

Special Monthly Compensation

Background & Basics of SMC (38 U.S.C. § 1114)

- ▶ SMC benefits compensate vets who suffer from certain types of SC disability
 - i.e. anatomical loss or loss of use (i.e. loss of use of a hand or a foot), or impairment of senses (i.e. loss of vision or hearing).
- ▶ SMC benefits are provided in addition to any benefit vet is entitled to under the VA rating schedule (38 C.F.R. Part 4).

Background & Basics of SMC

- ▶ SMC has been available since 1930 and was originally awarded only for physical loss of an organ and/or limb
- ▶ 1950s – Congress broadened scope of SMC to include both actual physical loss as well as loss of use of organs and/or limbs.
- ▶ This resulted in VA awarding SMC for disabilities such as blindness (in addition to actual physical loss of an eye).

Background & Basics of SMC

- ▶ Unlike schedular SC disability comp scheme, SMC rates are determined by non-economic factors.
- ▶ Personal inconvenience, social inadaptability, and profound nature of disability are factors that VA considers in awarding SMC.
- ▶ In addition to receiving SMC for loss, loss of use, and certain combinations of loss or loss of use, there are special situations that may warrant a grant of SMC.

SMC Eligibility

- ▶ Basic levels of SMC include entitlement to individual loss or loss of use of extremities, loss of senses, entitlement to housebound benefits, and basic entitlement to regular A&A
- ▶ The basic levels of SMC are the building blocks to the higher levels of SMC
- ▶ Entitlement to basic SMC benefits must be established first; then, the higher rates can be considered

Types of SMC

- ▶ If a vet qualifies for SMC – he/she will be in one of the following categories:
 - SMC(k)
 - SMC(s)
 - SMC(l) – (l ½)
 - SMC(m) – (m ½)
 - SMC(n) – (n ½)
 - SMC(o)
 - SMC(r) –(r–1) (r–2)
 - SMC(t)

Types of SMC

- ▶ Some of the letter categories also have $\frac{1}{2}$ levels
- ▶ The higher levels of SMC (l) through (o), and special aid and attendance benefits (r-1 and r-2) are payable for combinations of anatomical loss or loss of use of the extremities at different levels, blindness, and regular A&A

SMC Benefits Rates (effective 12/1/2014; no dependents)

- ▶ 100% rating (no SMC): \$2,906.83
- ▶ SMC(k): \$103.23 for each loss or loss of use (added to vet's disability compensation)
- ▶ SMC(s): \$3,253.67
- ▶ SMC(l): \$3,617.02; SMC(l ½): \$3,804.00
- ▶ SMC(m): \$3,991.74; SMC(m ½): \$4,266.00
- ▶ SMC(n): \$4,540.89; SMC(n ½): \$4,808.00

SMC Benefits Rates (effective 12/1/2014; no dependents)

- ▶ SMC(o): \$5,075.60
- ▶ SMC(r-1): \$7,252.63
- ▶ SMC(r-2): \$8,318.95
- ▶ SMC(t): \$8,318.95

SMC(k) Eligibility (38 U.S.C. § 1114(k); 38 C.F.R. § 3.350(a))

- ▶ To receive this award a vet must have one of the following:
 - Anatomical loss (or loss of use) of:
 - One hand
 - One foot
 - Both buttocks
 - One or more creative organs used for reproduction
 - One eye

SMC(k) Eligibility cont.

- ▶ To receive this award a vet must have one of the following:
 - Complete organic aphonia (constant loss of voice due to disease)
 - Deafness of both ears that includes absence of air and bone conduction
 - For female vets, loss of 25% or more of breast tissue from a single breast or both breasts in combination

SMC(k) can be paid in addition to SMC(s)

SMC(s) Eligibility (38 U.S.C. § 1114(s), 38 C.F.R. § 3.350(i))

- ▶ To receive this award a vet must meet the following requirements:
 - (1) Vet has one SC disability rated at 100%; or
 - the vet has one SC disability that by itself supports a total disability based on individual unemployability (TDIU);
 - AND

SMC(s) Eligibility cont.

