B&M
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An Introduction to SMC, P&T, Automobile Allowances

https://bmvetlaw.participoll.com/

Learning Objectives

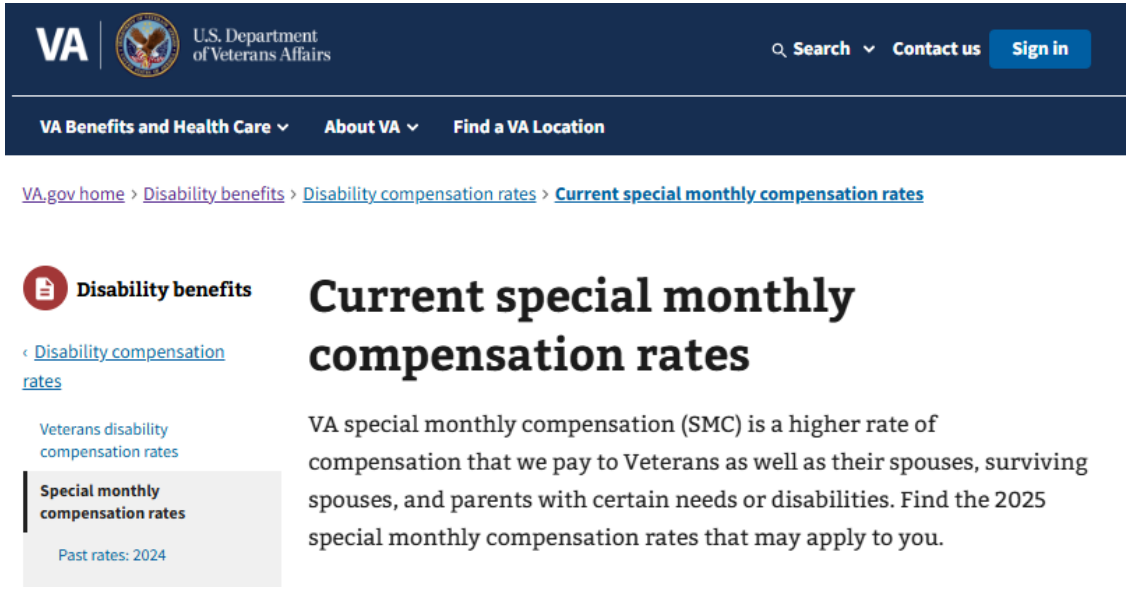
Learn how to obtain **additional VA benefits**, in addition to basic compensation.

- Recognize **Special Monthly Compensation** (SMC) based on loss of use and need for aid and attendance.
- Learn the importance of a finding of **permanent and total** (P&T) disability.
- Learn how to establish entitlement to an **automobile allowance** and **adaptive equipment benefits**.

Special Monthly Compensation (SMC)

What is SMC

- SMC is a monthly VA payment for Veterans with certain types of service-connected disabilities, or very severe service-connected disabilities.
- SMC is typically paid ***instead*** of the schedular compensation rate:
  - Higher rate of payment.
  - Some categories are paid ***in addition to*** the regular monthly payment.



VA's SMC website: https://www.va.gov/disability/compensation-rates/special-monthly-compensation-rates/

SMC Eligibility

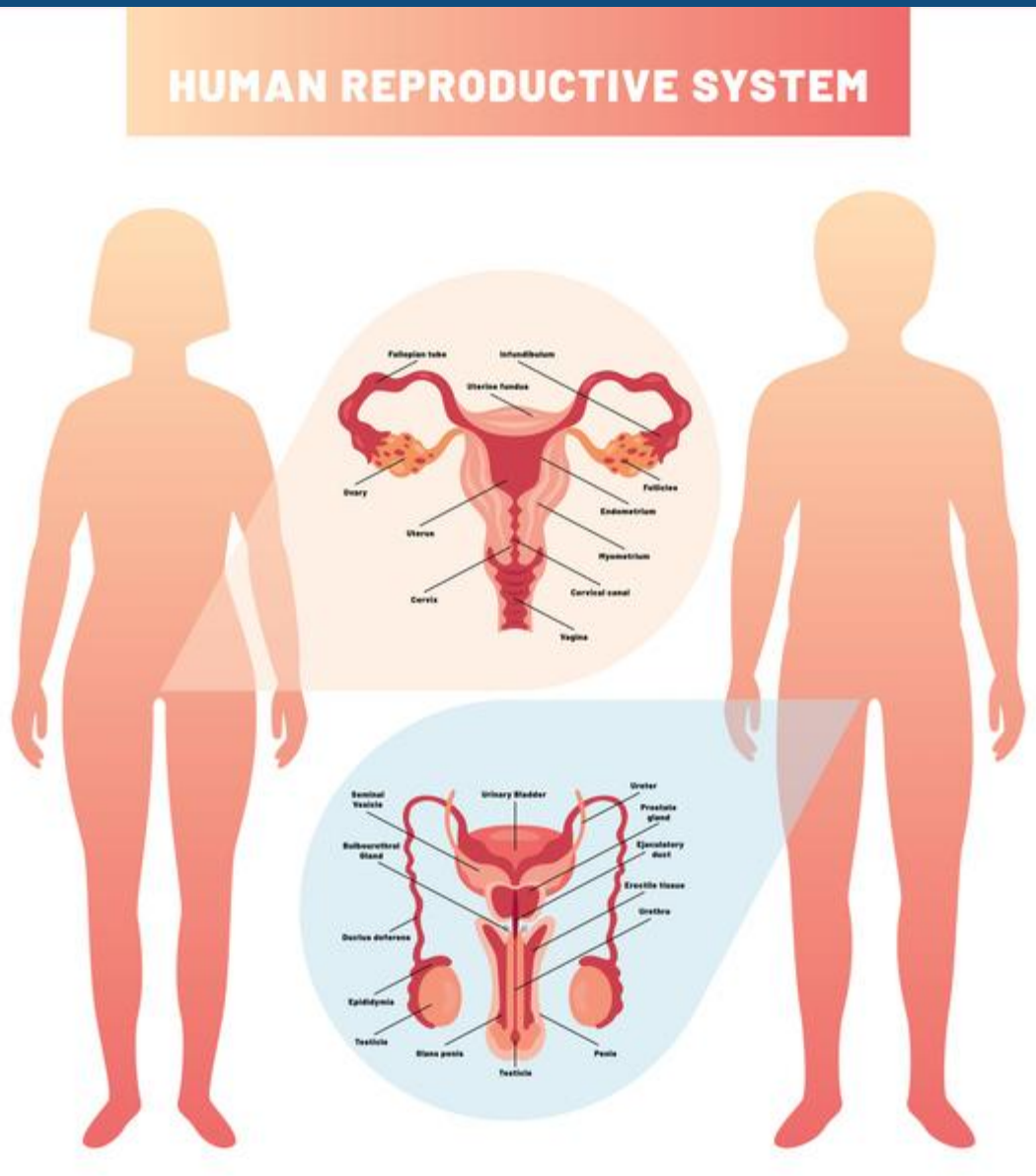
- Eligibility is very fact specific.
- Don’t try to memorize.
- Our goals: **Recognize that SMC may be available**, and **know where to look up VA regulations**.

