

PARALYZED VETERANS OF AMERICA

Veterans Benefits Department

A Basic Guide to Special Monthly Compensation Ratings Under 38 USC § 1114



Seventh Edition

2004

Table of Contents

How to Use this Guide.....1

38 USC § 1114(k) SMC Ratings.....2

38 USC § 1114(l) SMC Ratings3

38 USC § 1114(m) SMC Ratings ...4

38 USC § 1114(n) SMC Ratings5

38 USC § 1114(o) SMC Ratings5

38 USC § 1114(p) SMC Ratings6

38 USC § 1114(r)(1) & (2)
SMC Ratings10

38 USC § 1114(s) SMC Ratings...11

Special Rating Considerations
Under 38 USC § 1160 for Paired
Organs or Extremities12

Special Monthly
Compensation Rates
and Codes.....Inside back pocket

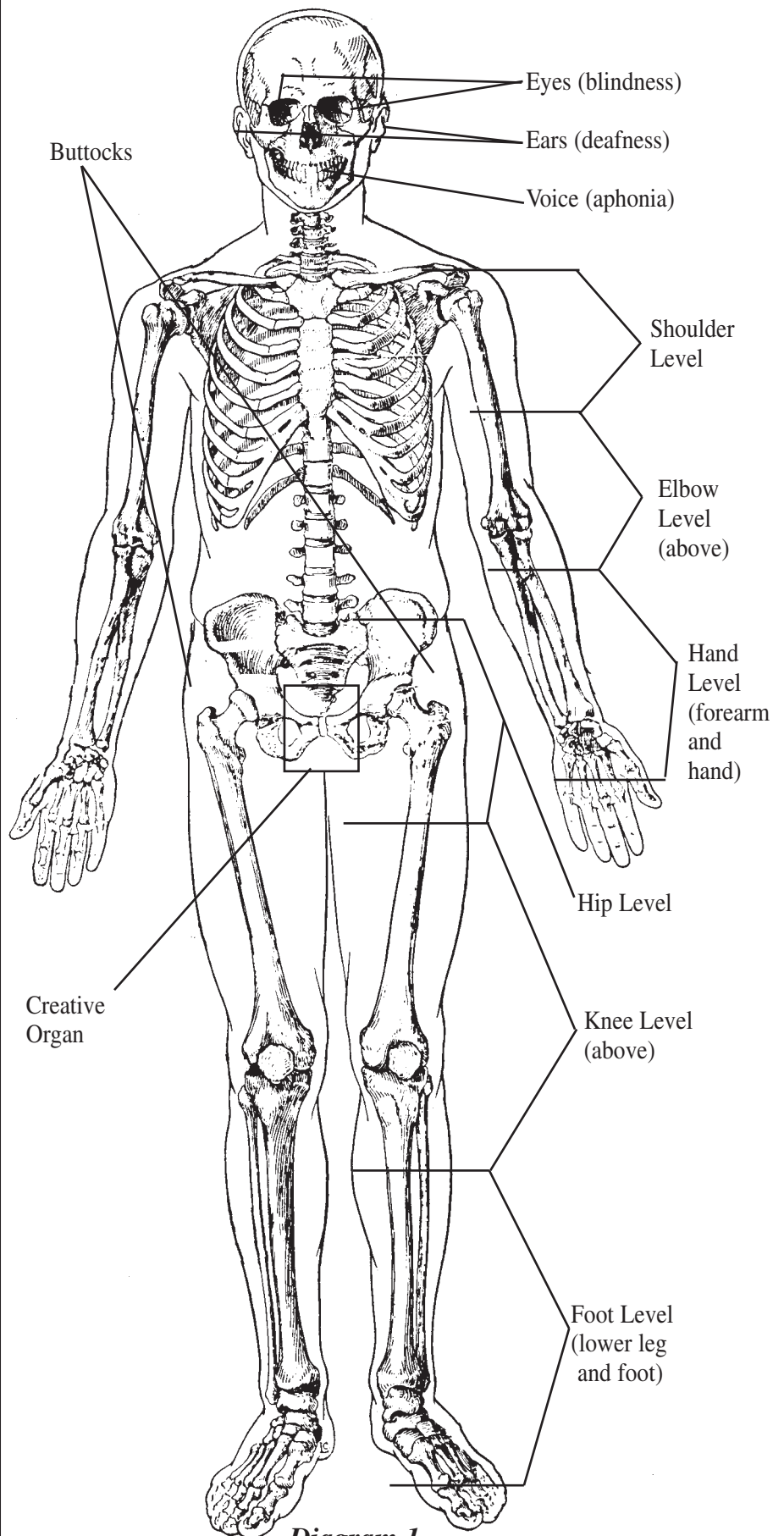


Diagram 1

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HOW TO USE THIS GUIDE

This guide is intended as a tool to develop and enhance the skills of national service officers of the Paralyzed Veterans of America (PVA). In our continuing efforts to ensure that all veterans receive the maximum benefits to which they are entitled from the Department of Veterans Affairs (VA), PVA has distributed this guide to numerous veterans service organization representatives as a training tool.

The concept of special monthly compensation (SMC) is difficult because of its complexity and the various factors that can affect entitlement. The different rates of SMC are based on the extent of service-connected disabilities involving anatomical loss or loss of use of extremities and in some cases the loss of certain bodily functions.

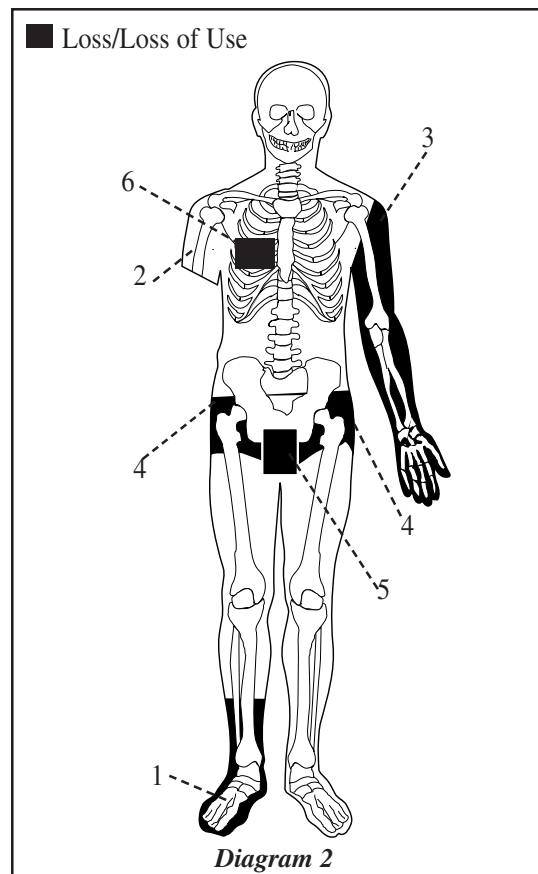
For each disability that qualifies for SMC, the applicable law or regulation is provided in the text. In addition, anatomical diagrams are included for several of the SMC prerequisites (see **diagram 1**). These diagrams are used to illustrate the extent of disability that creates entitlement to SMC.

