BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

Docket No. 260731-703688

Represented by
Gordon A. Graham, Agent

DATE: November 20, 2026

ORDER

Entitlement to special monthly compensation (SMC) prior to October 23, 2025, under 38 U.S.C. § 1114(p) at an intermediate rate between § 1114 (m) and (n), but no higher, is granted.

Entitlement to SMC, since October 23, 2025, under 38 U.S.C. § 1114(p) at the rate provided in § 1114(n), but no higher, is granted.

FINDINGS OF FACT

1. Prior to October 23, 2025, the record establishes entitlement to SMC pursuant to 38 U.S.C. § 1114(l), for the Veteran's need of aid and attendance due to his service-connected posttraumatic stress disorder (PTSD); and, two additional independent ratings of 50 percent or greater, under 38 C.F.R. § 3.350(f)(3), for separate and distinct disabilities of sleep apnea and headache disabilities; and a combined rating of 50 percent involving separate and distinct disabilities of different anatomical segments or bodily systems from the permanent disabilities which entitle the Veteran to SMC under § 1114(l) and intermediate steps under § 1114(p).

2. Since October 23, 2025, the record establishes entitlement to SMC pursuant to 38 U.S.C. § 1114(l), for the Veteran's need of aid and attendance due to his PTSD; and, two additional independent ratings of 50 percent or greater, under 38 C.F.R. § 3.350(f)(3), for separate and distinct disabilities of sleep apnea and headache disabilities; and two additional combined ratings of 50 percent involving separate

and distinct disabilities of different anatomical segments or bodily systems from the permanent disabilities which entitle the Veteran to SMC under § 1114(l) and intermediate steps under § 1114(p).

CONCLUSIONS OF LAW

1. The criteria for SMC under 38 U.S.C. § 1114(p) at an intermediate rate between § 1114 (m) and (n), but no higher, prior to October 23, 2025, have been met. 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352.

2. The criteria for SMC under 38 U.S.C. § 1114(p) at the rate provided in § 1114(n), but no higher, since October 23, 2025, have been met. 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served in the United States Marine Corps on active duty from December 1986 to April 1991 and October 1998 to July 2011.

The issues come before the Board of Veterans' Appeals (Board) on appeal from a July 2026 rating decision by the Department of Veterans Affairs (VA) Regional Office (RO).

In the July 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 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 claim(s), considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

As a final preliminary matter, in the July 2026 VA Form 10182, the Veteran selected to waive any additional time within which to modify the selected Board appeal docket. Under these circumstances, the Board may move forward with the Veteran's appeal prior to the required deadline for requesting a docket switch. *See* 38 C.F.R. § 20.202(c)(2); *see also Williams v. McDonough*, 37 Vet. App. 305 (2024).

Special Monthly Compensation

Special monthly compensation is available when, as the result of a service-connected disability, a veteran suffers additional hardships above and beyond those contemplated by the schedule for rating disabilities. *See* 38 U.S.C. § 1114; *see also* 38 C.F.R. §§ 3.350, 3.352. The rate of SMC varies according to the nature of the Veteran's service-connected disabilities.

Special monthly compensation provided by 38 U.S.C. § 1114(l) is payable 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 C.F.R. § 3.350(b).

Generally, 38 U.S.C. § 1114(p) allows compensation at rates provided between § 1114 paragraphs (l) and (o), where a veteran is in receipt of compensation under § 1114(l) and also has additional service-connected disabilities that combine independently to 50 or 100 percent. *See* 38 C.F.R. § 3.350(f). Such an award creates "entitlement to the next higher intermediate rate or if already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. § 1114." 38 C.F.R. § 3.350(f)(3).

1. Entitlement to SMC prior to October 23, 2025, under 38 U.S.C. § 1114(p) at an intermediate rate between § 1114 (m) and (n), but no higher, is granted.

2. Entitlement to SMC, since October 23, 2025, under 38 U.S.C. § 1114(p) at the rate provided in § 1114(n), but no higher, is granted.

In April 2020, the AOJ granted entitlement to SMC(l) based on the Veteran's need for regular aid and attendance. Notably, the grant to SMC(l) was reported as due entirely to the Veteran's service-connected PTSD.

