



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefit Administration
VA Regional Office**

[REDACTED]

VA File Number

[REDACTED]

**Represented By:
GORDON A GRAHAM
Rating Decision
10/12/2018**

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Navy from May 17, 2000 to May 1, 2003. You filed a new claim for benefits that was received on July 27, 2018. Based on a review of the evidence listed below, we have made the following decisions on your claim.

DECISION

1. The decision to grant entitlement to special monthly compensation based on aid and attendance, with a higher level rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012 was proper. The level of Special Monthly Compensation payable from January 9, 2012 is confirmed and continued. No error is found.
2. The decision granting entitlement to a higher level of special monthly compensation payable under 38 U.S.C. 1114(m) from September 23, 2014 is found to be proper. No clear and unmistakable error is found. The level of Special Monthly Compensation is confirmed and continued at its current rate.

EVIDENCE

- Discharge Document, DD Form 214, May 17, 2000 to May 1, 2003 (MOS: Social Worker; Navy and Marine Corps Achievement medal, National Defense Service medal)
- Service Treatment Records for service period May 17, 2000 to May 1, 2003, received May 7, 2014
- VA Form 21-4502, Application for Automobile or Other Conveyance and Adaptive Equipment, received November 7, 2011
- VA Form 21-0820, Report of General Information, January 9, 2012
- Veterans Claim Assistance Act (VCAA)/Duty-to-Assist (DTA) Letter sent to Veteran on October 25, 2012
- [REDACTED]
- VA Form 21-4138, Statement in Support of Claim, received November 26, 2012
- VA Notification of Rating Decision sent to Veteran on January 22, 2013
- Disability Records, Social Security Administration, received July 22, 2008 and May 18, 2014
- VA Form 21-526b, Veteran's Supplemental Claim for Compensation, received September 23, 2014
- 38 U.S.C §5103 Notice/DTA letter sent to Veteran on September 27, 2014
- VA Form 27-0820, Report of General Information (Veteran called to state that she receives all her treatment at the Hampton VAMC), January 14, 2015
- [REDACTED]
- VA Notification of Rating Decision sent to Veteran on June 22, 2015
- VA Form 27-0820, Report of General Information (Veteran called in response to Notification letter dated 22Jun15, requesting that her Special Monthly Compensation be amended to rate payable for loss-of-use (LOU) of one-hand and one-foot as this payment is not reduced for hospitalization at VA expense), June 26, 2015
- VA Form 21-526, Veteran's Application for Compensation and/or Pension, received October 19, 2015
- 38 U.S.C §5103 Notice/DTA letter sent to Veteran on October 22, 2015
- VA Form 21-0958, Notice of Disagreement (not receiving SMC for MS), received November 23, 2015
- Lay Evidence (Veteran's Husband), received December 10, 2015
- Supporting Medical Evidence (Treatment reports from [REDACTED] dated January 16, 2016 to December 8, 2016), received March 5, 2017
- Supporting Medical Evidence [REDACTED] dated February 3, 2017), received March 5, 2017
- Statement of Case outlining actions taken on claim sent to Veteran on May 24, 2017
- VA Notification of Appellate Decision sent to Veteran on May 25, 2017
- VA Form 21-0966, Intent to File Claim (Compensation), received May 9, 2018
- VA Letter Acknowledging Receipt of Intent to File a Claim for Compensation Benefits sent to Veteran on May 9, 2018
- VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, received July 27, 2018 and August, 2018
- VA Form 21-0966, Intent to File Claim (Compensation) - Duplicate to intent to file received May 9, 2018
- Supporting Medical Evidence (Veteran Initiated Claim for Recommendation of Catastrophic

- Disability, 06Aug18 - has recommendation from unknown source), received August 10, 2018
- VA Outpatient Records, [REDACTED]
- [REDACTED]
- 38 U.S.C §5103 Notice/DIA letter sent to Veteran on September 24, 2018
- [REDACTED]

REASONS FOR DECISION

1. Whether the decision to grant entitlement to special monthly compensation based on aid and attendance, with a higher level rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012 was proper.

On November 9, 2000, the President signed into law P.L. 106-475, which states that the Secretary shall make "reasonable efforts" to assist a claimant in obtaining the evidence necessary to substantiate a claim. The records were reviewed and it appears that all evidence is in the file permitting a decision to be made.

The decision to grant entitlement to special monthly compensation based on aid and attendance, with a higher level rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012 was proper. The level of Special Monthly Compensation payable from January 9, 2012 is confirmed and continued. No error is found.

A finding of clear and unmistakable error means that either the facts, as they were known at the time, were not before the rating board, or the or the statutory or regulatory provisions existing at the time were incorrectly applied. The regulation does not permit reversal based on opinions about how the facts should have been weighed and evaluated, and the benefit of doubt rule is not for application. Only errors which are undebateable (those about which reasonable minds cannot differ) are subject to reversal based on clear and unmistakable error. Based on evidence of record review, no error is found in the decision granting entitlement to special monthly compensation under 38 U.S.C. 1114, subsection (p) and 38 CFR 3.350(f)(3) at a rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012.

Rating Decision of January 4, 2013 granted entitlement to special monthly compensation based on aid and attendance, with a higher level rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012.