A word of caution: Representatives should be aware that the diagrams are, for the most part, only examples of possible disability combinations that may qualify for SMC. In general, the law provides for a variety of disability combinations that may entitle a veteran to a particular rate of SMC. Representatives should rely on the appropriate laws and regulations when applying the SMC provisions and not on an example diagram.

PVA's Veterans Benefits Department believes in the concept of using diagrams to teach SMC. On these diagrams, the anatomical loss or loss of use of a specific extremity or function, at the appropriate level of involvement, is represented by a blackened section of the affected area. Where amputation is a prerequisite, a missing body part is depicted. By using a diagram to signify different types and levels of disability, SMC can be envisioned more easily. Generally, disabilities used to determine the SMC rate payable are service-connected. When applying the provisions of 38 CFR § 3.383, nonservice-connected conditions may be used.

As an example of the effectiveness of these diagrams, visualize a veteran with the following disabilities:

- 1) loss of use of the right foot;
- 2) amputation of the right arm, above the elbow;
- 3) loss of use of the left arm, at the shoulder;
- 4) loss of use of both buttocks;
- 5) loss of use of a creative organ;
- 6) loss of one or both breasts.



Difficult isn't it? Now refer to **diagram 2**. By using a diagram for this veteran, you can "see" the severity of his/her disabilities and determine the proper rate of SMC quickly and accurately.

The various SMC rates payable to qualified disabled veterans are usually increased annually. Consult VA Manual M21-1, Appendix B, for accurate, up-to-date information.

It is our belief that this guide will prove useful in your role as an advocate for veterans. Please forward any comments concerning the guide to:

Paralyzed Veterans of America
 Veterans Benefits Department
 Attn: Field Services
 801 Eighteenth Street, NW
 Washington, DC 20006-3517
 (202) 872-1300 (voice)
 (202) 416-7622 (TDD)

38 USC § 1114(k) SMC RATINGS

GENERAL (38 CFR § 3.350(a))

An additional monthly payment is authorized when the veteran has suffered the anatomical loss or loss of use of:

- 1) one or more creative organs (**diagram 3**);
- 2) one foot (**diagram 4**);
- 3) one hand;
- 4) both buttocks (**diagram 5**);
- 5) one eye;
- 6) hearing—deafness of both ears;
- 7) speech—aphonia;
- 8) the anatomical loss or partial loss of one or both breasts for a female.

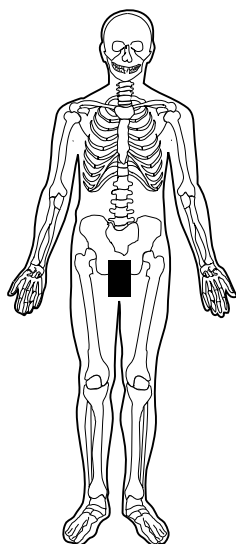


Diagram 3

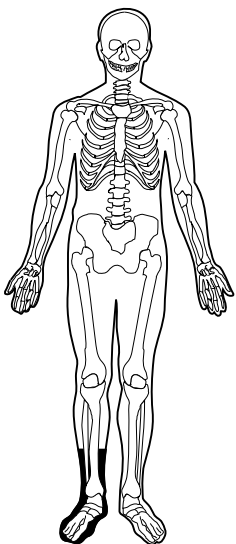


Diagram 4

38 CFR § 3.350(a)(2)

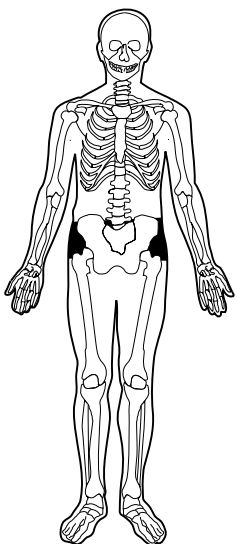


Diagram 5

38 CFR § 3.350(a)(3)

CREATIVE ORGAN (38 CFR § 3.350(a)(1))

Entitlement to SMC(k) exists when there is acquired loss or loss of use of one or both testicles or ovaries or other creative organs. Generally, elective surgery, such as vasectomy, or the loss of use of a creative organ following menopause would not be considered loss or loss of use of a creative organ. Even though there may be loss or loss of use of more than one creative organ, the law provides that only one (k) award can be granted for this function.

FOOT OR HAND (38 CFR § 3.350(a)(2), 38 CFR § 4.63)

Entitlement to SMC(k) will be found to exist when there is loss or loss of use of one foot or one hand. Loss of use will be held to exist when the remaining function is equal to that of an amputation stump (below the level of the elbow or knee), with a suitable prosthesis in place, were amputation to be performed.

Foot: Normal functions include balancing, propulsion, and ambulation.

Hand: Function is described in terms of grasping and manipulation.

Other factors: Loss of use of a foot is conceded when there is extremely unfavorable complete ankylosis of the knee or complete ankylosis of two major joints of an extremity or shortening of the lower extremity 3½ inches or more. Complete paralysis of the common peroneal nerve and consequent foot-drop, accompanied by characteristic organic changes, including trophic and circulatory disturbances and other factors indicating complete paralysis, will be taken as loss of use.

BOTH BUTTOCKS (38 CFR § 3.350(a)(3), 38 CFR § 4.64)

SMC(k) is awarded for the loss of use of both buttocks when there is severe damage to muscle group XVII, bilaterally, so as to make it impossible for the person to rise without assistance from a seated or stooped (fingers to toes) position and an inability to maintain postural stability (stand erect). The assistance may be provided by the person's own hands or arms and, in the matter of postural stability, by a special appliance. Payment of SMC(k) for loss of use of both buttocks is payable even when there is separate entitlement to SMC for loss or loss of use of both lower extremities (38 USC § 1114(l) through (n)); however, appropriate tests must clearly demonstrate that there is such additional loss.

Note: Under diagnostic code 5317 compensation is payable at the 50 percent rate for severe loss of use of each buttock. If bilateral, the 50 percent evaluation is applied to both buttocks, and when the bilateral factor is considered (see 38 CFR § 4.26) an overall evaluation of 80 percent is assigned.