- (2) The vet has an additional SC disability (or disabilities) that is completely separate from the first disability and is independently rated at 60% or more; or
- The vet is housebound: vet's disabilities must directly cause him/her to be substantially confined to his/her home and the immediate premises or, if he/she is in an institution, to the ward or clinical areas
 - Also – it must be reasonably certain that the vet's disability or disabilities and confinement will continue for the rest of his/her life

SMC Eligibility

- ▶ Vet may also be determined to have “housebound” status in one of two ways, which would entitle him/her to additional monthly compensation
 - First, vet may be eligible for housebound benefits if there is a single SC disability rated as totally disabling & additional SC disabilities that are independently rated at 60%

SMC Eligibility

- ▶ Vet may also be determined to have “housebound” status...
 - Second, a vet is entitled to housebound benefits if he or she has a single SC disability rated as totally disabling and the vet is permanently housebound because of SC disability or disabilities

SMC(I) Eligibility (38 U.S.C. § 1114(I), 38 C.F.R. § 3.352(a))

- ▶ Regular A&A, SMC(I) is for those vets whose disabilities are so severe that they need assistance from another person (does not have to be provided by a professional)
- ▶ To receive this award a vet must have one of the following:
 - Anatomical loss (or loss of use) of:
 - Both feet
 - One hand and one foot

SMC(I) Eligibility cont.

- ▶ To receive this award a vet must have one of the following...
 - Blindness in both eyes with visual acuity of 5/200 or less
 - Permanently bedridden
 - Regular (not constant) need for aid and attendance

SMC(I) Eligibility

▶ Example:

- A vet has 5/200 vision loss in the right eye and 5/200 vision loss in the left eye
- The vet is evaluated at 100% under DC 6071 and entitled to SMC for blindness in both eyes with bilateral vision of 5/200

Background & Basics of SMC

- ▶ For example, a vet who has such significant disabilities so as to be in need of “regular A&A” of another in order to perform personal functions of daily living may be eligible for SMC(I).

Aid & Attendance

- ▶ A vet qualifies for regular A&A based on any of the following circumstances:
 - The need for regular help to perform everyday living activities
 - Physical or mental incapacity which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment

Aid & Attendance

- ▶ There are 3 levels of Aid and Attendance:

1. Regular A&A

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

3. Special A&A – Higher Level of Care (SMC $r-2$)

SMC(I 1 / 2) Eligibility

- ▶ The following combination of loss or loss of use for the lower and upper extremities and vision loss will entitle a vet to SMC (I ½)

| | | |
|---------------------------------------|---|--|
| Loss or Loss of Use of Leg Below Knee | + | Loss or Loss of Use of Arm Above Elbow |
| Vision: 20/200 | + | Vision: Light Perception Only |

SMC(m) Eligibility (38 U.S.C. § 1114(m))

- ▶ To receive this award, a vet must have one of the following:
 - Anatomical loss (loss of use) of:
 - Both hands
 - Both legs at the region of the knee
 - One arm at the region of the elbow with one leg at the region of the knee
 - Blindness in both eyes, having only light perception
 - Blindness in both eyes resulting in the need for regular aid and attendance

SMC(m 1 / 2) Eligibility (38 U.S.C. § 1114(p)(m ½))

- ▶ The following combinations of loss or loss of use for the lower and upper extremities and vision loss will entitle a vet to SMC(m ½)

| | | |
|---|---|--|
| Loss or Loss of Use of a Leg Above Knee | + | Loss of Leg Near Hip |
| Loss or Loss of Use of Leg Above Knee | + | Loss of Arm Near Shoulder |
| Loss or Loss of Use of Arm Above Elbow | + | Loss of Leg Near Hip |
| Loss or loss of use of hand | + | Loss or Loss of Use of Arm Above Elbow |
| Vision: Light Perception only | + | Vision: No light perception |

SMC(n) Eligibility (38 U.S.C. § 1114(n))

- ▶ To receive this award a vet must have one of the following:
 - Anatomical loss (or loss of use) of both arms at the region of the elbow
 - Anatomical loss of both legs so near the hip that it prevents the use of prosthetic appliance

SMC(n) Eligibility cont.

- ▶ To receive this award a vet must have one of the following:
 - Anatomical loss of one arm so near the shoulder that it prevents the use of a prosthetic appliance, along with the anatomical loss of one leg so near the hip that it prevents the use of a prosthetic appliance
 - The anatomical loss of both eyes, or blindness in both eyes that includes loss of light perception

SMC(n 1 / 2) Eligibility (38 U.S.C. § 1114(p)(n 1/2))

- ▶ The following combination of loss or loss of use for the upper extremity will entitle a vet to SMC (n 1/2)

Loss or Loss of Use
of Arm Above Elbow

+

Loss of arm near
shoulder

SMC(o) Eligibility (38 U.S.C. § 1114(o))

- ▶ To receive this award a vet must have one of the following:
 - Anatomical loss of both arms so near the shoulder that it prevents the use of a prosthetic appliance
 - Bilateral deafness (both ears) rated at least 60% disabling, along with SC blindness with visual acuity of 20/200 or less in both eyes
 - Complete deafness in one ear or bilateral deafness rated at least 40% disabling, along with SC blindness in both eyes that includes loss of light perception

SMC(o) Eligibility cont.

