Breniser*, 25 Vet. App. at 77-78. Without loss of use of any extremity at the lowest level of SMC(l), the Board also finds no evidence to support loss of use of any extremity at a higher level as contemplated by SMC(m) or (n).

Accordingly, the lay and medical evidence do not reflect blindness, deafness, or loss of use contemplated by any of subsections (l), (m), (n), (o), or (p) of 38 U.S.C. § 1114. Instead, the evidence, including that submitted by the Veteran, shows the need for aid and attendance based on the limitations imposed by the combination of his service-connected disabilities (PTSD, the back disability, the neck disability, and the bilateral knee disabilities; and one intermediate-rate SMC, or half step, increase pursuant to §§ 1114(l), (p); 38 C.F.R. §§ 3.350(b)(3), (f)(3), 3.352(a). Based on the foregoing, the Veteran does not meet the requirements for two or more of the rates provided in one of more of subsections (l) through (n) and is not eligible for SMC pursuant to 38 U.S.C. § 1114(o), and thus in turn is not eligible for SMC pursuant to 38 U.S.C. § 1114(r).

Here, while the evidence shows that the Veteran needs regular aid and attendance, he has not lost the use of any extremity for the purposes of SMC, and entitlement to higher levels of SMC on that basis is denied. 38 U.S.C. § 1114(l) and 38 C.F.R. § 3.352(a). Additionally, the Veteran's proposed application of 38 U.S.C. § 1114(p) impermissibly adds two intermediate-rate SMC, or half step, increases pursuant to § 1114(p) by calculating those half-steps out of the proper order from most to least severe called for by 38 C.F.R. § 4.25; as well as utilizing service-connected disabilities already accounted for in the grant of SMC based on the need for regular aid and attendance. The proper application of 38 U.S.C. § 1114(l), combining disabilities in the order or severity pursuant to 38 C.F.R. § 4.25, results in one intermediate-rate SMC increase pursuant to § 1114(p).

In sum, SMC at the intermediate rate between SMC(l) and SMC(m) is warranted. To that extent only, the appeal is granted. In reaching this conclusion, the Board finds that the benefit-of-the-doubt doctrine is inapplicable. *See* 38 U.S.C. § 5107(b); *Lynch v. McDonough*, 21 F.4th 776, 781 (Fed. Circ. 2021) (en banc) (only

when the evidence persuasively favors one side or another is the benefit of the doubt doctrine not for application).

J. Kirby
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board E. Fu, Counsel

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.