EYE (38 CFR § 3.350(a)(4), 38 CFR § 4.79)

Loss of use or blindness of one eye, having light perception only, so as to entitle a veteran to SMC(k), will be held to exist when there is inability to recognize test letters from 1 foot away and when further examination of the eye reveals that perception of objects or hand movements or counting fingers cannot be accomplished at a distance of 3 feet.

DEAFNESS (38 CFR § 3.350(a)(5))

Entitlement to SMC(k) is established for deafness in both ears, having absence of air and bone conduction. Deafness will exist when a VA examination shows, under current testing criteria, that the bilateral hearing loss is equal to or greater than what is required for a 100 percent evaluation under Diagnostic Code 6110 of the *VA Schedule for Rating Disabilities*.

APHONIA (38 CFR § 3.350(a)(6))

Payment of SMC(k) is authorized for complete organic aphonia when there is a disability of the organs of speech that constantly precludes communication by speech. Total laryngectomy with tracheostomy, even if there is comprehensible speech by means of “esophageal voice” (without a prosthesis), will entitle a veteran to a (k) award.

LOSS OF ONE OR BOTH BREASTS (38 CFR § 3.350(a)(7))

Entitlement to SMC for loss of one or both breasts is limited to women veterans. The loss of a breast will be held to exist when there is surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury) of 25 percent or more of the affected breast(s).

38 USC § 1114(I) SMC RATINGS

GENERAL (38 CFR § 3.350(b))

The SMC rate payable under 38 USC § 1114(I) is authorized for the following disabilities or conditions:

- 1) anatomical loss or loss of use of both feet (**diagram 6**);
- 2) anatomical loss or loss of use of one hand and one foot (**diagram 7**);
- 3) blindness in both eyes with visual acuity of $\frac{5}{200}$ or less (**diagram 8**);
- 4) being so helpless as to be in need of the regular aid and attendance (A&A) of another person (38 CFR § 3.350(b)(3));
- 5) being permanently bedridden (38 CFR § 3.350(b)(4)).

EXTREMITIES (38 CFR § 3.350(b)(1))

The previously discussed criteria for loss and loss of use of an extremity (foot or hand) also apply to SMC rates (l) through (o).

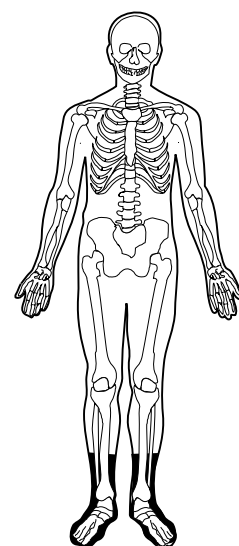


Diagram 6
38 CFR § 3.350(b)(1)

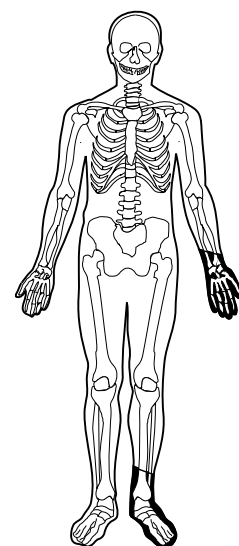


Diagram 7
38 CFR § 3.350(b)(1)

Bilateral blindness with visual acuity of $\frac{5}{200}$ or less ($\frac{5}{200}$)

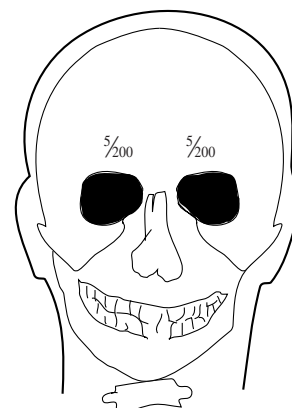


Diagram 8
38 CFR § 3.350(b)(2)

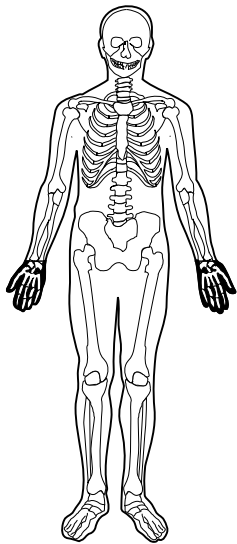


Diagram 9
38 CFR § 3.350(c)(1)(i)

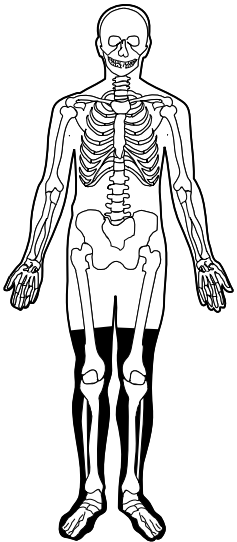


Diagram 10
38 CFR § 3.350(c)(1)(ii)

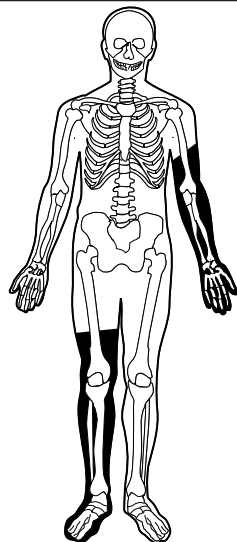


Diagram 11
38 CFR § 3.350(c)(1)(iii)

EYES, BILATERAL (38 CFR § 3.350(b)(2))

To qualify for SMC(1), there must be bilateral visual acuity of $\frac{5}{200}$ or less. Concentric contraction of the field of vision beyond five degrees in both eyes is equivalent of $\frac{5}{200}$ visual acuity.

NEED FOR AID AND ATTENDANCE AND PERMANENTLY HOUSEBOUND (38 CFR §§ 3.350(b)(3)&(4), 3.352(a))

In determining the need for regular aid and attendance, the following factors are considered: inability to dress or undress oneself or to keep oneself ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances that by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances that normal individuals would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability to feed oneself through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect oneself from hazards or dangers incident to one's daily environment. "Bedridden" will be a proper basis for a determination that the need for aid and attendance exists. "Bedridden" means that the condition (through its essential character) actually requires that the claimant remain in bed. The fact that a claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice.

NOTE: It is not required that all of the disabling conditions listed in the above paragraph be found to exist before a favorable rating may be made. The particular personal functions that the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there is a constant need. Determinations that the veteran is so helpless as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition requires him or her to be in bed. The determination must be based on the actual requirement of personal assistance from others.

