agency will consider whether the evidence makes it reasonably certain that the improvement will be maintained under the ordinary conditions of life. When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in prior diagnosis or possibly a disease entity independent of the service-connected disability. When the new diagnosis reflects mental deficiency or personality disorder only, the possibility of only temporary remission of a super-imposed psychiatric disease will be borne in mind.

(b) Doubtful cases. If doubt remains, after according due consideration to all the evidence developed by the several items discussed in paragraph (a) of this section, the rating agency will continue the rating in effect, citing the former diagnosis with the new diagnosis in parentheses, and following the appropriate code there will be added the reference “Rating continued pending reexamination [lll] months from this date, § 3.344.” The rating agency will determine on the basis of the facts in each individual case whether 18, 24 or 30 months will be allowed to elapse before the reexamination will be made.

(c) Disabilities which are likely to improve. The provisions of paragraphs (a) and (b) of this section apply to ratings which have continued for long periods at the same level (5 years or more). They do not apply to disabilities which have not become stabilized and are likely to improve. Reexaminations disclosing improvement, physical or mental, in these disabilities will warrant reduction in rating.

corresponding diameters of the paired normal testicle, or

(b) The diameters of the affected testicle are reduced to one-half or less of the corresponding normal testicle and there is alteration of consistency so that the affected testicle is considerably harder or softer than the corresponding normal testicle; or

(c) If neither of the conditions (a) or (b) is met, when a biopsy, recommended by a board including a genitourologist and accepted by the veteran, establishes the absence of spermatozoa.

(ii) When loss or loss of use of a creative organ resulted from wounds or other trauma sustained in service, or resulted from operations in service for the relief of other conditions, the creative organ becoming incidentally involved, the benefit may be granted.

(iii) Loss or loss of use traceable to an elective operation performed subsequent to service, will not establish entitlement to the benefit. If, however, the operation after discharge was required for the correction of a specific injury caused by a preceding operation in service, it will support authorization of the benefit. When the existence of disability is established meeting the above requirements for nonfunctioning testicle due to operation after service, resulting in loss of use, the benefit may be granted even though the operation is one of election. An operation is not considered to be one of election where it is advised on sound medical judgment for the relief of a pathological condition or to prevent possible future pathological consequences.

(iv) Atrophy resulting from mumps followed by orchitis in service is service connected. Since atrophy is usually perceptible within 1 to 6 months after infection subsides, an examination more than 6 months after the subsidence of orchitis demonstrating a normal genitourinary system will be considered in determining rebuttal of service incurrence of atrophy later demonstrated. Mumps not followed by orchitis in service will not suffice as the antecedent cause of subsequent atrophy for the purpose of authorizing the benefit.

(2) Foot and hand. (i) Loss of use of a hand or a foot will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance, propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis; for example:

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of two major joints of an extremity, or shortening of the lower extremity of 3½ inches or more, will constitute loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent footdrop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.

(3) Both buttocks. (i) Loss of use of both buttocks shall be deemed to exist when there is severe damage by disease or injury to muscle group XVII, bilateral, (diagnostic code 5317) and additional disability making it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be done by the person’s own hands or arms, and, in the matter of postural stability, by a special appliance.

(Authority: 38 U.S.C. 1114(k))

(ii) Special monthly compensation for loss or loss of use of both lower extremities (38 U.S.C. 1114(l) through (n)) will not preclude additional compensation under 38 U.S.C. 1114(k) for loss of use of both buttocks where appropriate tests clearly substantiate that there is such additional loss.

(4) Eye. Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot and when further examination of
the eye reveals that perception of objects, hand movements, or counting fingers cannot be accomplished at 3 feet. Lesser extents of vision, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet is considered of negligible utility.

(5) Deafness. Deafness of both ears, having absence of air and bone conduction will be held to exist where examination in a Department of Veterans Affairs authorized audiology clinic under current testing criteria shows bilateral hearing loss is equal to or greater than the minimum bilateral hearing loss required for a maximum rating evaluation under the rating schedule.

(Authority: Pub. L. 88–20)

(6) Aphonia. Complete organic aphonia will be held to exist where there is a disability of the organs of speech which constantly precludes communication by speech.

(Authority: Pub. L. 88–22)

(b) Ratings under 38 U.S.C. 1114(1). The special monthly compensation provided by 38 U.S.C. 1114(1) 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(1). 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).