SMC – Laws, Regs, and M21-1

- **38 U.S.C. § 1114 (statute / law)**
  - Types of SMC are frequently referred to by the letter of the paragraph in this **statute**.
  - E.g., "SMC(s)" is referring to paragraph (s) of 38 U.S.C. § 1114.
- More details are in **38 C.F.R. § 3.350 (regulation)**
  - Confusingly, paragraphs for **regulations** are not assigned the same letters as the laws.
  - E.g., § 1114(k) and § 3.350(a) are the same benefit.
- M21-1-Part-VIII-Subpart-iv-Chapter-4-Section-A-Special-Monthly-Compensation-SMC

Loss of Use

- One of the most frequently seen categories of SMC is based on "loss of use" – SMC(k).
- Veterans whose service-connected disabilities are so severe the Veteran is no longer able to use certain body parts.
- SMC(k) is paid ***in addition to*** the compensation for a Veteran's combined schedular rating.



Loss of Use – Creative Organ

- The most common basis for SMC(k) is **loss of use of a creative organ**:
  - Includes loss of use of testicles and ovaries
- A note before 38 C.F.R. § 4.114b, ratings of the genitourinary system, directs VA to consider eligibility of SMC(k).
- Includes erectile dysfunction (DC 7522).
  - Common complication of diabetes, prostate cancer, mental health disability, and heart disability.

Loss of Use of Extremities

- Physical loss of the extremity is <u>not required</u>.
- Instead, loss of use exists when "**no effective function** remains other than that which would be equally well served by amputation."
  - Does not mean that amputation is warranted.
  - Extremity is essentially useless.
- Higher levels of SMC are awarded for loss of use of more than one extremity.

Loss of Senses

- SMC loss of use is also available for loss of senses:
  - Sight, hearing, and speech.

- Look for Veterans who have profound hearing loss or visual impairment:
  - Generally worse than the maximum schedular rating.
  - For example, vision is limited to light perception only.

Housebound

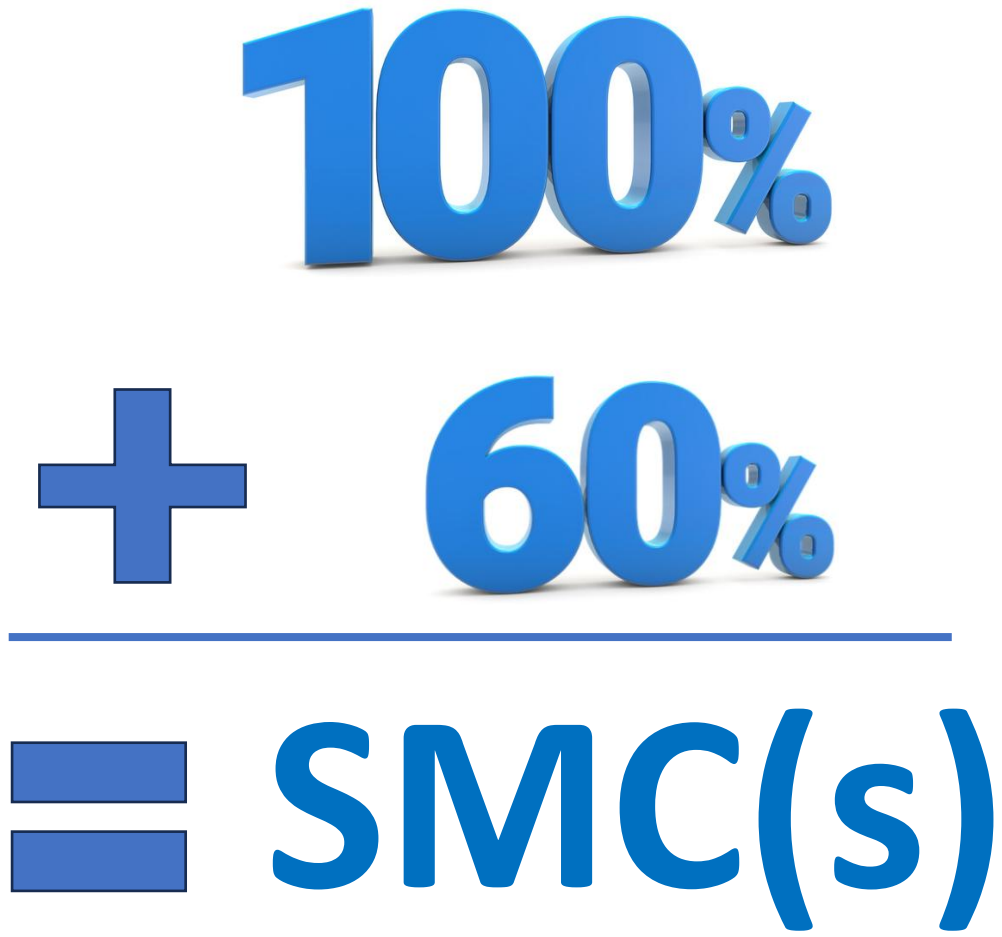
- Two ways to establish:
  - Statutory Housebound
    - Specific schedular ratings are required to be eligible.
  - Housebound in Fact
    - No threshold schedular rating required; raised by the facts.

