

§ 3.352

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aid and attendance, by reason of being housebound.

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

(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): 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.

(b) *Basic criteria for the higher level aid and attendance allowance.* (1) A veteran is entitled to the higher level aid and attendance allowance authorized by § 3.350(h) in lieu of the regular aid and

attendance allowance when all of the following conditions are met:

(i) The veteran is entitled to the compensation authorized under 38 U.S.C. 1114(o), or the maximum rate of compensation authorized under 38 U.S.C. 1114(p).

(ii) The veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(iii) The veteran needs a "higher level of care" (as defined in paragraph (b)(2) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

(2) Need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a State or political subdivision thereof.

(3) The term "under the regular supervision of a licensed health-care professional", as used in paragraph (b)(2) of this section, means that an unlicensed person performing personal health-care services is following a regimen of personal health-care services prescribed by a health-care professional, and that the health-care professional consults with the unlicensed person providing the health-care services at least once each month to monitor the prescribed regimen. The consultation need not be in person; a telephone call will suffice.

(4) A person performing personal health-care services who is a relative or other member of the veteran's household is not exempted from the requirement that he or she be a licensed health-care professional or be providing such care under the regular supervision of a licensed health-care professional.

(5) The provisions of paragraph (b) of this section are to be strictly construed. The higher level aid-and-attendance allowance is to be granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial.

(Authority: 38 U.S.C. 501, 1114(r)(2))

(c) *Attendance by relative.* The performance of the necessary aid and attendance service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.

[41 FR 29680, July 19, 1976, as amended at 44 FR 22720, Apr. 17, 1979; 60 FR 27409, May 24, 1995]

§ 3.353 Determinations of incompetency and competency.

(a) *Definition of mental incompetency.* A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) *Authority.* (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), and, subject to § 13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary's social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter; select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided

in § 13.57 of this chapter; and authorize disbursement of the benefit.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Service Center Manager develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

(c) *Medical opinion.* Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Considerations of medical opinions will be in accordance with the principles in paragraph (a) of this section. Determinations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency.

(d) *Presumption in favor of competency.* Where reasonable doubt arises regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency (see § 3.102 on reasonable doubt).

(e) *Due process.* Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a hearing as provided in § 3.103. Such notice is not necessary if the beneficiary has been declared incompetent by a court of competent jurisdiction or if a guardian has been appointed for the beneficiary based upon a court finding of incompetency. If a hearing is requested it must be held prior to a