38 USC § 1114(m) SMC RATINGS

GENERAL (38 CFR § 3.350(c))

The SMC rate payable under 38 USC § 1114(m) is authorized for the following disabilities:

- 1) anatomical loss or loss of use of both hands (**diagram 9**);
- 2) anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prostheses in place (**diagram 10**);
- 3) anatomical loss or loss of use of one upper and one lower extremity preventing natural elbow and knee action with prostheses in place, due to the level of involvement or with complications (**diagram 11**);
- 4) blindness in both eyes having only light perception (**diagram 12**, shown on page 5), 38 CFR § 3.350(c)(1)(iv);
- 5) blindness in both eyes leaving the veteran so helpless as to be in need of aid and attendance, 38 CFR 3.350 § (c)(1)(v).

NATURAL ELBOW OR KNEE ACTION (38 CFR § 3.350(c)(2))

In determining whether there is natural elbow or knee action with prosthesis in place, consideration will be based on whether use of the proper prosthetic appliance requires natural use of the joint, or whether necessary motion is otherwise controlled, so that the muscles affecting joint motion, if not already atrophied, will become so.

NOTE: If there is no movement in the joint, as in ankylosis or complete paralysis, use of a prosthesis is not to be expected, and the determination will be as though there were one in place.

EYES, BILATERAL (38 CFR § 3.350(c)(3))

With visual acuity of $\frac{5}{200}$ or less or the vision field reduced to five degrees concentric contraction in both eyes, entitlement on account of need for regular aid and attendance will be determined on the facts in the individual case, as required by 38 CFR § 3.352(a).

38 USC § 1114(n) SMC RATINGS

GENERAL (38 CFR § 3.350(d))

The SMC rate payable under 38 USC § 1114(n) is authorized for the following disabilities:

- 1) anatomical loss or loss of use of both arms at a level, or with complications, preventing natural elbow action with prostheses in place (**diagram 13**);
- 2) anatomical loss of both legs so near the hip as to prevent use of prosthetic appliances (**diagram 14**);
- 3) anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, 38 CFR § 3.350(d)(3);
- 4) anatomical loss of both eyes (enucleation) or blindness without light perception (NLP) in both eyes, 38 CFR § 3.350(d)(4).

PREREQUISITES (38 CFR § 3.350(d))

Amputation is a prerequisite for the payment of the (n) rate, except for the loss of use of both arms and blindness without light perception in both eyes. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were reamputation at a higher level, the requirements for the (n) award are not met. Instead, consideration will be given to loss of natural elbow or knee action.

38 USC § 1114(o) SMC RATINGS

GENERAL (38 CFR § 3.350(e))

The SMC rate payable under 38 USC § 1114(o) is for the following disabilities or conditions:

- 1) anatomical loss of both arms so near the shoulder as to prevent use of prosthetic appliances (**diagram 15** on next page);

Note: Loss of use of both arms at the shoulder level does not qualify for the SMC rate payable under 38 USC § 1114(o) as amputation (anatomical loss)

Bilateral blindness with light perception only (LPO)

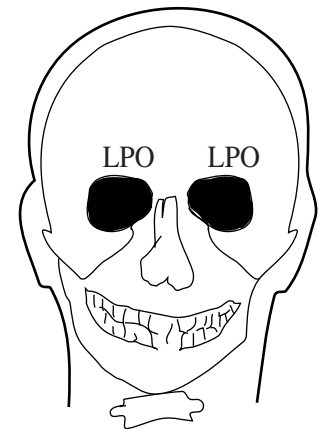


Diagram 12
38 CFR § 3.350(c)(1)(iv)

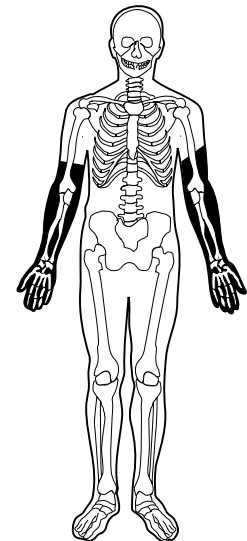


Diagram 13
38 CFR § 3.350(d)(1)

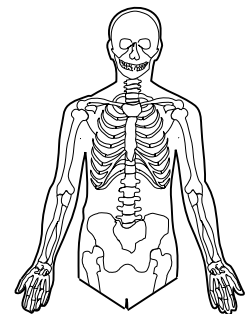


Diagram 14
38 CFR § 3.350(d)(2)

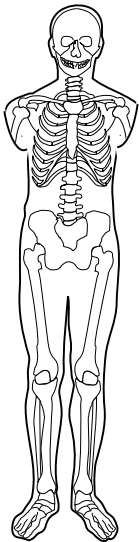


Diagram 15
38 CFR § 3.350(e)(1)(i)

Bilateral blindness (LPO or less) with SC total deafness one ear, or bilateral deafness 40 percent or more one ear SC.

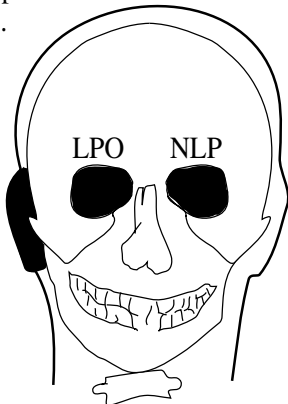


Diagram 16
38 CFR § 3.350(e)(1)(iv)

Must be combined with loss of anal and bladder sphincter control.

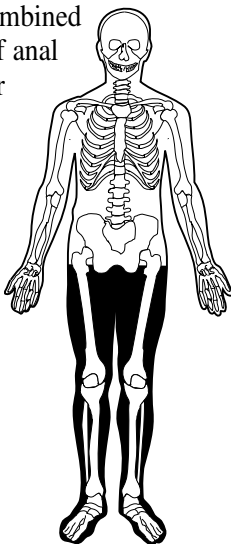


Diagram 17
38 CFR § 3.350(e)(2)

is a prerequisite. When determining the rate payable in a case where complete loss of use exists (unilateral or bilateral), but there is no amputation, use the rate applicable for loss of use of arm (or arms) above the elbow level.

- 2) conditions entitling the veteran to two or more SMC rates provided in 38 USC § 1114(l) through (n), with no condition being considered twice;
- 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 $\frac{3}{200}$ or less;
- 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 or both ears is service connected) in combination with service-connected blindness of both eyes having only light perception or less (**diagram 16**);
- 5) paralysis of both lower extremities (paraplegia) together with loss of anal and bladder sphincter control (**diagram 17**).

PARAPLEGIA (38 CFR § 3.350(e)(2))

The requirement for loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures. Entitlement to SMC(o) for paraplegia is based on a combination of loss of use of both legs and helplessness.

COMBINATIONS (38 CFR § 3.350(e)(3))

Determinations are based upon separate and distinct disabilities. This requires, for example, that where a veteran who has suffered the loss or loss of use of two extremities is being considered for the maximum SMC(o) 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 veteran 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 under SMC(o). 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, a single injury or rheumatoid arthritis, will not preclude entitlement to the (o) rate.