Statutory Housebound

- A Veteran is eligible for SMC(s) based on service-connected ratings if:
  - A **single** service-connected disability is rated as **total, either 100 percent or TDIU**

  AND

  - Other **separate** service-connected disabilities are rated at a **combined 60 percent or higher.**



Housebound in Fact

- A Veteran is eligible for SMC(s) is warranted when a Veteran has:
  - Has a **single** service-connected disability rated as **total** (100 percent or TDIU)

  AND

  - Is **permanently housebound –** substantially confined to house (ward or clinical areas, if institutionalized) or immediate premises due to service-connected disability or disabilities and it is reasonably certain to remain throughout the Veteran's life.

Quiz

Click the **Quiz** button to edit this object

Veteran Deborah is rated 70 percent for her service-connected PTSD, and she has additional service-connected orthopedic disabilities which combine to 60 percent. She has also been awarded TDIU.

Is Deborah eligible for the statutory housebound (requiring a single service-connected disability rated at 100 percent plus additional separate disabilities combined to 60 percent or greater)?

- ○ Yes
- ○ Additional information is needed
- ○ No

Answer to Quiz 1

Additional information is needed

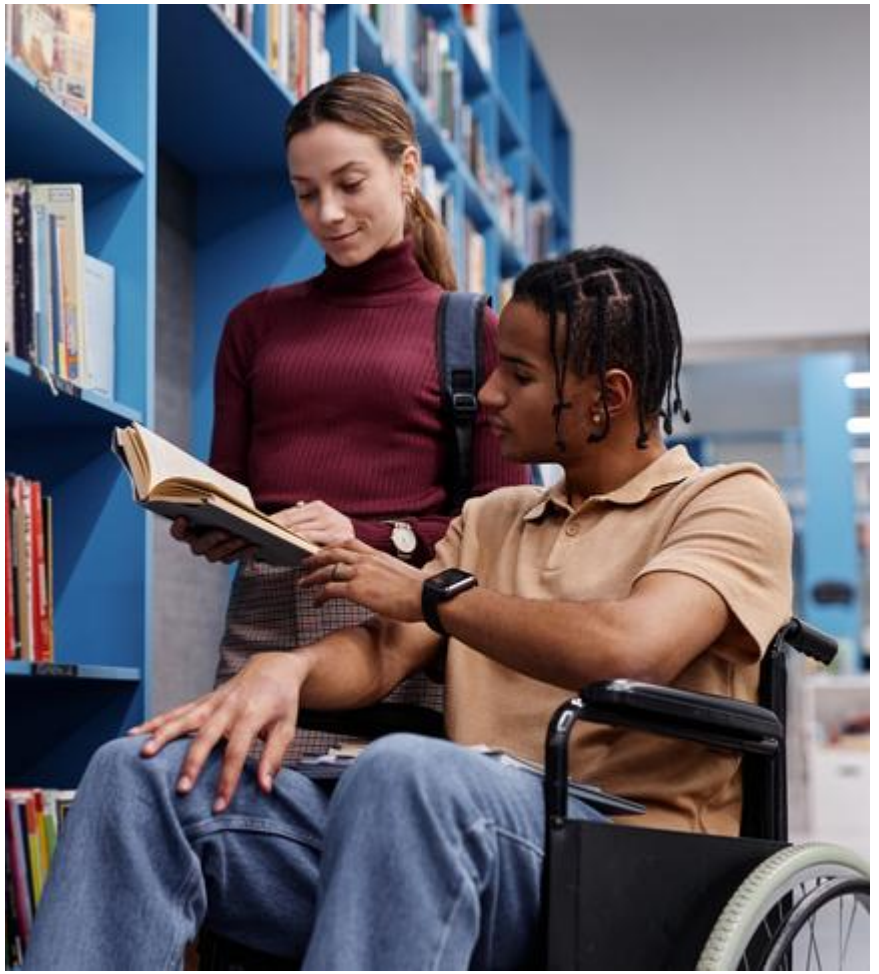
Deborah ***could be eligible*** for SMC(s) **if** her TDIU is based on her PTSD alone. These facts are similar to those in *Bradley v. Peake*, 22 Vet. App. 280 (2008). The Court held that TDIU can meet the "total" rating requirement for SMC(s) if awarded based on a ***single*** disability.

