



**DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office**



VA File Number



**Represented By:
GORDON A GRAHAM
Rating Decision
03/04/2020**

INTRODUCTION

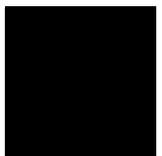
The records reflect that you are a Veteran of the Peacetime. You served in the Navy from August 28, 1978 to September 3, 1982. The Board of Veterans Appeals made their decision on your appeal on February 24, 2020. We have implemented their decision based on the evidence listed below.

DECISION

Entitlement to special monthly compensation based on aid and attendance criteria being met is granted from August 23, 2018.

EVIDENCE

- VA Form 21-526 EZ: Application for Disability Compensation and Related Compensation Benefits, August 23, 2018
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, dated May 1, 2018, received October 18, 2018
- Spouse's Lay Statement, dated October 18, 2018, received October 18, 2018



- Section (§) 5103 Notice Response, received October 18, 2018
- VAMC (Veterans Affairs Medical Center) treatment records, Houston VAMC, for the period of January 08, 2010 to September 10, 2018, received October 23, 2018
- Notification Letter, dated October 30, 2018
- Rating Decision, dated October 23, 2018
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, November 7, 2018
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance Incomplete, received November 7, 2018
- Section (§) 5103 Notice Response, received November 7, 2018
- Notification Letter, Compensation Acknowledgement Letter, November 8, 2018
- Notification Letter, Subsequent Development Letter, November 13, 2018
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, received November 18, 2018
- Veteran's Correspondence, November 19, 2018
- VA Form 21-4138, Statement in Support of Claim, received November 19, 2018
- VAMC (Veterans Affairs Medical Center) treatment records, Houston VAMC, for the period of January 21, 2019 to January 25, 2019, dated January 25, 2019
- VA Form 21-526EZ Application for Disability Compensation and Related Compensation Benefits, January 31, 2019
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, dated February 7, 2019 and April 15, 2019, received February 7, 2019 and April 29, 2019
- Section (§) 5103 Notice Response, received February 13, 2019
- Aid and Attendance Worksheet, LHI, conducted on, March 3, 2019
- Rating Decision, dated March 13, 2019
- Notification Letter, dated March 15, 2019
- VA Form 10182, Notice of Disagreement, April 19, 2019
- AMA Notification Letter, April 29, 2019
- VAMC (Veterans Affairs Medical Center) treatment records,, for the period of May 1, 2019 to May 7, 2019, received May 22, 2019, and for the period of May 20, 2019 to May 31, 2019, received June 12, 2019
- VA Form 21-0820 Report of General Information, dated July 17, 2019
- BVA Letter, September 10, 2019
- VAMC (Veterans Affairs Medical Center) treatment records, Houston VAMC, for the period of October 31, 2018 to October 10, 2019, dated October 25, 2019
- VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, dated January 22, 2020, received January 27, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, for the period of, Houston VAMC, for the period of January 22, 2020 to January 25, 2020, received January 27, 2020
- Physician's Statement in Support of Aid and Attendance, received January 27, 2020
- VAMC (Veterans Affairs Medical Center) treatment records, Houston VAMC, for the period of October 28, 2019 to February 13, 2020, dated February 13, 2020
- Board of Veterans Appeals Decision, dated February 24, 2020

REASONS FOR DECISION

Entitlement to special monthly compensation based on aid and attendance.

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Relevant evidence means evidence that tends to prove or disprove a matter at issue in a claim. (38 CFR 3.2501)

In support of your claim, new and relevant evidence has been received and your claim is now reconsidered.

Special monthly compensation (SMC) for aid and attendance and permanently bedridden can be awarded if the following criteria's are met per (3.351(c)(3): inability of claimant to dress or undress himself (herself), or to keep himself (herself) 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 (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) 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 the claimant from hazards or dangers incident to his or her daily environment.

In accordance with the Board of Veterans' Appeals Decision dated February 24, 2020 entitlement to special monthly compensation is warranted in this case because criteria regarding aid and attendance have been met. (38 CFR 3.350) Reasons and bases in the Board's decision are herein incorporated by reference.

The Board finds that the aid and attendance or housebound examination conducted on March 3, 2019 showed that you required aid and attendance due to diabetes, respiratory disability, psychiatric disability, and peripheral neuropathy. Moreover, the evidence from this exam supports that you have a mental incapacity and physical limitations due to service connected disabilities that requires care or assistance on a regular basis to protect you from hazards or dangerous incident to your daily environment.

Additionally, this exam reported that you required assistance with your daily living, such as, hygiene, fixing meals and financial management. To include, the examiner indicated that you experienced urinary and bowel accidents, and due to your limited ability to protect yourself from daily hazards, you are only able to leave the house for medical care, thus requiring the assistance from your wife or another individual to ever leave your house.

Therefore, entitlement to special monthly compensation is warranted in this case because criteria regarding aid and attendance have been met effective August 23, 2018, which is the date we received your claim and it was fully developed within one year of that date. Therefore, since the claim has been continually pursued since that date, the effective date will be fixed in accordance with the date of receipt of the initial claim or date entitlement arose, whichever is later. (38 CFR 3.155, 38 CFR 3.400, 38 CFR 3.2500)

Please note: You are currently granted special monthly compensation based on being housebound. However, since both special monthly compensation cannot be simultaneously granted at the same time, your special monthly compensation for housebound will be discontinued, as aid and attendance offers you a greater benefit. Therefore, housebound has been discontinued, which is the day prior to your effective date that your aid and attendance is being granted. Although you meet the criteria for A&A at the SMC "L" rate, you do not meet the threshold of 38 U.S.C 114 (o) for a higher level SMC.

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.