HELPLESSNESS (38 CFR § 3.350(e)(4))

The maximum SMC rate under (o), as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

38 USC § 1114(p) SMC RATINGS

GENERAL (38 CFR § 3.350(f))

38 USC § 1114(p) provides the authority for the VA to award intermediate or next higher statutory SMC rates. These rates are commonly referred to as “½ step” and “full step” increases (i.e., (1½), (m), (m½), (n), (n½) and (o)). The “½ step” (intermediate) rate

payable is determined by arithmetic means, rounded to the nearest dollar, between the two “full step” rates concerned (e.g., (l) and (m)). Awards under (p) are payable when the following disabilities or conditions exist:

- 1) anatomical loss or loss of use of one foot with anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place will entitle the veteran to (1½) (the SMC rate payable between (l) and (m)) (38 CFR § 3.350(f)(1)(i)) (**diagram 18**);
- 2) anatomical loss or loss of use of one foot with anatomical loss of one leg so near the hip as to prevent the use of a prosthetic appliance will entitle the veteran to the SMC rate payable under (m) (38 CFR § 3.350(f)(1)(ii));
- 3) anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place will entitle the veteran to (1½) (the SMC rate payable between (l) and (m)) (38 CFR § 3.350(f)(1)(iii));
- 4) anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance will entitle the veteran to the SMC rate payable under (m) (38 CFR § 3.350(f)(1)(iv));
- 5) anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance will entitle the veteran to (m½) (the SMC rate between (m) and (n)) (38 CFR § 3.350(f)(1)(v)) (**diagram 19**);
- 6) anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss or loss of use of one hand will entitle the veteran to (1½) (the SMC rate between (l) and (m)) (38 CFR § 3.350(f)(1)(vi)) (**diagram 20**);
- 7) anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance will entitle the veteran to (m½) (the SMC rate between (m) and (n)) (38 CFR § 3.350(f)(1)(vii));
- 8) anatomical loss of one leg so near the hip as to prevent the use of a prosthetic appliance with anatomical loss or loss of use of one hand will entitle the veteran to the SMC rate payable under (m) (38 CFR § 3.350(f)(1)(viii));
- 9) anatomical loss of one leg so near the hip as to prevent the use of a prosthetic appliance with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place will entitle the veteran to (m½) (the SMC rate payable between (m) and (n)) (38 CFR § 3.350(f)(1)(ix));
- 10) anatomical loss or loss of use of one hand with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place will entitle the veteran to (m½) (the SMC rate payable between (m) and (n)) (38 CFR § 3.350(f)(1)(x));
- 11) anatomical loss or loss of use of one hand with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance will entitle the veteran to the SMC rate payable under (n) (38 CFR § 3.350(f)(1)(xi));
- 12) anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance

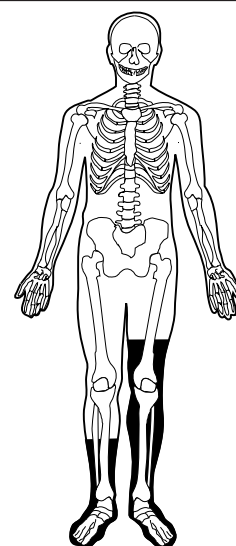


Diagram 18
38 CFR § 3.350(f)(1)(i)

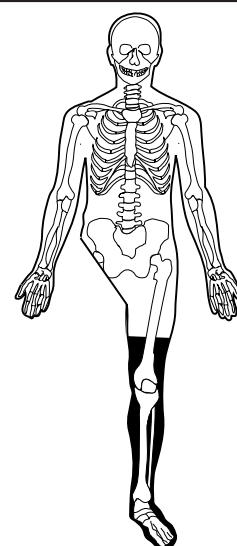


Diagram 19
38 CFR § 3.350(f)(1)(v)

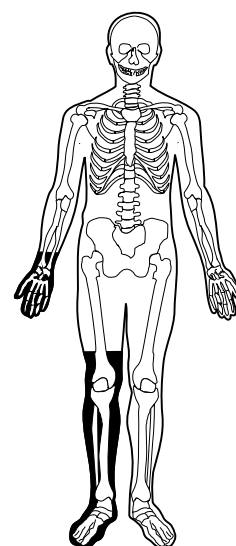


Diagram 20
38 CFR § 3.350(f)(1)(vi)

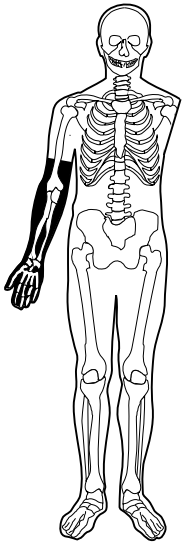


Diagram 21
38 CFR § 3.350(f)(1)(xii)

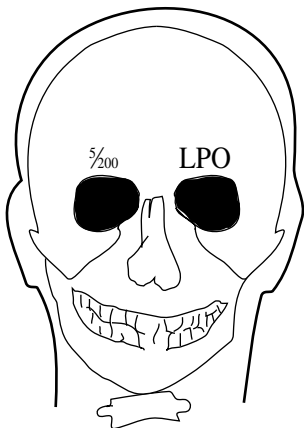


Diagram 22
38 CFR § 3.350 (f)(2)(i)

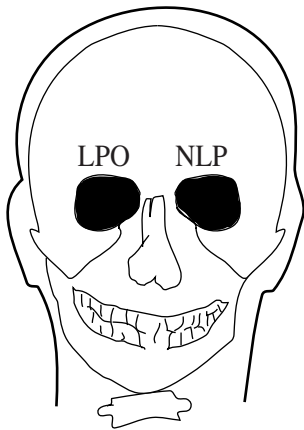


Diagram 23
38 CFR § 3.350(f)(2)(iii)

will entitle the veteran to (n½) (the SMC rate between (n) and (o)) (38 CFR § 3.350(f)(1)(xii)) (**diagram 21**);