Note: Disabilities that can be combined under 38 C.F.R. § 4.16(b) for purposes of TDIU eligibility ***cannot*** be combined for SMC(s) eligibility!*

**Youngblood v. Wilkie*, 31 Vet.App. 412 (2019).

Aid & Attendance: SMC (l)

- SMC(l) is for Veterans who need regular aid and attendance.
- The need only has to be regular, not constant.
- The need must be caused solely by service-connected disabilities.
- Schedular Eligibility Requirement: ***None***



Eligibility for Aid & Attendance

Factors in determining eligibility for A&A[1]:

- An inability to dress or undress oneself.
- An inability to keep oneself ordinarily clean and presentable.
- A need to frequently adjust prosthetics or appliances which cannot be accomplished without aid. This does not include things you would not have been able to do alone, such as laces in back.
- An inability to feed oneself due to a loss of coordination or extreme weakness.
- An inability to "attend to the wants of nature." This includes urination or defecation and cleanup.
- **An inability to protect oneself from the hazards and dangers of daily life and environment. The inability can be physical or mental.**

[1]38 C.F.R. § 3.352(a)

Activities of Daily Living

When seeking Special Monthly Compensation due to the need for regular aid and attendance, consider whether the Veteran is entitled to the Program of Comprehensive Assistance for Family Caregivers. We will address this in depth in Lesson 19.

Permanently Bedridden: SMC (l)

- SMC (l) is also assigned for being permanently bedridden.
- SMC(l) is reduced to SMC(s) when a Veteran is hospitalized.[1]

Photo : DoD

[1]38 C.F.R. § 3.350(b)(4)

Special Aid & Attendance: SMC(r)

- SMC(r)(1) is for Veterans with a combination of severe disabilities.
- Must require **daily** help.
- Two types of SMR(r):
  - r1 – Special A&A
    - Help can come from family or friend.
  - r2 – Higher Level of A&A
    - Help must come from licensed medical professional.
    - Professional care must be needed to avoid hospitalization or institutionalization.

Quiz

Click the **Quiz** button to edit this object

Veteran Roger files a claim for increased ratings for his service-connected disabilities. He does not, however, submit any of VA's forms to request any type of SMC or to explicitly demonstrate his eligibility.

Does VA have to address his entitlement to SMC if the record supports such an award?

- ○ No
- ○ Yes

Answer to Quiz 2

Goal: Maximum VA benefit for Veteran

Yes!

The CAVC has held that VA's regulation that requires standard forms to be used does not require claimants to file a formal claim for entitlement to ancillary benefits such as SMC. That means no specific form is required **because the Veteran is presumed to be seeking the maximum VA disability benefit**.

Payne v. Wilkie, 31 Vet. App. 373 (2019).

Permanent and Total

What is P&T

- VA will find that there is **permanent and total** (P&T) disability when "such impairment is reasonably certain to continue throughout the life of the disabled person." 38 C.F.R. § 3.340(b).

What are the Benefits of P&T

- When VA finds a Veteran P&T disabled, then VA will **no longer schedule** the Veteran for periodic VA C&P reexaminations.
- If the Veteran is ***not*** P&T, then they ***may*** be called in for regular VA C&P reexaminations to determine if their service-connected disabilities have improved.

What are the Benefits of P&T - 2

- More importantly, P&T status opens the doors to other VA and state benefits:
  - Dependents' Educational Assistance (DEA Chapter 35 benefits).
  - Higher priority group for VHA healthcare.
  - CHAMPVA family health benefits.
  - Real estate tax exemptions.
  - Discounts for hunting/fishing licenses.

Survivors' and Dependents' Educational Assistance

If you're the child or spouse of a Veteran or service member who has died, is captured or missing, or is permanently and totally disabled due to a service-connected disability, you may be eligible for the Survivors' and Dependents' Educational Assistance (DEA) program. Keep reading to find out if the DEA program, also called Chapter 35, may be able to help you pay for school or cover expenses while you're training for a job.

Am I eligible for education benefits through the DEA program?

You may be eligible for these benefits if both you and the Veteran or service member meet certain eligibility requirements.