- ▶ To receive this award a vet must have one of the following:
 - Paraplegia–paralysis of both lower extremities, along with bowel and bladder incontinence
 - Helplessness due to a combination of loss (or loss of use) of 2 extremities with deafness and blindness, or a combination of multiple injuries causing severe and total disability

SMC(r) Eligibility

- ▶ To receive this award a vet must be receiving the maximum SMC(o) benefits (equivalent to 2 SMC(l)'s) and require:
 - Aid and Attendance, or
 - Aid and attendance of another person without which you would require hospitalization, nursing home care, or other residential type care

SMC(r - 1) Eligibility

- ▶ SMC (r-1) – Special Aid and Attendance Benefits
- ▶ Vet is entitled to this special aid and attendance when:
 - The vet is receiving the max rate or a rate equal to the max rate of SMC authorized
 - The vet meets the requirements for entitlement to the basic or regular A&A
- ▶ This special benefit is payable whether or not the need for A&A was a partial basis for entitlement to the max rate under SMC(o)

SMC(r -2) Eligibility

- ▶ SMC (r-2) – Special Aid and Attendance Benefits – Higher Level of Care
- ▶ Vet is entitled to this higher level care aid and attendance when:
 - The vet is receiving the max rate or a rate equal to the max rate of SMC authorized
 - The vet meets the requirements for entitlement to the basic or regular A&A and
 - The vet needs a higher level of care (a licensed health care professional or someone under the supervision of a professional)

SMC(t) Eligibility (38 U.S.C. § 1114(t))

- ▶ To receive this award a vet must meet all of the following:
 - The vet needs regular A&A for the residuals of traumatic brain injury (TBI)
 - The vet is not eligible for a higher level of A&A under SMC(r)(2); and
 - The vet would need hospitalization, nursing home care, or other residential institutional care without in-home A&A
- ▶ Thus, for vets disabled by SC TBI who meet all of the above-listed requirements, SMC(t) pays the highest possible amount of monthly VA benefits

The SMC Formula

- ▶ The formula described below can be used to determine the proper rate of SMC when there is a combination of loss (or loss of use) of the hands and feet, or vision impairment involving both eyes
- ▶ In most instances this formula should help advocates determine the proper SMC rate between SMC(l) and SMC(o) and the formula should help advocates understand how the various levels of SMC are assigned
- ▶ The formula is designed to help advocates understand SMC so that they can best represent their clients

The SMC Formula

- ▶ Note that the formula does not cover all possible entitlements to SMC – in that sense it is not an all-inclusive formula
- ▶ There are additional entitlements to SMC such as combined deafness and blindness that occur rarely and are not covered by this formula

The SMC Formula

- ▶ When thinking about the various levels of SMC it helps to think in divisions of three.
- ▶ For example:
 - SMC at the levels established by 38 U.S.C. § 1114(l) through(o) generally involve:
 - Anatomical loss (amputation) or loss of use of a lower extremity at three levels, anatomical loss (amputation) or loss of use of an upper extremity at three levels, or visual impairment at three levels
 - Lower Extremity
 - Upper Extremity
 - Visual Extremity

The SMC Formula

- ▶ Lower Extremity – there are three levels of disability used to evaluate the higher levels of loss or loss of use of the lower extremity
 - Loss or loss of use of the leg below the knee (anatomical loss below the knee or loss of use of the foot);
 - Loss or loss of use of the leg above the knee (anatomical loss above the knee or loss of use at a level or with complications preventing natural knee action with prosthesis in place); or
 - Loss of the leg near the hip (anatomical loss so near the shoulder as to prevent use of a prosthetic appliance).

The SMC Formula

- ▶ Upper Extremity – there are three levels of disability used to evaluate the higher levels of loss of use of the upper extremity:
 - Loss or loss of use of the hand (anatomical loss below the elbow or loss of use of the hand); or
 - Loss or loss of use of the arm above the elbow (anatomical loss above the elbow or loss of use of an arm at a level, or with complications preventing natural elbow action with prosthesis in place); or
 - Loss of the arm near the shoulder (anatomical loss so near the shoulder as to prevent use of a prosthetic appliance).

The SMC Formula

- ▶ Visual Impairment – there are three levels of disability used to evaluate the higher levels of SMC for visual impairment:
 - Vision – 5/200 (5/200 visual activity or less); or
 - Vision – light perception only (blindness having light perception only); or
 - Vision – no light perception (blindness without light perception in both eyes or enucleation (removal) of the eyes).