- 13) blindness of one eye with $\frac{5}{200}$ visual acuity or less and blindness of the other eye having only light perception will entitle the veteran to (l½) (the SMC rate payable between (l) and (m)) (38 CFR § 3.350(f)(2)(i)) (**diagram 22**);
- 14) blindness of one eye with $\frac{5}{200}$ visual acuity or less and anatomical loss of or blindness in the other eye having no light perception will entitle the veteran to the SMC rate payable under (m) (38 CFR § 3.350(f)(2)(ii));
- 15) blindness of one eye having only light perception and anatomical loss of or blindness in the other eye having no light perception will entitle the veteran to (m½) (the SMC rate payable between (m) and (n)) (38 CFR § 3.350(f)(2)(iii)) (**diagram 23**);
- 16) blindness in both eyes with visual acuity of $\frac{5}{200}$ or less ((l) SMC rate) or blindness in both eyes that qualifies for the SMC rate of (l½) or (m) under numbers 13 and 14 above, when accompanied by service-connected deafness of one ear, will entitle the veteran to a “½ step” increase (e.g., from (m) to (m½)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(iv));
- 17) blindness in both eyes having only light perception or less ((m) SMC rate), or blindness in both eyes that qualifies for (m½) under number 15 above, when accompanied by bilateral deafness (and the hearing impairment in one or both ears is service connected) rated at 10 percent or 20 percent disabling, will entitle the veteran to a “½ step” increase (e.g., from (m) to (m½)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(v));
- 18) blindness in both eyes with an SMC rating of (l), (l½), (m), (m½), or (n), when accompanied by bilateral deafness (and the hearing impairment in one or both ears is service-connected) rated at 30 percent or more disabling, will entitle the veteran to a “full step” increase (e.g., from (m½) to (n½)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(vi));
- 19) blindness in both eyes with an SMC rating of (l), (l½), (m), (m½), or (n), when accompanied by service-connected loss or loss of use of one hand, will entitle the veteran to a “full step” increase (e.g., from (m) to (n)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(vii)(A)) (**diagram 24**);
- 20) blindness in both eyes with an SMC rating of (l), (l½), (m), (m½), or (n), when accompanied by service-connected loss or loss of use of one foot which in itself would be rateable at 50 percent or more (above the knee), will entitle the veteran to a “full step” increase (e.g., from (m½) to (n½)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(vii)(B));
- 21) blindness in both eyes with an SMC rating of (l), (l½), (m), (m½), or (n), when accompanied by service-connected loss or loss of use of one foot which is rated at less than 50 percent (below the knee) and which is the only compensable disability other than blindness, will entitle the veteran to a “½ step” increase (e.g., from (l) to (l½)), but in no event higher than (o) (38 CFR § 3.350(f)(2)(vii)(C)) (**diagram 25**);
- 22) when entitlement exists under the SMC rate of (l), (l½), (m), (m½), (n), or (n½), additional independent permanent disability or disabilities rated 50 percent or more service connected will entitle the veteran to a “½ step” increase (e.g., from (n) to (n½)), but in no event higher than the (o) rate (38 CFR § 3.350(f)(3));
- 23) when entitlement exists under the SMC rate of (l), (l½), (m), (m½), (n), or (n½), an additional single permanent disability independently rateable 100 percent

service connected (does not include individual unemployability) will entitle the veteran to a “full step” increase (e.g., from (l) to (m)), but in no event higher than the (o) rate (38 CFR § 3.350(f)(4));

- 24) anatomical loss or loss of use, or a combination of anatomical loss or loss of use, of three extremities will entitle the veteran to a “½ step” increase (e.g., from the SMC rate of (m½) to (n)) but in no event higher than (o) (38 CFR § 3.350(f)(5)) (**diagram 26**).

ADDITIONAL INDEPENDENT 50 PERCENT DISABILITY (38 CFR § 3.350(f)(3))

In the application of this provision, the disability or disabilities independently rateable at 50 percent or more must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement to SMC rate (l), (l½), (m), (m½), (n), or (n½).

ADDITIONAL INDEPENDENT 100 PERCENT RATINGS (38 CFR § 3.350(f)(4))

In the application of this provision, the single permanent disability independently rateable at 100 percent must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement to SMC rate (l), (l½), (m), (m½), (n), or (n½).

NOTE:

- The definition of a single disability is contained in 38 CFR § 4.16(a).
- Where the multiple loss or loss of use entitlement to any SMC rate between (l) and (o) is caused by the same etiological disease or injury, that disease or injury may not serve as the basis for awarding a “½ step” or “full step” increase for an independent 50 percent or 100 percent disability unless it is rated without regard to the loss or loss of use.
- No SMC rate under the provisions of (p) can exceed (o).

THREE EXTREMITIES (38 CFR § 3.350(f)(5))

Entitlement to a (k) award for the third extremity will remain unless such entitlement will exceed the (o) rate.

The rate of SMC payable to a veteran who has the service-connected loss or loss of use of three extremities will be determined by ascertaining the rate payable without regard to the three extremities rule and then increasing that rate by a “½ step” (e.g., from (n) to (n½)).

BILATERAL BLINDNESS WITH DEAFNESS (38 CFR § 3.350(f)(2))

There are numerous combinations of bilateral blindness in connection with deafness. Review the above regulation citation for a complete breakdown on how to rate blindness with deafness.

BILATERAL BLINDNESS WITH LOSS OR LOSS OF USE OF ONE HAND OR ONE FOOT (38 CFR § 3.350(f)(2))

A “full step” or “½ step” increase under (p) is payable to veterans with service-connected bilateral blindness (any combination of 5/200 or less, LPO, NLP, or enucleation) in conjunction with the service-connected loss or loss of use of one hand or one foot for which SMC(k) is also payable.

Bilateral blindness with loss or loss of use of one hand

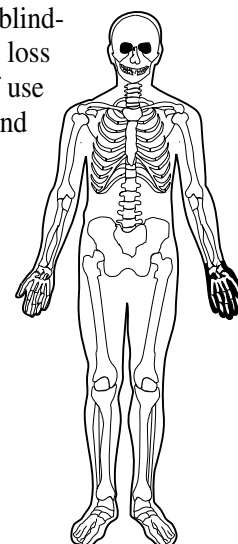


Diagram 24

38 CFR § 3.350(f)(2)(vii)

Bilateral blindness with loss or loss of use of one foot

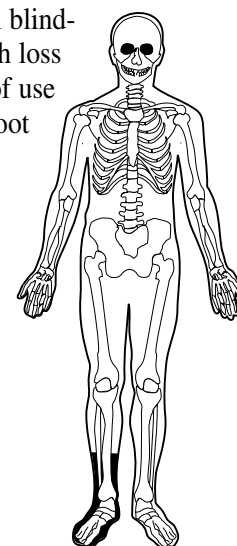


Diagram 25

38 CFR § 3.350(f)(2)(vii)(C)

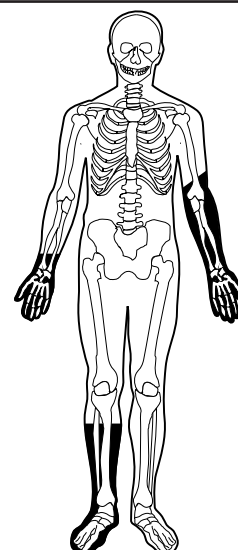


Diagram 26

38 CFR § 3.350(f)(5)

38 USC § 1114(r)(1)&(2) SMC RATINGS

GENERAL (38 CFR § 3.350(h))

Veterans who receive the maximum SMC rate under (o) or (p) and who need regular aid and attendance or a higher level of care are entitled to an additional allowance during periods in which they are not hospitalized at government expense ((r)(1) or (r)(2)). Determination for this need is subject to 38 CFR § 3.352(a). The regular or higher aid and attendance allowance is payable whether or not such need was a partial basis for entitlement to the maximum rate under (o) or (p) or was on an independent factual determination. Veterans who receive SMC at the (n½) rate plus (k) and who establish a factual need for regular aid and attendance or a higher level of care are also entitled to the (r)(1) or (r)(2) allowance while not hospitalized at government expense (38 CFR § 3.350(h)(2)).

