

Special Monthly Compensation (SMC) and the new SMC(t) Benefit

A General Overview

Introduction to SMC

- SMC paid in addition to comp paid under Rating Schedule
- SMC Compensates vets for SC loss or loss of use of body parts and functions
- Loss of use = LOU
- SMC Compensates for SC loss/LOU of body parts/functions

Rationale for SMC & when VA must infer SMC claim

- SMC payments based on non-economic factors such as:
 - Personal inconvenience
 - Social inadaptability
 - Profound nature of disability
- If med evidence *indicates* possible entitlement to SMC, VA must consider it (SMC is inferred issue)
- If vet wrongfully denied SMC may receive retro benefits upon showing CUE

Basic Levels of SMC - SMC(k)

- SMC(k) is the term for SMC governed by 38 USC 1114(k)
- Basic Levels of SMC are building blocks to higher levels of SMC
- SMC(k) benefit \$99 effective 12/1/11

What SMC(k) Covers: Loss or LOU of

- Creative organ
- Hand
- Foot
- Buttocks
- Blindness of One Eye
- Deafness of Both Ears
- Aphonia (Loss of Voice)
- Loss of One or Both Breasts

Calculating SMC(k) & Comp. for Evaluations

- For **each** qualifying loss (or loss of use) vet receives SMC of \$99
- SMC does not account for degree of disability, regular comp does, see example on next slide

SMC(s) - Housebound or Total Rating Plus 60%

- SMC(s) = \$3,100
- Awarded if Vet has 100% eval or TDIU AND add'l eval of 60% OR is permanently HB
- paid in addition to any SMC(k)
- Permanently HB: substantially confined to home & reasonably certain disability/disabilities causing confinement will continue throughout life

Eligibility for SMC(I)

- Veteran needs regular Aid & Attendance (A&A)
- Vet Permanently Bedridden
- Combination of losses or LOU of extremities & blindness

SMC(I) - Aid and Attendance (A&A)

- SMC(I) benefit is \$3,446
- Awarded if vet needs regular A&A of another person to perform normal functions of daily life due to SC physical or mental disability

Qualifying for SMC(I) - A&A

- **S/C disabilities interfere with:**
 - Dressing or Undressing
 - Keeping ordinarily clean
 - Feeding
 - Toileting
 - Ability for claimant to protect themselves from the hazards of claimant's daily environment

SMC(I) - Permanently Bedridden

- SMC(I) benefit is \$3,446
- SC condition requires vet to stay in bed
 - vet voluntarily taking to bed = NO
 - Physician-ordered rest in bed to promote convalescence or cure = NO

Higher Levels of SMC

- VA will not consider higher SMC levels until vet establishes entitlement to basic SMC
- SMC(k) can be combined w/ higher SMC level if based on different condition

SMC(l) through (o) - Level of Loss, Loss of Use & Blindness

- Determined by finding level of severity of loss or loss of use of extremities and blindness
- Awarded in half-steps depending on severity levels

Low Severity Levels for SMC(I) through(o)

- **Lower Extremity, Leg Below Knee:** loss below knee or LOU of foot
- **Upper Extremity, Hand:** loss below elbow or LOU of hand
- **Vision:** 5/200 visual acuity or worse

Intermediate Severity Levels for SMC(I) through (o)

- **Lower Extremity, Leg Above Knee:** loss/LOU above knee, or no natural knee action w/ prosthetic
- **Upper Extremity, Arm Above Elbow:** loss/LOU above elbow, or no natural elbow action w/ prosthetic
- **Vision:** light perception only

High Severity Levels for SMC(I) through (o)

- **Lower Extremity, Leg Near Hip:** loss prevents use of prosthetic leg
- **Upper Extremity, Arm Near Shoulder:** loss prevents use of prosthetic arm
- **Vision:** no light perception (total blindness) in both eyes or eye removal

Qualifying for SMC(I) (\$3,446)

- Low severity level--both lower extremities (loss/LOU both legs below knee) OR
- Low severity level-- one lower extremity (loss/LOU both legs below knee) & 1 upper extremity (loss/LOU 1 hand) OR

Qualifying for SMC(I) (\$3,446)

- Low severity level vision both eyes (5/200) OR
- A&A (discussed earlier) OR
- Permanently Bedridden (discussed earlier)

Qualifying for SMC(I 1/2) (\$3,624)