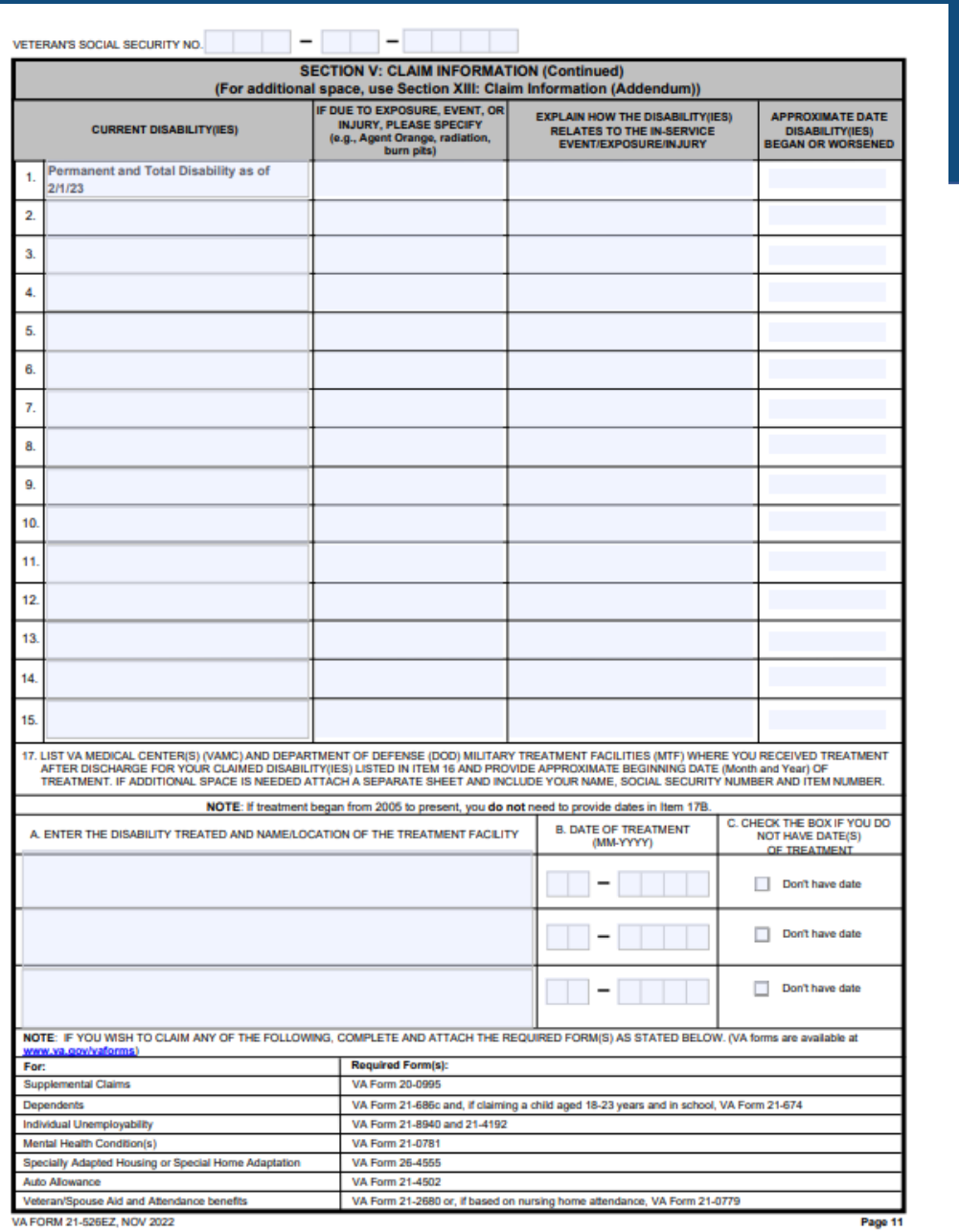
One of these descriptions must be true for the Veteran or service member:

- The Veteran is permanently and totally disabled due to a service-connected disability, **or**
- The Veteran died as a result of a service-connected disability, **or**
- The service member died in the line of duty, **or**
- The service member is missing in action or was captured in the line of duty by a hostile force for more than 90 days, **or**
- The service member was forcibly detained (held) or interned in the line of duty by a foreign entity for more than 90 days, **or**
- The service member is in the hospital or getting outpatient treatment for a service-connected permanent and total disability and is likely to be discharged for that disability

https://www.va.gov/family-and-caregiver-benefits/education-and-careers/dependents-education-assistance/

Claims for P&T

- Veterans can file a claim to be found P&T disabled.
  - VA does a fairly good job of automatically granting P&T status when warranted, but sometimes VA overlooks it.
  - A Veteran should file a claim to establish P&T status – **VA Form 21-526EZ**. On page 3 of the form specify "Permanent and Total Disability" and the effective date from which it should be granted.



VETERAN'S SOCIAL SECURITY NO. ___ – ___ – ____

SECTION V: CLAIM INFORMATION (Continued)
(For additional space, use Section XIII: Claim Information (Addendum))

	CURRENT DISABILITY(IES)	IF DUE TO EXPOSURE, EVENT, OR INJURY, PLEASE SPECIFY (e.g., Agent Orange, radiation, burn pits)	EXPLAIN HOW THE DISABILITY(IES) RELATES TO THE IN-SERVICE EVENT/EXPOSURE/INJURY	APPROXIMATE DATE DISABILITY(IES) BEGAN OR WORSENED
1.	Permanent and Total Disability as of 2/1/23			
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

17. LIST VA MEDICAL CENTER(S) (VAMC) AND DEPARTMENT OF DEFENSE (DOD) MILITARY TREATMENT FACILITIES (MTF) WHERE YOU RECEIVED TREATMENT AFTER DISCHARGE FOR YOUR CLAIMED DISABILITY(IES) LISTED IN ITEM 16 AND PROVIDE APPROXIMATE BEGINNING DATE (Month and Year) OF TREATMENT. IF ADDITIONAL SPACE IS NEEDED ATTACH A SEPARATE SHEET AND INCLUDE YOUR NAME, SOCIAL SECURITY NUMBER AND ITEM NUMBER.

NOTE: If treatment began from 2005 to present, you **do not** need to provide dates in Item 17B.