(d) Ratings under 38 U.S.C. 1114(n). The special monthly compensation provided by 38 U.S.C. 1114(n) is payable for any of the conditions which follow: Amputation is a prerequisite except for loss of use of both arms and blindness without light perception in both eyes. If a prosthesis cannot be worn at the
present level of amputation but could be applied if there were a reamputation at a higher level, the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

(1) Anatomical loss or loss of use of both arms at a level or with complications, preventing natural elbow action with prosthesis in place;

(2) Anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance;

(3) Anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance;

(4) Anatomical loss of both eyes or blindness without light perception in both eyes.

(e) Ratings under 38 U.S.C. 1114 (o).

(1) The special monthly compensation provided by 38 U.S.C. 1114(o) is payable for any of the following conditions:

(i) Anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance;

(ii) Conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 1114(l) through (n);

(iii) Bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less.

(iv) Service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less.

(2) Paraplegia. Paralysis of both lower extremities together with loss of anal and bladder sphincter control will entitle to the maximum rate under 38 U.S.C. 1114(o), through the combination of loss of use of both legs and helplessness. The requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.

(3) Combinations. Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of “being permanently bedridden” and “being so helpless as to require regular aid and attendance” without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement.

(4) Helplessness. The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(f) Intermediate or next higher rate. An intermediate rate authorized by this paragraph shall be established at the arithmetic mean, rounded to the nearest dollar, between the two rates concerned.

(1) Extremities. (i) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one leg at a level, or with complications preventing natural knee action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).
(ii) Anatomical loss or loss of use of one foot with anatomical loss of one leg so near the hip as to prevent use of prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(m).

(iii) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).

(iv) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(m).

(v) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(vi) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(vii) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(viii) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one hand shall entitle to the rate under 38 U.S.C. 1114(m) and (n).

(ix) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(x) Anatomical loss or loss of use of one hand with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).

(xi) Anatomical loss or loss of use of one hand with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(n).

(xii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(n) and (o).

(2) Eyes, bilateral, and blindness in connection with deafness and/or loss or loss of use of a hand or foot.

(i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate between 38 U.S.C. 1114(l) and (m).

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate equal to 38 U.S.C. 1114(m).

(iii) Blindness of one eye having only light perception and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate between 38 U.S.C. 1114(m) and (n).

(iv) Blindness in both eyes with visual acuity of 5/200 or less, or blindness in both eyes rated under subparagraph (2)(i) or (ii) of this paragraph, when accompanied by service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate of if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(v) Blindness in both eyes having only light perception or less, or rated under subparagraph (2)(iii) of thisparagraph, when accompanied by bilateral deafness (and the hearing impairment in either one or both ears is service-connected) rated at 10 or 20 percent disabling, will afford entitlement to the next higher intermediate rate, or if the
veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(Authority: Sec. 112, Pub. L. 98–223)

(vi) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m) or (n), or rated under subparagraphs (2)(i), (ii) or (iii) of this paragraph, when accompanied by bilateral deafness rated at no less than 30 percent, and the hearing impairment in one or both ears is service-connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114, or if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o).

(Authority: 38 U.S.C. 1114(p))

(vii) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m), or (n), or under the intermediate or next higher rate provisions of this subparagraph, when accompanied by:

(A) Service-connected loss or loss of use of one hand, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(B) Service-connected loss or loss of use of one foot which by itself or in combination with another compensable disability would be ratable at 50 percent or more, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or

(C) Service-connected loss or loss of use of one foot which is ratable at less than 50 percent and which is the only compensable disability other than bilateral blindness, will afford entitlement to the next higher intermediate rate or, if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).

(Authority: 38 U.S.C. 1114(p))
(ii) The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(5) Three extremities. Anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities shall entitle a veteran to the next higher rate without regard to whether that rate is a statutory rate or an intermediate rate. The maximum monthly payment under this provision may not exceed the amount stated in 38 U.S.C. 1114(p).

(g) Inactive tuberculosis (complete arrest). The rating criteria for determining inactivity of tuberculosis are set out in §3.375.

(1) For a veteran who was receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the minimum monthly rate is $67. This minimum special monthly compensation is not to be combined with or added to any other disability compensation.

(2) For a veteran who was not receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the special monthly compensation authorized by paragraph (g)(1) of this section is not payable.

(h) Special aid and attendance benefit; 38 U.S.C. 1114(r)—(1) Maximum compensation cases. A veteran receiving the maximum rate under 38 U.S.C. 1114 (o) or (p) who is in need of regular aid and attendance or a higher level of care is entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See §3.352(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.