- Low severity level 1 lower extremity (loss/LOU of leg below knee) & intermed. severity level other lower extremity (loss/LOU leg above knee) OR
- Low severity level for 1 lower extremity (loss/LOU of leg below knee) & intermed. severity level 1 upper extremity (loss/LOU of arm above elbow) OR

Qualifying for SMC(I ½) (\$3,624)

- Intermed. severity level 1 lower extremity (loss/LOU 1 leg above knee) & low severity level 1 upper extremity (loss/LOU of hand) OR
- Low severity level for 1 eye (5/200) & intermed. severity level other eye (light perception)

Qualifying for SMC(m) (\$3,803)

- Low severity level both upper extremities (loss/LOU both hands) OR
- Intermed. severity level both lower extremities (loss/LOU both legs above knee) OR
- Intermed. severity level 1 upper extremity (loss/LOU of arm above elbow) & 1 lower extremity (loss/LOU leg above knee) OR

Qualifying for SMC(m) (\$3,803)

- Intermediate severity level vision (light perception only) both eyes OR
- Low severity level 1 lower extremity (loss/LOU leg below knee) & high severity level other lower extremity (loss of other leg near hip) OR
- Low severity level 1 lower extremity (loss/LOU leg below knee) & high severity level 1 upper extremity (loss/LOU of arm near shoulder) OR

Qualifying for SMC(m) (\$3,803)

- High severity for lower extremity (loss of leg near hip) & low severity level upper extremity (loss/LOU hand) OR
- Low severity level vision in 1 eye (5/200) & high severity level vision in other eye (no light perception) OR
- Blindness both eyes causes need for A&A

Qualifying for SMC(m 1/2) (\$4,064)

- Intermed. severity level 1 lower extremity (loss/LOU leg above knee) & high severity level other lower extremity (loss of other leg near hip) OR
- Intermed. severity level 1 lower extremity (loss/LOU leg above knee) & high severity level upper extremity (loss of arm near shoulder) OR

Qualifying for SMC(m 1/2) (\$4,064)

- Intermed. severity level upper extremity (loss/LOU arm above elbow) & high severity level lower extremity (loss of leg near hip)
OR
- Low severity level upper extremity (loss/LOU hand) & intermed. severity level other upper extremity (loss/LOU arm above elbow) OR
- Intermed. severity level vision (light perception) in 1 eye & high severity level in other (total blindness)

Qualifying for SMC(n) (\$4,326)

- Intermed. severity level both upper extremities (loss/LOU both arms above elbow) OR
- Low severity level 1 upper extremity (loss/LOU of hand) & high severity level other upper extremity (loss of arm near shoulder, amputation required) OR

Qualifying for SMC(n) (\$4,326)

- High severity level both lower extremities (loss both legs near hip, amputation required) OR
- High severity level lower extremity (loss of leg near hip) & high severity level upper extremity (loss of arm near shoulder) (amputation required) OR
- High severity level vision both eyes (total blindness, no light perception)

Qualifying for SMC(n ½) (\$4,580)

- Intermed. severity level for 1 upper extremity (loss/LOU arm above elbow) & high severity level other upper extremity (loss of arm near shoulder)

Qualifying for SMC(o) (\$4,835)

- High severity level both upper extremities (loss both arms near shoulder) OR
- Qualifying for SMC(l) through (n) twice (with no condition considered twice) OR
- Deafness both ears rated at least 60% & low severity level vision (20/200) both eyes OR

Qualifying for SMC(o) (\$4,835)

- Total deafness 1 ear or 40% deafness both ears & intermed. severity level vision both eyes (only light perception) OR
- Paraplegia OR
- Helplessness

SMC(I) through (o) Benefits

- SMC(I) = \$3,446
 - SMC(I ½) = \$3,624
- SMC(m) = \$3,803
 - SMC(m ½) = \$4,064
- SMC(n) = \$4,326
 - SMC(n ½) = \$4,580
- SMC(o) = \$4,835

SMC(p), Additional Disabilities Increasing Level of SMC

- **Separate disabilities** from those that qualify veteran for SMC(I) through (n ½) may increase SMC payment

Qualifying for higher SMC under SMC(p)

- Half step increase from original SMC(I) through (n ½) determination for separate combined ratings of 50%-90%
- Full step increase from original SMC(I) through (n ½) determination for separate combined rating of 100%

Qualifying for higher SMC under SMC(p)