In the July 2026 rating decision on appeal, the AOJ identified a clear and unmistakable error in the assignment of the level of SMC and granted an additional half step of compensation under § 1114(p) at a rate between § 1114(l) and (m). The AOJ assigned additional SMC noting that the Veteran is service-connected for sleep apnea, headaches with symptoms of photophobia, chronic left shoulder pain, cervical spondylosis with cervical fusion and right side radiculopathy, tinnitus, tremors of the hands and feet bilaterally, and cervical radiculopathy of the left upper extremity that have a combined evaluation of 50 percent or more and are separate and distinct from the Veteran's service-connected PTSD (rated as 100 percent and the sole disability in the SMC(l) aid and attendance rating). The AOJ applied the rate of SMC retroactively to June 17, 2014.

In the present case, the Veteran challenges the assignment of an intermediate level of compensation between § 1114 (l) and (m). The Veteran proposes a more beneficial reading of his disability ratings which might entitle him to a higher rate of SMC under § 1114(p).

For the period on appeal prior to October 23, 2025, the Veteran is in receipt of a total disability rating, effective June 17, 2014. The claims file shows the Veteran's service-connected disabilities are rated as:

1. 100 percent for PTSD with attention deficit-hyperactivity disorder and traumatic brain injury (TBI);

2. 50 percent for sleep apnea;

3. 50 percent for headaches with symptoms of photophobia;

4. 40 percent for mild traumatic brain injury (TBI) (discontinued in August 2020 and rated further under DC 8045-9411 with the Veteran's mental health condition);

5. 20 percent for internal derangement of the left shoulder (also referred to as left shoulder pain);

6. 20 percent for cervical spondylosis with cervical fusion and right side radiculopathy with chronic pain syndrome of the back (also referred as cervicalgia and claimed as upper back condition and chronic pain syndrome of the back);

7. 10 percent for tinnitus;

8. 10 percent for tremors of the hands and feet bilaterally with loss of sensation/numbness of the hands (also claimed as tremors of bilateral hands and feet and bilateral numbness of the hands); and

9. 10 percent for cervical radiculopathy of the left upper extremity.

(The Veteran is in receipt of numerous noncompensable ratings, including for service-connected erectile dysfunction, which are not relevant for the current claim for increased SMC).

In cases where a veteran is entitled to SMC at a rate between (l) and (n) and has additional service-connected disabilities not captured by any other SMC rate, a veteran's SMC rate may be increased either a half or a full step, but not more than the SMC rate set out in subsection (o). 38 U.S.C. § 1114(p). An intermediate rate is determined as the arithmetic mean, rounded to the nearest dollar, between the two rates concerned. 38 C.F.R. § 3.350(f). The requirements for a half-step increase are provided by 38 C.F.R. § 3.350(f)(3) and the requirements for a full-step increase are provided by § 3.350(f)(4).

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 disability ratable at 50 percent or more, the next higher intermediate rate should be assigned. *See* 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.* Multiple half-step increases are unambiguously permitted under this provision when the disability or combination of disabilities are separate and distinct and involve different anatomical segments or bodily systems from the disabling condition(s) providing a previous SMC increase. *Barry v. McDonough*, 101 F.4th 1348, 1356 (Fed. Cir. 2024).

In total, § 1114(p) provides for six levels of SMC payable to a veteran at rates from § 1114 (l) to (o) (rates equal to § 1114 between (l) and (m); (m); between (m) and (n); (n); between (n) and (o); and (o)). 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3); *see Barry*, *supra*.

In the present case, the Board finds that for the period on review prior to October 23, 2025, the Veteran is entitled to SMC at the intermediate level between § 1114 (m) and (n). 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3).

The Veteran is in receipt of SMC at the rate of § 1114(l) due to the need of aid and attendance based solely on the Veteran's service-connected PTSD. Under 38 C.F.R. § 3.350(f)(3), the Veteran is entitled to two intermediate steps due to the Veteran's 50 percent disability ratings for sleep apnea and headaches for the entire period on review, as the disabilities are separate and distinct from PTSD and involve different anatomical segments or bodily systems from one another.