REGULAR AID AND ATTENDANCE (38 CFR § 3.352(a))

See the criteria for regular aid and attendance under 38 USC § 1114(l) on pages 3 and 4.

NOTE: A definition for “inability to attend to the wants of nature” to support a finding of “helplessness” for establishing entitlement to SMC at the (r)(1) level is not found in the statutes or regulations. In memorandum decisions of March 14 and September 12, 1979 VA’s general counsel opined that the regulation liberally assumes that helplessness results from loss of anal and bladder control for purposes of establishing entitlement to SMC at the “o” and “(r)(1)” levels. On February 14, 1994, the director of VA’s Compensation and Pension Service responded to PVA’s request for a clarification of VA’s rating policy. The director instructed that the use of a catheter for bladder incontinence to control spontaneous voiding met the definition of complete loss of bladder control. The fact that a veteran cannot void the bowel without the use of laxatives and manual stimulation met the definition of loss of anal sphincter control. The director instructed that the loss of bowel and bladder control together with loss of use of lower extremities established entitlement to SMC at the (r)(1) level.

VA’s Veterans Benefits Manual, M21-1, Part VI, Addendum, provides a history of special monthly compensation. VA restates the regulations providing for an award of aid and attendance and again explains, “it is allowable to base such need on one of the same disabilities which was used to establish entitlement under either (o) or the maximum rate under (p).” VA also instructs, “As the veterans involved are by definition very seriously disabled, apply a liberal interpretation in determining the need for aid and attendance so as to establish entitlement under subsection (r).”

HIGHER LEVEL AID AND ATTENDANCE (38 CFR § 3.352(b))

A veteran is entitled to the higher level aid and attendance allowance authorized by 38 CFR § 3.350(h) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

- 1) the veteran is entitled to compensation authorized under (o) or the maximum rate authorized under (p);
- 2) the veteran meets the requirements for entitlement to the regular aid and attendance allowance under (r)(1);
- 3) the veteran needs a “higher level of care” (as defined below) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care, the veteran would require hospitalization, nursing home care, or other residential institutional care;
- 4) the veteran’s need for a “higher level of care” is determined by a VA physician or, in areas where no VA physician is available, by a physician carrying out such function under VA contract or fee arrangement based on an examination by such physician.

HIGHER LEVEL OF CARE (38 CFR § 3.352(b)(2))

Need for a higher level of care is considered to be a need for personal health-care services provided on a daily basis in the veteran’s home by a professional who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a state or political subdivision thereof.

NOTE: The term “under the regular supervision of a licensed health-care professional,” as used above, means that an unlicensed person performing personal health-care services is following a regimen of personal health-care services prescribed by a health-care professional and that the health-care professional consults with the unlicensed person providing the health-care services at least once each month to monitor the prescribed regimen. The consultation

need not be in person; a telephone call will suffice (38 CFR § 3.352(b)(3)).

- *A person performing personal health-care services who is a relative or other member of the veteran's household is not exempted from the requirement that he or she be a licensed health-care professional or be providing such care under the regular supervision of a licensed health-care professional (38 CFR § 3.352(b)(4)).*
- *The "higher level of care" provisions for (r)(2) are strictly construed by VA. The higher level aid-and-attendance allowance ((r)(2)) is granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial (38 CFR § 3.352(b)(5)).*
- *Attendance by relative. The performance of the necessary aid and attendance service by a relative of the beneficiary or other member of a veteran's household will not prevent the granting of the additional (r)(2) allowance (38 CFR § 3.352(c)).*

DISCONTINUANCE DURING HOSPITALIZATION AT GOVERNMENT EXPENSE (38 CFR §§ 3.552(a)(1) & 3.552(b)(2))

When a veteran is hospitalized at the expense of the U.S. government, the additional aid and attendance allowance authorized under (r)(1) or (r)(2) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization. The SMC rate payable during hospitalization is based on the veteran's actual disabilities (discounting the need for aid and attendance while not hospitalized).

SMC ENTITLEMENT CODES AND CONDITIONS FOR 38 USC § 1114(r)(1)&(2)

(VA Manual M21-1, Appendix B)

38 USC § 1114(s) SMC RATINGS

GENERAL (38 CFR § 3.350(i))

The SMC rate payable under 38 USC § 1114(s) is authorized for a veteran with a single 100 percent service-connected evaluation when either one of the following apply:

- 1) the veteran has additional service-connected disability or disabilities independently rateable at 60 percent or more, separate and distinct from the 100 percent disability and involving different anatomical segments or bodily systems; or

- 43 - Entitlement to SMC(n½) plus (k) and factual need for regular aid and attendance ((r)(1)) has been found.
- 44 - Entitlement under SMC Code 43 and the veteran needs a higher level of care.
- 51 - Entitlement to two SMC(l) rates, when one is based on the need for regular aid and attendance.
- 52 - Entitlement to SMC(l) based on the need for regular aid and attendance and independent entitlement to SMC(l½).
- 53 - Entitlement to SMC(l) based on the need for regular aid and attendance and independent entitlement to SMC(m).
- 54 - Entitlement to SMC(l) based on the need for regular aid and attendance and independent entitlement to SMC(m½).
- 55 - Entitlement to SMC(n) or (n½) and an (l) award based on the need for regular aid and attendance; or SMC(o) without including an (l) based on the need for regular aid and attendance.
- 56 - Entitlement under SMC Code 51 and the veteran needs a higher level of care.
- 57 - Entitlement under SMC Code 52 and the veteran needs a higher level of care.
- 58 - Entitlement under SMC Code 53 and the veteran needs a higher level of care.
- 59 - Entitlement under SMC Code 54 and the veteran needs a higher level of care.
- 60 - Entitlement under SMC Code 55 and the veteran needs a higher level of care.

Refer to the chart in the inside back pocket for additional SMC Codes and monetary rates payable.

- 2) the veteran is permanently housebound by reason of service-connected disability or disabilities.