- Higher SMC available if vet blind in both eyes & deaf or loss/LOU of hand or foot (38 C.F.R. 3.350(f)(2))
- Loss/LOU of 3 extremities entitles veteran to higher SMC (38 C.F.R. 3.350(f)(5))

SMC(r-1) &(r-2) Special A&A

- 3 levels of SMC for Aid & Attendance
 - Regular A & A under SMC(I)
(discussed earlier)
 - SMC(r-1) (\$6,909)
 - SMC(r-2) (\$7,925)

SMC(r-1) Special A&A (\$6,909)

- Entitled to SMC(o) AND
- Meet requirements for SMC(I) - A&A (disabilities result in vet needing assistance w/ functions of daily living)

SMC(r-2) Special A&A (higher level of care)

- Benefit =\$7,925
- Entitled to SMC(o) AND
- Meets requirements for SMC(I) - A&A AND
- Requires health-care services provided in home daily by licensed health-care professional (or someone under supervision of professional)

Introduction to SMC(t)

- Any vet, incl vets of OEF/OIF and vets who served during prior or later periods, may exp residuals of TBI due to combat, training for combat, non-combat blast injuries and accidents, motor vehicle accidents (MVAs), falls, etc.....
- Any vet who exp an open head injury, closed head injury, or cranial shock-wave injury in service may have TBI residuals and be eligible for VA disability comp bens.

Eligibility Requirements for SMC(t)

- Eff. 10/1/2011, these vets eligible (must meet all reqs.)
 - Vet has SC TBI and/or TBI residuals
 - Vet needs reg A&A for residuals of TBI, and
 - Vet not eligible for higher level of A&A under (r)(2), and
 - Vet would require hospitalization, nursing home care, or other residential instit'l care w/o regular in-home A&A.

Determining Eligibility: veteran must have SC TBI and/or residuals of TBI

- If SC hasn't been est for residuals of TBI, VA will usu perform an initial TBI exam—called an “I-TBI” exam.
- Reqs for SC for TBI and TBI residuals are same gen SC reqs that usu. apply to claims for SC

Determining Eligibility: Vet's SC TBI alone creates need for A&A

- Vet's SC TBI, w/o considering other SC or NSC conditions, must create need for reg A&A under 38 U.S.C. § 1114(I) (also called SMC(I)).
- A vet who needs reg A&A from another *to perform personal functions of daily living* is eligible to receive *regular* A&A benefit.

Determining Eligibility: Vet's SC TBI alone creates need for A&A

- To meet this part of SMC(t) req – that vet be entitled to “regular aid and attendance” – vet does not need to show that he/she needs care of a licensed health care professional.

Determining Eligibility: Vet's SC TBI alone creates need for A&A

- A&A can be provided by spouse, family member, or neighbor of vet — does not have to be provided by a professional or an outsider
- See 38 C.F.R. § 3.352(a) (containing no requirement that vet need professional health services)
- See also *Prejean v. West*, 13 Vet. App. 444 (2000) (spouse provides daily assist.)

Determining Eligibility: Vet's SC TBI alone creates need for A&A

- However, in order to show ultimate entitlement to SMC(t), claimant needs evid that
 - W/o reg in-home care, his/her SC TBI would require hospitalization, nursing home care, or other residential instit'l care.

Determining Eligibility: Doctor's Statement

- must be evid that
 - Vet needs care of another to perform functions of daily living &
 - “In absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential instit'l treatment.”
- Need doc's statement
 - that vet would have to be institutionalized w/o in-home care he/she receives, incl. explanation of reasoning

Determining Eligibility: Veteran cannot be Eligible for SMC(r-2)

- Vets disqualified from receiving SMC(t) b/c they qualify for SMC(r-2) benefits are not disadvantaged
 - They will receive SMC(r-2) and this benefit pays same amount as SMC(t)
- SMC(r-2) and SMC(t) are highest-paying monthly benefits available to vets.
- SMC(r-2) is also called “A&A at highest level” of care.

Determining Eligibility: Veteran cannot be Eligible for SMC(r-2)

- unique cognitive and behavioral residuals from TBI do not fit easily into SMC(r-2) reqs.
 - This is why obtaining entitlement to SMC(r-2) difficult for vets w/ PTSD & other mental conds.
 - If vet does not meet reqs for SMC(r-2), make sure VA considers entitlement to new SMC(t).