The SMC Formula

- ▶ The formula is based on a point total
- ▶ Even point totals (2,4,6,8) correspond to SMC(l), (m), (n), and (o)
- ▶ Odd point totals (3,5,7) correspond to the intermediate SMC rates – SMC($l \frac{1}{2}$), ($m \frac{1}{2}$), and ($n \frac{1}{2}$)
- ▶ Please note that once 8 points (entitlement to SMC(o)) has been awarded, the formula should not be used

The SMC Formula

- ▶ $SMC(l) = 2$ points
- ▶ $SMC(l \frac{1}{2}) = 3$ points
- ▶ $SMC(m) = 4$ points
- ▶ $SMC(m \frac{1}{2}) = 5$ points
- ▶ $SMC(n) = 6$ points
- ▶ $SMC(n \frac{1}{2}) = 7$ points; and
- ▶ $SMC(o) = 8$ points

The SMC Formula

- ▶ Advocates using the formula must first determine if there is a combination of loss of use or anatomical loss of:
 - Both hands/arms;
 - Both feet/legs
 - A hand/arm and a foot/leg or
 - Visual impairment of at least 5/200 in both eyes

The SMC Formula

- ▶ If there is a combination, then the advocate should start assigning point totals
- ▶ Advocates should note that while the point totals for feet/legs and hands/arms may be combined, vision impairment may not be combined with loss, or loss of use of the feet/legs or the hands/arms

The SMC Formula

- ▶ Assign one point for the lowest level of impairment that qualifies for SMC
- ▶ For example, loss or loss of use of a foot, loss or loss of use of a hand, or 5/200 visual acuity or less is worth one point

The SMC Formula

- ▶ Assign two points for the second level of loss, loss of use, or vision impairment
- ▶ For example, loss or loss of use of the leg above the knee (anatomical loss above the knee or loss of use at a level, or with complications preventing natural knee action with prosthesis in place) is worth two points

The SMC Formula

- ▶ Assign three points for the highest level of loss, loss of use, or vision impairment
- ▶ Add two extra points if there is loss, or loss of use, of both hands/arms

The SMC Formula

- ▶ Add one extra point if a vet has additional single permanent disability or combinations of permanent disabilities independently ratable at 50 to 90 percent
- ▶ Add two extra points if a vet has additional single permanent disability independently ratable at 100% apart from any consideration of individual unemployability

The SMC Formula

- ▶ Note #1: Loss of use of a hand (1 point) and light perception only in one eye (2 points) cannot be combined. This vet would be entitled to only two SMC(k)s
- ▶ Note #2: SMC(o) can also be assigned when a vet has two awards of SMC(l) through ($n \frac{1}{2}$).

For example, if a vet suffers both the loss of use of both feet and also is SC for 5/200 visual acuity or less in both eyes, the vet would be entitled to 2 awards of SMC(l). Since the vet is entitled to 2 awards of SMC(l), the vet would automatically be entitled to SMC(o).

The SMC Formula

- ▶ Note #3: If a vet is entitled to two SMC awards of SMC(l) or higher and either one of the combined disabilities that made the vet entitled to SMC(l) also causes the vet to be in need of aid and attendance (or a combination of the disabilities cause the vet to be in need of aid and attendance), then the vet would be entitled to SMC(r)(1)

Applying the SMC Formula

▶ Example 1

- Veteran suffered the following injuries:
 - Loss of left leg above the knee; and
 - Loss of use of right hand
- What level of SMC is the veteran entitled to?

Applying the SMC Formula

▶ Example 1 Answer

- Loss of left leg above the knee = 2 points
- Loss of use of right hand = 1 point
- Total is 3 points so the veteran is entitled to SMC(I ½)

Applying the SMC Formula

▶ Example 2

- Veteran suffered the following injuries:
 - Anatomical loss of right arm near the shoulder;
 - Loss of use of left hand; and
 - Loss of use of right foot
- What level of SMC is the veteran entitled to?

Applying the SMC Formula

▶ Example 2 Answer

- Anatomical loss of right arm near the shoulder = 3 points
- Loss of use of left hand = 1 point
- 2 extra points for loss of use of both hands
- Loss of use of right foot = 1 point
- Total is 7 points so the veteran is entitled to SMC(n $\frac{1}{2}$)

Applying the SMC Formula

▶ Example 3

- Veteran suffered the following injuries:
 - Anatomical loss of left arm above the elbow;
 - Loss of use of right hand; and
 - Visual acuity of 5/200 in right eye
- What level of SMC is the veteran entitled to?

Applying the SMC Formula

▶ Example 3 Answer

- Anatomical loss of left arm above the elbow = 2 points
- Loss of use of right hand = 1 point (+ 2 extra points for loss of use of both hands)
- Visual acuity of 5/200 in right eye = 1 point (but does not count in this case because visual impairment cannot be combined with loss or loss of use of hands)
- Total is 5 points so the veteran is entitled to SMC(m ½)

Questions?