A. ENTER THE DISABILITY TREATED AND NAME/LOCATION OF THE TREATMENT FACILITY	B. DATE OF TREATMENT (MM-YYYY)	C. CHECK THE BOX IF YOU DO NOT HAVE DATE(S) OF TREATMENT
	__ – ____	☐ Don't have date
	__ – ____	☐ Don't have date
	__ – ____	☐ Don't have date

NOTE: IF YOU WISH TO CLAIM ANY OF THE FOLLOWING, COMPLETE AND ATTACH THE REQUIRED FORM(S) AS STATED BELOW. (VA forms are available at www.va.gov/vaforms)

For:	Required Form(s):
Supplemental Claims	VA Form 20-0995
Dependents	VA Form 21-686c and, if claiming a child aged 18-23 years and in school, VA Form 21-674
Individual Unemployability	VA Form 21-8940 and 21-4192
Mental Health Condition(s)	VA Form 21-0781
Specially Adapted Housing or Special Home Adaptation	VA Form 26-4555
Auto Allowance	VA Form 21-4502
Veteran/Spouse Aid and Attendance benefits	VA Form 21-2680 or, if based on nursing home attendance, VA Form 21-0779

VA FORM 21-526EZ, NOV 2022 **Page 11**

Automobile Allowances & Adaptive Equipment

Automobile Allowances

If a Veteran has one or more ***specific*** service-connected condition, then the Veteran may be eligible for:

- VA automobile allowance, ***or***
- VA adaptive-equipment benefits.

*38 C.F.R. § 3.808.

Automobile Allowances

At least one of these must be true:

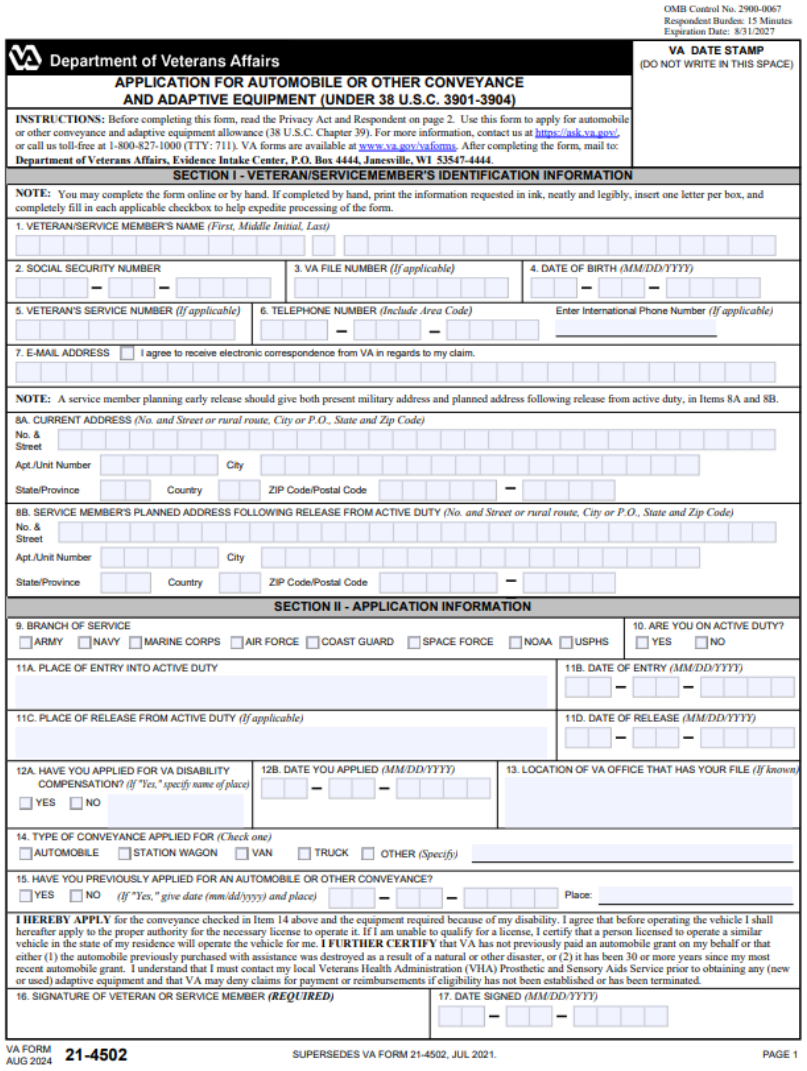
- Loss or permanent loss of use of one or both feet;
- Loss or permanent loss of use of one or both hands;
- Permanent impairment of vision in both eyes: 20/200 vision or less in better eye with glasses, or greater than 20/200 vision but with a visual field defect that has reduced peripheral vision to 20 degrees or less in better eye;
- Severe burn injury;
- Amyotrophic lateral sclerosis (ALS);
- Ankylosis in one or both knees or hips (this is for adaptive-equipment only).

Adaptive Equipment

The term "adaptive equipment" refers to equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant and to assist him or her in meeting the applicable standards of licensure of the proper licensing authority. It includes (but is not limited to) the following:

- Basic automatic transmission (loss or loss of use of limb);
- Power steering, power brakes, power window lifts, and power seats;
- Air-conditioning equipment when such equipment is necessary to the health and safety of the veteran;
- Necessary equipment to assist the veteran in and out of the conveyance.

Applying for Automobile Allowance



OMB Control No. 2900-0067
Respondent Burden: 15 Minutes
Expiration Date: 8/31/2027

Department of Veterans Affairs

VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

APPLICATION FOR AUTOMOBILE OR OTHER CONVEYANCE AND ADAPTIVE EQUIPMENT (UNDER 38 U.S.C. 3901-3904)

INSTRUCTIONS: Before completing this form, read the Privacy Act and Respondent on page 2. Use this form to apply for automobile or other conveyance and adaptive equipment allowance (38 U.S.C. Chapter 39). For more information, contact us at https://ask.va.gov/, or call us toll-free at 1-800-827-1000 (TTY: 711). VA forms are available at www.va.gov/vaforms. After completing the form, mail to: **Department of Veterans Affairs, Evidence Intake Center, P.O. Box 4444, Janesville, WI 53547-4444.**

SECTION I - VETERAN/SERVICEMEMBER'S IDENTIFICATION INFORMATION

NOTE: You may complete the form online or by hand. If completed by hand, print the information requested in ink, neatly and legibly, insert one letter per box, and completely fill in each applicable checkbox to help expedite processing of the form.