Comparing SMC(r-2) to SMC(t)

- For SMC(r-2), a vet needs to show that
 - A higher level of care is nec. and
 - Vet needs personal health care svcs provided on a daily basis in vet's home by an indiv licensed to provide such svcs or who provides such svcs under reg supervision of a licensed health care prof.
- This benefit definitely req involvement of or supervision of a health care prof.

Comparing SMC(r-2) to SMC(t)

- No req that vet require assistance of or supervision by health care prof.
- Vet simply needs evid, preferably a statement from a doctor or health care prof, that in absence of daily in-home care vet would require instit'l care.

What SMC(t) Pays

- SMC(t) is paid at SMC(r-2) rate
- 12/1/2011, SMC(r-2) and SMC(t) pay \$7,925 per month for a single vet
- Thus, for vets disabled by SC TBI who meet 3 reqs, SMC(t) pays highest possible amount of monthly VA benefits

What SMC(t) Pays

- SMC(t) is paid at SMC(r-2) rate
- Comparison of Rate Chart for L and R-2

Dependent Status	L	R-2
Veteran Alone	\$3,446	\$7,925
Veteran with Spouse	\$3,601	\$8,080
Veteran with Spouse and 1 Child	\$3,714	\$8,193
Veteran with 1 Child	\$3,550	\$8,029
For each add'l Child under Age 18	\$77	\$77
For each add'l Schoolchild over Age 18	\$248	\$248

© NVLSP 2012

Developing SMC(t) Claims

- In Dec. 2011, VA issued VA Fast Letter 11-035, concerning SMC(t).
- Fast Letter indicates that as with other SMC benefits, usual VA dev rules apply to claims for SMC(t).

Developing SMC(t) Claims

- Fast Letter procedures:
 - Before consid SMC(t), SMC(l) must be est.
 - If no SC for residuals of TBI, and exam necessary order an initial TBI exam—called an “I-TBI”
 - If SC already est for residuals of TBI & TBI exam necessary order TBI review exam—“R-TBI” exam
 - If med exam/opinion req under 38 C.F.R. § 3.159(c)(4), or if any doubt, VA to set up TBI exam & VA Form 21-2680 completed (*Exam for Housebound Status or Permanent Need for Regular A&A*)
 - VA must forward C-file to examiner & request full review of all VHA & DoD evid
 - If vet entitled to SMC(r-2) then process as SMC(r-2) award

Developing SMC(t) Claims

- Fast Letter also sets following procedures concerning these claims (cont'd):
 - where exam/opinion is req, get following med opinion: “In the absence of reg A&A for the residuals of TBI, would vet require hospitalization, nursing home care, or other residential instit'l care?”
 - Examiner to provide rationale
 - If findings unclear, inconsistent, or conflict w/ other evid --return for clarification
 - May accept a private physician's report certifying need for both A&A & need for instit'l care if exam/opinion meet all reqs.
 - Presumably means private dr must perform correct exam, complete VA Form 21-2680, answer question re: whether vet would require instit'l care in absence of regular A&A

Effective Date of SMC(t) Benefits

- Fast Letter provides that earliest ED possible for an award of SMC(t) is 10/1/2011— date that amendment creating entitlement to SMC(t) became eff.
- Advocates should be aware of a special ED rule that may sometimes result in an EED than date claim is rec'd by VA.
 - However, even under this special rule, a vet may not receive SMC(t) benefits prior to 10/1/2011

Effective Date of SMC(t) Benefits

- Under “liberalizing” effect of law, some vets may be entitled to SMC(t) prior to date they actually applied for SMC(t) (comes into play where there has been a liberalizing, favorable change in a law or reg).
- Rule may apply where a VA claimant continuously met criteria for new benefit, for period beginning on ED of new liberalizing law and ending on date claimant filed claim with VA.
- These claimants may receive up to 1 year of retro benefits.

Effective Date of SMC(t) Benefits

- Ex:
 - Eff. Date of change in law = 10/1/2011
 - VA receives SMC(t) claim 5/1/2012 (8 mos. after eff. date)
 - VA grants claim b/c of law change & vet met all reqs from date law change to date of claim
 - Likely special eff. date rules may give vet eff date earlier than date of claim
 - possible vet will receive eff date of 10/11 even though did not file until 5/12
 - more info about special eff. date rule see VBM § 6.8 (2011)