Entitlement to Special Monthly Compensation Based on the Need of Aid and Attendance and/or Housebound Benefits.

Entitlement to Aid and Attendance Benefits:

Just for reference there are multiple ways a veteran can be entitled to Special Monthly Compensation at the L rate, which is the same rate that Aid and Attendance is assigned. We will be focusing on Aid and Attendance on a factual basis, meaning that the veteran’s service connected disabilities are of such a severe nature that he cannot protect himself from the hazards of daily environment.

§3.350 Special monthly compensation ratings:
(b) Ratings under 38 U.S.C. 1114(l). The 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.

(1) Extremities. The criteria for loss and loss of use of an extremity contained in paragraph (a)(2) of this section are applicable.

(2) Eyes, bilateral. 5/200 visual acuity or less bilaterally qualifies for entitlement under 38 U.S.C. 1114(l). However, evaluation of 5/200 based on acuity in excess of that degree but less than 10/200 (§4.83 of this chapter) does not qualify. Concentric contraction of the field of vision beyond 5 degrees in both eyes is the equivalent of 5/200 visual acuity.

(3) Need for aid and attendance. The criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance are contained in §3.352(a).

(4) Permanently bedridden. The criteria for rating are contained in §3.352(a). Where possible, determinations should be on the basis of permanently bedridden rather than for need of aid and attendance (except where 38 U.S.C. 1114(r) is involved) to avoid reduction during hospitalization where aid and attendance is provided in kind.

3.352 Criteria for determining need for aid and attendance and "permanently bedridden."

This is the requirement for Special Monthly Compensation based on Aid and Attendance solely due to Service Connected Disabilities.

(a) Basic criteria for regular aid and attendance and permanently bedridden. The following will be accorded consideration in determining the need for regular aid and attendance (§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.

"Bedridden" will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that 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 disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which 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 be 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 is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.

38 CFR 3.351(c) (3)  
(3) Establishes a factual need for aid and attendance under the criteria set forth in §3.352(a).  
(Authority: 38 U.S.C. 1502(b))

We can use 38 CFR 4.16 Total disability ratings for compensation based on unemployability of the individual to determine if the veteran has a single 100% evaluation.

(1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable,

(2) Disabilities resulting from common etiology or a single accident,

(3) Disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric,

(4) Multiple injuries incurred in action, or

(5) Multiple disabilities incurred as a prisoner of war.

If the veteran does not have a single 100% disability and the medical evidence shows he/she is in need of factual aid and attendance we can refer the case to Compensation and Pension, (C&P) Service for an advisory opinion. This doesn’t happen very often, as when the veteran is in need of Aid and Attendance benefits due to his service connected disabilities the veteran will have a single 100% disability.
**Aid and Attendance Quiz**

1. Does a veteran have to have a single 100% evaluation in order to grant entitlement to Aid and Attendance Benefits? What if the veteran’s disabilities combine to 80% and the medical evidence shows he/she is in need of factual aid and attendance, is there a course of action?

2. If a veteran has a 90% and 60% evaluation both due to an automobile accident, combining to 100%, does this satisfy the single 100% evaluation needed, under 38 CFR 4.16?

3. If the veteran is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less does the veteran meet the criteria for Aid and Attendance just based on his/her vision loss?

4. If the veteran has loss of use of his lower extremities due to multiple sclerosis, (He can walk a few steps, but he is wheelchair bound with no functional use of the lower extremities) does the veteran meet the criteria for special monthly compensation, (SMC) at the L rate, (which is the same SMC rate as Aid and Attendance)?
**Entitlement to Housebound Benefits:**

3.350 Housebound on a factual basis or if a veteran has a single 100% and other disabilities combine to at least 60%, schedularly.

(i) **Total plus 60 percent, or housebound; 38 U.S.C. 1114(s).** The special monthly compensation provided by 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent and:

(1) Has additional service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability and involving different anatomical segments or bodily systems, or

(2) Is permanently housebound by reason of service-connected disability or disabilities. This requirement is met when the veteran is substantially confined as a direct result of service-connected disabilities to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.

Unfortunately, we cannot consider 38 CFR 4.16, to get to a single 100% for Housebound purposes, only for Aid and Attendance.

**I was asked to discuss the following court case:**

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS
NO. 06-1854

GARY D. BRADLEY APPELLANT, V.
JAMES B. PEAKE, M.D., SECRETARY OF VETERANS AFFAIRS, APPELLEE.

The case primarily addresses Housebound benefits in the following way: With the veteran being in receipt of Individual Unemployability benefits based on his 70% PTSD and then his separate and distinct disabilities combining to at least 60% was he entitled to schedular housebound benefits.

The Court decided with the veteran’s sole disability for which he was entitled to Individual Unemployability benefits being 70% PTSD this meets the Housebound requirement of having a single 100% disability. Then, with his other separate and distinct disabilities combining to at least 60% he is entitled to schedular housebound benefits.

Also, when the veteran has a total knee, hip, etc. replacement and this puts his/her knee at 100% for 13 months and his/her other disabilities combine to at least 60% we can grant housebound benefits during the 13 month period.
Same principle applies when a veteran has surgery on her knee, for example, ACL repair and is granted 38 CFR 4.30, (Para 30), for 2 months of temporary 100% based on convalescence due to her surgery and her other disabilities combine to at least 60% we can housebound benefits during the 2 month period.

If the veteran does not have a single 100% disability or is not receiving individual unemployability benefits from the VA and the medical evidence shows he/she is in need of factual housebound benefits we can refer the case to Compensation and Pension, (C&P) Service for an advisory opinion. This doesn’t happen very often as when the veteran is in need of housebound benefits due to his service connected disabilities the veteran will usually have a single 100% disability or in receipt of individual unemployability benefits.
Housebound Quiz

1. As in Aid and Attendance, you need a single 100% evaluation for Housebound benefits to be granted. Can you use 38 CFR 4.16 to combine a veteran’s disabilities to get to 100%?

2. If the veteran is receiving individual unemployability benefits based on 60% diabetes mellitus under diagnostic code 7913. And the veteran has four other service connected disabilities related to his diabetes mellitus, peripheral neuropathy, upper and lower extremities combining to 80%. Is the veteran entitled to housebound benefits on a schedular basis, due to IU due to diabetes mellitus and separate disabilities combining to at least 60%?