HOUSEBOUND (38 CFR § 3.350(i)(2))

This requirement is met when the veteran is, as a direct result of service-connected disabilities, substantially confined to his or her dwelling and immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that the confinement will continue throughout the veteran's lifetime.

Note: The SMC rate payable under 38 USC § 1114(s) may be awarded, under certain conditions, when a veteran is granted a total rating under the provisions of 38 CFR §§ 4.28, 4.29, and 4.30. In a precedent decision issued by VA general counsel (O.G.C. Precedent 02-94, 02/02/94), it was found that the provisions of 38 USC § 1114(s) do not require a disability to be rated as 100 percent disabling on a permanent basis before entitlement to SMC(s) can be considered. A total disability rating based on prestabilization (38 CFR § 4.28), hospitalization at government expense (38 CFR § 4.29), or convalescence following hospitalization or surgery (38

CFR § 4.30) qualifies as the “single” 100 percent service-connected disability. However, VA General Counsel Opinion VAOPGCPREC 6-99 (June 7, 1999) held that entitlement to SMC at the “s” level must not be based on a total disability rating awarded by the working of 38 C.F.R. § 4.16 (Individual Unemployability). In order for the (s) rate to be payable, however, the veteran must have additional service-connected disabilities independently ratable at 60 percent or more. These additional disabilities must not have been part of the basis under which the total disability rating was granted.

SPECIAL RATING CONSIDERATIONS UNDER 38 USC § 1160 For Paired Organs or Extremities

GENERAL (38 CFR § 3.383(a))

Compensation is payable for the combination of service-connected and nonservice-connected disabilities as if both disabilities were service connected for the disabilities listed below. Willful misconduct cannot be the cause of the nonservice-connected disabilities.

- 1) Service-connected blindness in one eye and nonservice-connected blindness in the other eye.
- 2) Service-connected total deafness in one ear and nonservice-connected total deafness in the other ear.
- 3) Service-connected loss or loss of use of one hand and nonservice-connected loss or loss of use of the other hand.
- 4) Service-connected loss or loss of use of one foot and nonservice-connected loss or loss of use of the other foot.
- 5) Loss or loss of use of one kidney as a result of a service-connected disability and involvement of the other kidney as a result of a nonservice-connected disability.
- 6) Permanent service-connected disability of one lung rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.

EFFECT OF JUDGMENT OR SETTLEMENT (38 CFR § 3.383(b)(1))

If a veteran receives any money or property of value as a result of an award in a judicial proceeding based upon, or a settlement or compromise of any cause of action for

damages for, the nonservice-connected disability that established entitlement under 38 CFR § 3.383, the increased compensation payable will not be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation, which would otherwise have been payable, equals the total of the amount of any such money received and the fair market value of any such property received. This provision does not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

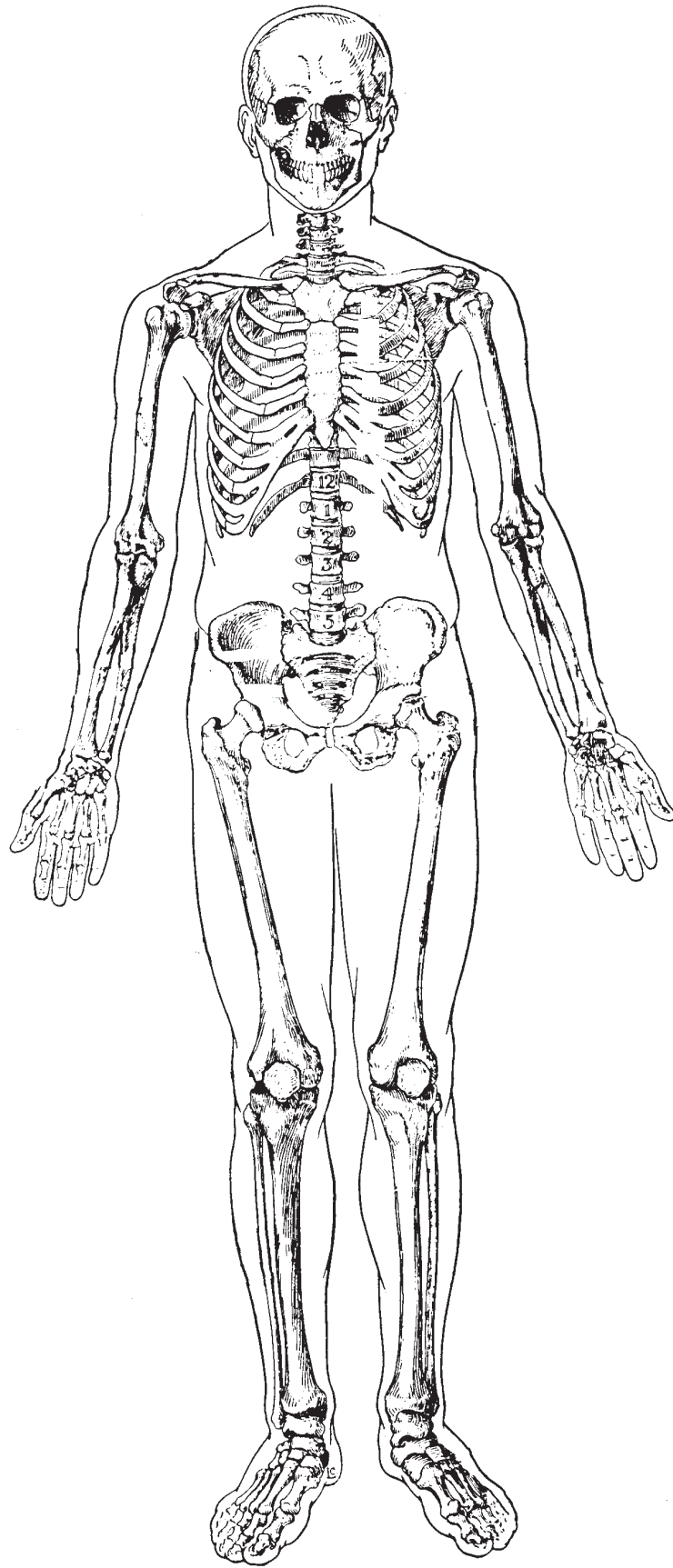
SOCIAL SECURITY AND WORKERS COMPENSATION (38 CFR § 3.383(c))

Benefits received under Social Security or workers' compensation are not subject to recoupment even though such benefits may have been awarded pursuant to a judicial proceeding.

VETERAN'S DUTY TO REPORT (38 CFR § 3.383(d))

Any person entitled to increased compensation under 38 CFR § 3.383 is required to promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based on, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the impaired extremity. The amount to be reported is the total of the amount of money received and the fair market value of property received.

NOTE: Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.





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