1. VETERAN/SERVICE MEMBER'S NAME *(First, Middle Initial, Last)*

2. SOCIAL SECURITY NUMBER | 3. VA FILE NUMBER *(If applicable)* | 4. DATE OF BIRTH *(MM/DD/YYYY)*

5. VETERAN'S SERVICE NUMBER *(If applicable)* | 6. TELEPHONE NUMBER *(Include Area Code)* | Enter International Phone Number *(If applicable)*

7. E-MAIL ADDRESS ☐ I agree to receive electronic correspondence from VA in regards to my claim.

NOTE: A service member planning early release should give both present military address and planned address following release from active duty, in Items 8A and 8B.

8A. CURRENT ADDRESS *(No. and Street or rural route, City or P.O., State and Zip Code)*
No. & Street
Apt./Unit Number | City
State/Province | Country | ZIP Code/Postal Code

8B. SERVICE MEMBER'S PLANNED ADDRESS FOLLOWING RELEASE FROM ACTIVE DUTY *(No. and Street or rural route, City or P.O., State and Zip Code)*
No. & Street
Apt./Unit Number | City
State/Province | Country | ZIP Code/Postal Code

SECTION II - APPLICATION INFORMATION

9. BRANCH OF SERVICE
☐ ARMY ☐ NAVY ☐ MARINE CORPS ☐ AIR FORCE ☐ COAST GUARD ☐ SPACE FORCE ☐ NOAA ☐ USPHS

10. ARE YOU ON ACTIVE DUTY?
☐ YES ☐ NO

11A. PLACE OF ENTRY INTO ACTIVE DUTY | 11B. DATE OF ENTRY *(MM/DD/YYYY)*

11C. PLACE OF RELEASE FROM ACTIVE DUTY *(If applicable)* | 11D. DATE OF RELEASE *(MM/DD/YYYY)*

12A. HAVE YOU APPLIED FOR VA DISABILITY COMPENSATION? *(If "Yes," specify name of place)*
☐ YES ☐ NO

12B. DATE YOU APPLIED *(MM/DD/YYYY)*

13. LOCATION OF VA OFFICE THAT HAS YOUR FILE *(If known)*

14. TYPE OF CONVEYANCE APPLIED FOR *(Check one)*
☐ AUTOMOBILE ☐ STATION WAGON ☐ VAN ☐ TRUCK ☐ OTHER *(Specify)*

15. HAVE YOU PREVIOUSLY APPLIED FOR AN AUTOMOBILE OR OTHER CONVEYANCE?
☐ YES ☐ NO *(If "Yes," give date (mm/dd/yyyy) and place)* Place:

I HEREBY APPLY for the conveyance checked in Item 14 above and the equipment required because of my disability. I agree that before operating the vehicle I shall hereafter apply to the proper authority for the necessary license to operate it. If I am unable to qualify for a license, I certify that a person licensed to operate a similar vehicle in the state of my residence will operate the vehicle for me. **I FURTHER CERTIFY** that VA has not previously paid an automobile grant on my behalf or that either (1) the automobile previously purchased with assistance was destroyed as a result of a natural or other disaster, or (2) it has been 30 or more years since my most recent automobile grant. I understand that I must contact my local Veterans Health Administration (VHA) Prosthetic and Sensory Aids Service prior to obtaining any (new or used) adaptive equipment and that VA may deny claims for payment or reimbursements if eligibility has not been established or has been terminated.

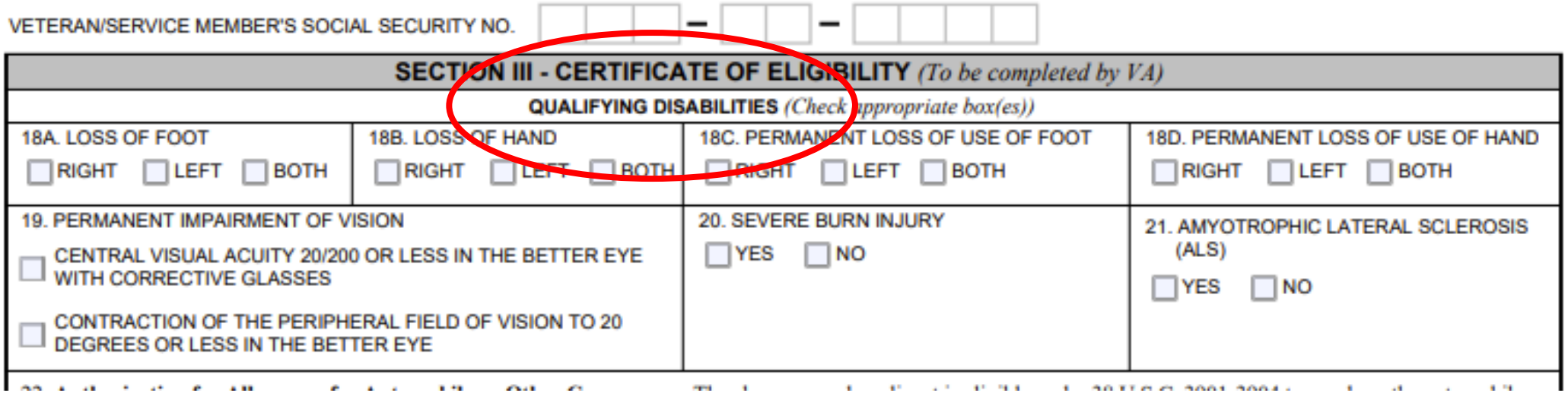
16. SIGNATURE OF VETERAN OR SERVICE MEMBER ***(REQUIRED)*** | 17. DATE SIGNED *(MM/DD/YYYY)*

