

### § 3.351

### 38 CFR Ch. I (7–1–10 Edition)

during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of this need is subject to the criteria of § 3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the maximum rate under 38 U.S.C. 1114 (o) or (p), or was based on an independent factual determination.

(2) *Entitlement to compensation at the intermediate rate between 38 U.S.C. 1114 (n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k).* A veteran receiving compensation at the intermediate rate between 38 U.S.C. 1114 (n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k) who establishes a factual need for regular aid and attendance or a higher level of care, is also entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of the factual need for aid and attendance is subject to the criteria of § 3.352:

(3) *Amount of the allowance.* The amount of the additional allowance payable to a veteran in need of regular aid and attendance is specified in 38 U.S.C. 1114(r)(1). The amount of the additional allowance payable to a veteran in need of a higher level of care is specified in 38 U.S.C. 1114(r)(2). The higher level aid and attendance allowance authorized by 38 U.S.C. 1114(r)(2) is payable in lieu of the regular aid and attendance allowance authorized by 38 U.S.C. 1114(r)(1).

(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.

[26 FR 1587, Feb. 24, 1961, as amended at 27 FR 4739, May 18, 1962; 28 FR 1587, Feb. 20, 1963; 28 FR 5671, June 11, 1963; 40 FR 54245, Nov. 21, 1975; 45 FR 25392, Apr. 15, 1980; 46 FR 47541, Sept. 29, 1981; 48 FR 41161, Sept. 14, 1983; 49 FR 47003, Nov. 30, 1984; 54 FR 34981, Aug. 23, 1989; 60 FR 12886, Mar. 9, 1995; 67 FR 6873, Feb. 14, 2002; 68 FR 55467, Sept. 26, 2003; 74 FR 11483, Mar. 18, 2009]

#### **§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.**

(a) *General.* This section sets forth criteria for determining whether:

(1) Increased pension is payable to a veteran by reason of need for aid and attendance or by reason of being housebound.

(Authority: 38 U.S.C. 1521(d), (e))

(2) Increased compensation is payable to a veteran by reason of the veteran's spouse being in need of aid and attendance.

(Authority: 38 U.S.C. 1115(1)(E))

(3) Increased dependency and indemnity compensation is payable to a surviving spouse or parent by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1311(c), 1315(h))

(4) Increased dependency and indemnity compensation is payable to a surviving spouse who is not in need of aid and attendance but is housebound.

(Authority: 38 U.S.C. 1311(d))

(5) Increased pension is payable to a surviving spouse by reason of need for aid and attendance, or if not in need of aid and attendance, by reason of being housebound.

(Authority: 38 U.S.C. 1541(d), (e))

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(6) Increased death compensation is payable to a surviving spouse by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1122)

(b) *Aid and attendance; need.* Need for aid and attendance means helplessness or being so nearly helpless as to require the regular aid and attendance of another person. The criteria set forth in paragraph (c) of this section will be applied in determining whether such need exists.

(c) *Aid and attendance; criteria.* The veteran, spouse, surviving spouse or parent will be considered in need of regular aid and attendance if he or she:

(1) 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; or

(2) Is a patient in a nursing home because of mental or physical incapacity; or

(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))

(d) *Housebound, or permanent and total plus 60 percent; disability pension.* The rate of pension payable to a veteran who is entitled to pension under 38 U.S.C. 1521 and who is not in need of regular aid and attendance shall be as prescribed in 38 U.S.C. 1521(e) if, in addition to having a single permanent disability rated 100 percent disabling under the Schedule for Rating Disabilities (not including ratings based upon unemployability under § 4.17 of this chapter) the veteran:

(1) Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or

(2) Is “permanently housebound” by reason of disability or disabilities. This requirement is met when the veteran is substantially confined to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities

and resultant confinement will continue throughout his or her lifetime.

(Authority: 38 U.S.C. 1502(c), 1521(e))

(e) *Housebound; dependency and indemnity compensation.* The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 1311(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 1311(d) if the surviving spouse is permanently housebound by reason of disability. The “permanently housebound” requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse’s lifetime.

(Authority: 38 U.S.C. 1311(d))

(f) *Housebound; improved pension; death.* The annual rate of death pension payable to a surviving spouse who does not qualify for an annual rate of death pension payable under § 3.23(a)(6) based on need for aid and attendance shall be as set forth in § 3.23(a)(7) if the surviving spouse is permanently housebound by reason of disability. The “permanently housebound” requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse’s lifetime.

(Authority: 38 U.S.C. 1541(e))

[44 FR 45939, Aug. 6, 1979]

### **§ 3.352 Criteria for determining need for aid and attendance and “permanently bedridden.”**

(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):