Further, for the entire period on review, the Veteran's additional disability ratings combine for a separate 50 percent rating. The disability ratings of the Veteran's internal derangement of the left shoulder (also referred to as left shoulder pain); cervical spondylosis with cervical fusion and right side radiculopathy with chronic pain syndrome of the back (also referred to as cervicalgia and claimed as upper back condition and chronic pain syndrome of the back); tremors of the hands and feet bilaterally with loss of sensation/numbness of the hands; and cervical radiculopathy of the left upper extremity total 50 percent. These disabilities are separate and distinct and involve different anatomical segments or bodily systems from the Veteran's PTSD, sleep apnea, and headache disability.

Accordingly, prior to October 23, 2025, the Veteran is entitled to three intermediate steps under § 1114(p) resulting in an SMC rate at a half step between § 1114(m) and (n). 38 C.F.R. § 3.350(f)(3), *see Barry*, 101 F.4th at 1353 (finding a "single additional disability or a combination of disabilities "is sufficient to qualify for the" SMC increase").

Finally, the Board finds that the Veteran is entitled to an additional intermediate step of SMC since October 23, 2025, under 38 U.S.C. § 1114(p). The AOJ granted service connection for fibromyalgia with a 40 percent initial disability rating, effective October 23, 2025, and the Veteran is in receipt of a 10 percent disability rating for tinnitus. When combined, these ratings total 50 percent disabling. The combination of disabilities is separate and distinct and involve different anatomical segments or bodily systems from the permanent disabilities which entitled the Veteran to SMC under § 1114(1) and the intermediate steps under § 1114(p) prior to October 23, 2025. Thus, since October 23, 2025, the Board finds the Veteran is entitled to SMC at the rate provided in § 1114(n). 38 C.F.R. § 3.350(f)(3), *see Barry*, 101 F.4th at 1353 (holding that "as long as [the appellant] is entitled to an intermediate-rate SMC increase under 38 C.F.R. § 3.350(f)(3), he shall receive it,") *see also Augustine v. Principi*, 343 F.3d 1334, 1338 (Fed. Cir. 2003) (concluding that 38 C.F.R. § 3.350(f)(3) is mandatory).

Thus, the Board finds, prior to October 23, 2025, the Veteran is entitled to SMC at the intermediate rate between § 1114(m) and (n), but no higher. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3). Further, for the period on review thereafter, the Veteran is entitled to SMC at the rate of § 1114(n), but no higher. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3).

The Board has considered whether entitlement to additional SMC may be afforded to the Veteran. Here, the Board notes the Veteran's 40 percent disability rating for TBI, effective from July 30, 2011, to August 31, 2020. As the Veteran's TBI disability rating is not separate or distinct from the permanent disabilities which entitled the Veteran to SMC under § 1114 (1) and (p), 38 C.F.R. § 3.350(f)(3) would bar further compensation under § 1114(p). 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f).

VA has a "well-established" duty to maximize a claimant's benefits. *See Buie v. Shinseki*, 24 Vet. App. 242, 250 (2011); *see also AB v. Brown*, 6 Vet. App. 35, 38 (1993). The duty to maximize benefits requires VA to assess all of a claimant's disabilities to determine whether any combination of disabilities establishes entitlement to SMC under 38 U.S.C. § 1114. *See Bradley v. Peake*, 22 Vet. App. 280, 294 (2008). Consideration will thereby be given as to whether the facts of this case would permit the Board to consider an additional separate rating under 38 U.S.C. § 1114(l). Such would allow the Veteran to be eligible for SMC under 38 U.S.C. § 1114(o), which is warranted based on two SMC rates under subsections (l), (m), or (n) of 38 U.S.C. § 1114. Here, based on a review of the claims file, for the period on review, the Veteran has not experienced additional hardship or disability that would provide the Veteran eligibility to additional SMC rating under § 1114(l), (m), or (n). The Veteran does not meet the criteria for additional SMC that would allow further compensation under § 1114(o). 38 U.S.C. § 1114.

Thus, in light of the above, the Board finds, prior to October 23, 2025, the Veteran is entitled to SMC at the intermediate rate between § 1114(m) and (n), but no higher. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3). Further, the Board finds for the period on review since October 23, 2025, the Veteran is entitled to SMC at the rate of § 1114(n), but no higher. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f)(3). To this extent the Veteran's claim is granted.

Jennifer Hwa

JENNIFER HWA
Veterans Law Judge
Board of Veterans' Appeals

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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.