



# BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

ANDREW [REDACTED]

Represented by

Gordon A. Graham, Agent

[REDACTED]  
Docket No. 190419-3646

DATE: February 24, 2020

## ORDER

Entitlement to special monthly compensation (SMC) based on the need for aid and attendance pursuant to 38 U.S.C. § 1114(l) is granted, subject to controlling regulations governing the payment of monetary awards.

## FINDING OF FACT

The evidence is at least evenly balanced as to whether the Veteran requires assistance in accomplishing the activities of daily living and is unable to protect himself from the hazards and dangers of his daily environment on account of physical and mental service-connected disabilities.

## CONCLUSION OF LAW

The criteria for an award of SMC based on aid and attendance have been met. 38 U.S.C. § 1114(i); 38 C.F.R. §§ 3.102, 3.350(b), 3.352(a).

## REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran served on active duty from August 1978 to March 1982 and from March 1982 to September 1982.

This case comes to the Board of Veterans' Appeals (Board) on appeal from a March 2019 rating decision issued by a Department of Veterans Affairs (VA) Regional Office (RO).

On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act, Pub. L. No. 115-55 (codified as amended in scattered sections of 38 U.S.C.), 131 Stat. 1105 (2017), also known as the Appeals Modernization Act (AMA). This law creates a new framework for veterans dissatisfied with VA's decision on their claim to seek review dated on or after February 19, 2019. As this case is based on a VA rating decision dated in March 2019, this decision has been written consistent with the new AMA framework.

In April 2019, the Veteran submitted a VA Form 10182 (Decision Review Request: Board Appeal) and requested evidence submission reviewed by a Veterans Law Judge.

**1. Entitlement to SMC based on the need of aid and attendance under U.S.C. § 1114(l).**

SMC at the aid and attendance rate is payable when a veteran, due to service-connected disability, has suffered the anatomical loss or loss of use of both feet or one hand and one foot, or is blind in both eyes, or is permanently bedridden or so helpless as to be in need of regular aid and attendance. *See* 38 U.S.C. § 1114(l); 38 C.F.R. § 3.350(b).

Pursuant to 38 C.F.R. § 3.350(b)(3) and (4), the criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance, including a determination that he is permanently bedridden, are contained in 38 C.F.R. § 3.352(a). That regulation provides that the following will be accorded consideration in determining the need for regular aid and attendance: inability of a claimant to dress or undress himself, or to keep himself ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid; inability to feed himself through the 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 him from hazards or dangers incident to his daily environment.

“Bedridden” is defined as that condition, which, through its essential character, actually requires that a 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.

It is not required that all of the above disabling conditions be found to exist before a favorable rating may be made. The particular personal functions that a veteran is unable to perform should be considered in connection with his condition as a whole. It is only necessary that the evidence establish that a veteran is so helpless as to need regular aid and attendance, not that there is a constant need.

Determinations that a veteran is so helpless as to be in need of regular aid and attendance will not be based solely upon an opinion that his condition is such as would require him to be in bed. They must be based on the actual requirement of personal assistance from others. *See* 38 C.F.R. § 3.352(a).

The Veteran seeks entitlement to special monthly compensation (SMC) based on the need for the regular aid and attendance of another person or by reason of being housebound. For the following reasons, the Board finds that the evidence is at least evenly balanced as to whether the Veteran requires assistance in accomplishing the activities of daily living and is unable to protect himself from the hazards and dangers of his daily environment on account of service-connected disability.

Service connection is in effect for a respiratory disability, to include chronic obstructive pulmonary disease (COPD), asthma, and sleep apnea, rated as 100 percent, psychiatric disorder rated as 100 percent disabling, sinusitis rated as 30 percent disabling, allergic rhinitis rated as 30 percent disabling, diabetes mellitus rated as 20 percent disabling, peripheral neuropathy of the sciatic nerve of the left lower extremity rated as 10 percent disabling peripheral neuropathy of the sciatic nerve of the right lower extremity rated as 10 percent disabling, peripheral neuropathy of the femoral nerve of the left lower extremity rated as 10 percent disabling, peripheral neuropathy of the femoral nerve of the right lower extremity rated as 10 percent disabling, hepatic stenosis rated as 10 percent disabling, diabetic peripheral neuropathy of the left upper extremity rated as 10 percent

disabling, diabetic peripheral neuropathy of the right upper extremity rated as 10 percent disabling, pharyngitis rated as noncompensable, left varicocele rated as noncompensable, erectile dysfunction rated as noncompensable, and cortical cataract of the left eye rated as noncompensable.

In the March 2019 aid and attendance or housebound examination report, the examiner indicated that the Veteran required aid and attendance due to diabetes, respiratory disability, psychiatric disability, and peripheral neuropathy. The examiner reported that the Veteran needed assistance in bathing and tending to hygiene needs. He was not able prepare his own meals except for making a sandwich or placing items in a bowl. The Veteran experienced urinary and bowel accidents. The examiner noted that the Veteran's ability to protect himself from daily hazards was limited due to mild short-term memory loss and intermittent imbalance that affected the ability to ambulate. The examiner noted that the Veteran can only leave the home for medical care. The examiner did note that she did not have ample time to review the Veteran's claims file for all of the diagnostic and clinical testing results. The examiner also noted that the Veteran knows the amount of his benefit payment but does not prudently handle payments, does not know the amount of his monthly bills, and does not personally handle money or pay bills. The examiner noted that the Veteran was not capable of managing his financial affairs. The examiner also noted that the Veteran only leaves beyond the domicile when accompanied by his wife or another person.

In this case, the aid and attendance or housebound examination report establishes that the Veteran required aid and assistance of others. Specifically, the examiner concluded that the Veteran required the assistance of another for his activities of daily living, such as hygiene needs, fixing meals, and financial management. The examiner also indicated that the Veteran experienced urinary and bowel accidents and limitations on ability to protect himself from daily hazards. The Veteran was also only able to leave the house for medical care and required the assistance from his wife or another individual to ever leave his house. Thus, the evidence supports that the Veteran has mental incapacity and physical limitations due to service-connected disabilities that requires care or assistance on a regular basis to protect him from hazards or dangers incident to his daily environment. As the Veteran's service-connected disabilities renders him disabled to the extent that he requires

the regular aid and assistance of another person, special monthly compensation based on the need for aid and attendance is warranted.



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Jonathan Hager  
Veterans Law Judge  
Board of Veterans' Appeals

**Attorney for the Board**

**Hammad Rasul, Associate 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.*