Decision was based upon your combined evaluation for your multiple sclerosis with complications rated at 100 percent effective January 9 2012 [REDACTED] [REDACTED] [REDACTED] indicated that you were not able to walk unaided. You required a right foot brace. You needed

assistance in bathing and tending to other hygiene needs. You required assistance getting in and out of the bath tub and occasionally getting on and off the toilet. You needed aid and attendance due to your persistent right-sided weakness and right sided foot drop. VAMC [REDACTED] record dated February 9 2012 showed you were using a scooter and/or wheelchair for prolonged ambulation.

Entitlement to special monthly compensation was found to be warranted in this case because criteria regarding aid and attendance were found to have been met effective January 9, 2012 the date VA received your claim.

{L-1} Entitled to special monthly compensation under 38 U S C 1114 subsection (1) and 38 CFR 3350(b) on account of status of being so helpless as to be in need of regular aid and attendance while not hospitalized at U S government expense from January 9, 2012, and in addition,

{P 1} Entitled to special monthly compensation under 38 U S C 1114 subsection (p) and 38 CFR 3350(f(3) at the rate intermediate between subsection (1) and subsection (m) on account of entitlement to the statutory rate payable under 38 U S C 1114(1) with additional disability(ies) independently ratable at 50 percent or more from January 9, 2012.

You were notified of this decision on January 22, 2013. The appeal period has expired and this decision is now final. Therefore, you can only reopen this finally adjudicated claim by submitting new and material evidence.

A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decision makers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

Review of the current available medical evidence of record, to include the additional evidence received which was not previously associated with your claims-file does not support a revision of the prior decision. Therefore, the decision to grant entitlement to special monthly compensation based on aid and attendance, with a higher level rate payable at an intermediate level between subsection (l) and subsection (m) with additional disability(ies), independently ratable at 50 percent or more from January 9, 2012 was proper. The level of Special Monthly Compensation payable from January 9, 2012 is confirmed and continued. No error is found.

2. Whether the current level of special monthly compensation payable under 38 U.S.C. 1114(m) from September 23, 2014 is found to be proper.

On November 9, 2000, the President signed into law P.L. 106-475, which states that the Secretary shall make "reasonable efforts" to assist a claimant in obtaining the evidence necessary to substantiate a claim. The records were reviewed and it appears that all evidence is in the file

permitting a decision to be made.

The decision granting entitlement to a higher level of special monthly compensation payable under 38 U.S.C. 1114(m) from September 23, 2014 is found to be proper. No clear and unmistakable error is found. The level of Special Monthly Compensation is confirmed and continued at its current rate.

Entitlement to an additional payment of compensation (known as “special monthly compensation”) is established when service connected impairment imposes a special level of disability.

A finding of clear and unmistakable error means that either the facts, as they were known at the time, were not before the rating board, or the or the statutory or regulatory provisions existing at the time were incorrectly applied. The regulation does not permit reversal based on opinions about how the facts should have been weighed and evaluated, and the benefit of doubt rule is not for application. Only errors which are undebateable (those about which reasonable minds cannot differ) are subject to reversal based on clear and unmistakable error. Based on evidence of record review, no error is found in the decision granting entitlement to a higher level of special monthly compensation payable under 38 U.S.C. 1114(m) from September 23, 2014.

A Notice of Disagreement with Rating Decision dated June 19, 2015 was received on December 10, 2015, with an election for a de novo review by a Decision Review Officer.

You elected a de novo review by a Decision Review Officer. The evidence considered in the previous decision documents, along with any subsequent evidence, were considered. You were provided a Statement of Case on May 24, 2017, outlining the actions taken on your claim. Rating Decision of May 24, 2017 based on de novo review of all of the evidence contained in the claims-file with deference to the prior determination under the authority of 38 CFR 3.2600 established a new decision granting entitlement to a higher level of special monthly compensation, payable under 38 U.S.C. 1114(m) from September 23, 2014, considered as a partial grant of issue under disagreement.

The rating decision of June 19, 2015 previously granted special monthly compensation at the intermediate rate between subsections (l) and (m) of 38 U.S.C. 1114. This was based on entitlement to subsection (l) on account of loss of use of one hand and loss of use of one foot and a half step increase for having additional disabilities ratable at 50 percent or more.

Based on a review of the evidence of record, the VA contract exam findings showed that you have complete paralysis above the right knee to support a higher rate of special monthly compensation. You are now entitled to the rate payable under 38 U.S.C. 1114(m). This is based on entitlement to the intermediate rate between subsections (l) and (m) on account of loss of use of one hand and loss of use of one leg, at level preventing natural knee action, and a half step increase for having additional disabilities ratable at 50 percent or more. The effective date is September 23, 2014, the date of receipt of the claim for an increased evaluation as preserved by the appellate process.

No formal appeal to the Board of Veterans Appeals (VA Form 9) was received within the prescribed period and this decision became final. Therefore, you can only reopen this finally adjudicated claim by submitting new and material evidence.

A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decision makers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

Review of the current available medical evidence of record, to include the additional evidence received which was not previously associated with your claims-file does not support a revision of the prior decision. Therefore, the decision granting entitlement to a higher level of special monthly compensation payable under 38 U.S.C. 1114(m) from September 23, 2014 is found to be proper. No clear and unmistakable error is found. The previous decision is continued.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.