VA FORM AUG 2024 **21-4502** SUPERSEDES VA FORM 21-4502, JUL 2021. PAGE 1

- To apply for an automobile allowance, or adaptive equipment, simply complete and submit VA Form 21-4502.

Applying for Automobile Allowance - 2

Important Note: VA will complete the top of page 2 which identifies the service-connected "qualifying disabilities" necessary for the need for the automobile allowance.



VETERAN/SERVICE MEMBER'S SOCIAL SECURITY NO. ___ – ___ – ____

SECTION III - CERTIFICATE OF ELIGIBILITY *(To be completed by VA)*

QUALIFYING DISABILITIES *(Check appropriate box(es))*

18A. LOSS OF FOOT	18B. LOSS OF HAND	18C. PERMANENT LOSS OF USE OF FOOT	18D. PERMANENT LOSS OF USE OF HAND
☐ RIGHT ☐ LEFT ☐ BOTH	☐ RIGHT ☐ LEFT ☐ BOTH	☐ RIGHT ☐ LEFT ☐ BOTH	☐ RIGHT ☐ LEFT ☐ BOTH

19. PERMANENT IMPAIRMENT OF VISION	20. SEVERE BURN INJURY	21. AMYOTROPHIC LATERAL SCLEROSIS (ALS)
☐ CENTRAL VISUAL ACUITY 20/200 OR LESS IN THE BETTER EYE WITH CORRECTIVE GLASSES ☐ CONTRACTION OF THE PERIPHERAL FIELD OF VISION TO 20 DEGREES OR LESS IN THE BETTER EYE	☐ YES ☐ NO	☐ YES ☐ NO

Exercise

A Veteran, David Wise, comes into your office with his spouse and she explains that he just received a VA rating decision that granted TDIU based solely on his service-connected PTSD that was effective from the date of his claim on January 8, 2015.

She explains that she wants to make sure that he is receiving everything he's entitled to receive. You notice that she does all the talking.

Quiz

Click the **Quiz** button to edit this object

Which of the following might you ask first?

- Which state do you live in?
- What is the Veteran's in-service stressor?
- What years did the Veteran serve on active duty?
- Are you (the wife) listed as a dependent on the award?

Exercise

Is the spouse listed as a dependent on the award?

- The other questions (although potential ice-breakers for your conversation) are not pertinent to whether additional benefits are available.
- The spouse isn’t sure, so you look at the notification letter and see that he is being paid for one dependent (spouse).
- You confirm that the rate of pay for a total rating with one dependent is correct.
- You start to become a little concerned because Mr. Wise hasn’t spoken at all yet.

Quiz

Click the **Quiz** button to edit this object

Due to your concern what might you ask next?

- Would you like to know about educational benefits?
- Does Mr. Wise have any cognitive issues?
- Are there any other issues you think should be service connected?

Exercise

Does Mr. Wise have any cognitive issues?

- Cognitive issues are not uncommon with severe mental health conditions. Ms. Wise explains that he's had cognitive issues that started before he filed his claim. His VA psychiatrist has attributed the cognitive issues to his PTSD.

- Mr. Wise still has not spoken.

Quiz

Click the **Quiz** button to edit this object

You've reviewed the psychiatric records and confirmed that VA attributes his cognitive decline to his service-connected PTSD. What benefit are you thinking you might want to pursue?

- ○ Service connection for hearing loss.
- ○ Special Monthly Compensation benefits based on the need for aid and attendance.
- ○ Automobile allowance.
- ○ Education benefits for Ms. Wise.

Exercise

Special Monthly Compensation (SMC) based on the need for regular aid and attendance of another person.

- This appears as if Mr. Wise might be entitled to SMC at the “L” rate based on his need for aid and attendance.

Quiz

Click the **Quiz** button to edit this object

Now that you think Mr. Wise might be entitled to Special Monthly Compensation based on the need for aid and attendance, which of the following questions would help in your assessment?

- Do you have to help Mr. Wise with meals (do you prepare his meals, help feed him)?
- All of these.
- Do you have to assist Mr. Wise with his hygiene (bathing, dressing, grooming)?
- Do you have to remind Mr. Wise to take his medications?

Exercise

All of these.

- Ms. Wise confirms that she must assist Mr. Wise with all of these activities.
- You're convinced that Mr. Wise requires the aid and attendance of another person – in this case, Ms. Wise. You explain that you will assist them by filing a claim for Special Monthly Compensation. You also explain that you will be claiming SMC starting from January 8, 2015, because SMC is an ancillary benefit to his previous claim (38 C.F.R. § 3.155(d)(2)).

Exercise

- **Important note:** Mr. and Mrs. Wise may be entitled to VHA benefits under the Program of Comprehensive Assistance for Family Caregivers.

Last Slide

- This presentation is complete.
- A PDF version of these slides will be provided to you at the conclusion of the course for future reference.