VA Special Monthly Compensation for Veterans with Traumatic Brain Injury (Proposed Rule)

Provides additional monetary benefits to veterans with traumatic brain injury who require high levels of disability care.

Updated last March 16, 2017 for the 12/21/2016 Proposed Rule.

WHAT IT DOES

The Department of Veterans Affairs (VA) has proposed a rule (noticed via 81 FR 93649) that concerns financial compensation for veterans with a traumatic brain injury (TBI). Veterans are normally paid varying monthly amounts based on the severity of their service-related disability (38 U.S.C. 1110 et seq.). Some veterans with particularly severe disabilities are awarded a special monthly compensation (SMC) to pay for medical care (38 U.S.C. 1114(r)). The Veterans’ Benefits Act of 2010 (Public Law 111-275) allows for an additional SMC to be distributed specifically to veterans with disabilities due to TBI who (38 U.S.C. 1114(t)):

- Require “regular aid and attendance” and “higher level[s] of care”;
- In the absence of that aid and attendance, would require hospitalization, nursing home care, or other residential institutional care; and
- Are not otherwise eligible for the standard SMC defined at 38 U.S.C. 1114(r).

In the proposed rule, the VA clarifies the amount of compensation provided to veterans with TBI who meet the above requirements, given ambiguity in the statutory language. The VA notes that two readings of 38 U.S.C. 1114(t) are feasible but that Congress likely intended veterans with TBI to receive a greater monetary benefit than those without. Consequently, the VA proposes that veterans with TBI would receive the maximum standard compensation for any service-related disability ($4,667 / month), and additionally the standard SMC paid to veterans who require a “higher level of care” ($2,983 / month) during periods when the veteran is not hospitalized at the government’s expense. In sum, veterans with TBI-related disabilities who meet the above requirements would receive $7,650 per month.

RELEVANT SCIENCE

TBI is a disruption of brain function caused by an external force. Common causes include transportation accidents, falls, and injuries due to violence, firearms, and sports. There are many different forms of TBI, and the effects vary widely in type, severity, and longevity. According to the Brain Injury Association of America, TBIs include concussions, contusions, and penetrations of the skull, among other conditions. While some forms of TBI are mild (e.g., a loss of consciousness shorter than 30 minutes), severe cases can result in serious complications including bruising, bleeding, torn tissues, long-term loss of consciousness, or long-term damage to brain structure and function. Long-term or permanent complications of TBI may take the form of comas, vegetative states, paralysis, seizures, infections, and damage to the circulatory or nervous system.

The effects of TBI are not always purely physical. There are a variety of ways in which TBI can affect cognitive processes as well. Patients with TBI may experience problems in the following areas, according to the Center for Disease Control:

- Sensory processing;
- Memory impairment;
- Difficulty with logical reasoning;
- Difficulty communicating and understanding others;
- Depression;
- Anxiety;
• Changes in personality;
• Aggression/acting out; and
• Social inappropriateness.

MayoClinic expands this list further to include impaired decision-making ability, lack of empathy, insomnia, changes in self-esteem, mood swings, and lack of self-awareness, to name a few. Research has also shown that victims of TBI are at greater risk for Alzheimer’s disease, Parkinson’s disease, and dementia.

BACKGROUND

Definitions

Whether a veteran requires “regular aid and attendance” is defined in 38 CFR 3.352. This rule requires that the veteran’s disability places them in a state that is either permanently bedridden or that hinders the veteran’s ability to dress and undress, to keep clean and presentable, or to feed themselves, among others. Not all of the criteria must be met to establish eligibility; decisions are made on a case-by-case basis and ultimately depend on the individual condition.

Similarly, 38 CFR 3.352 defines “higher level of care” to mean a veteran receiving daily, at home health services from health care providers. Services that such a veteran might receive include, among others, physical therapy, injections, changing sterile dressings, or placing catheters.

TBI in the Military

According to a CDC report on TBI, more than 235,000 military service members were diagnosed with a TBI between 2000 and 2011. Approximately 75% of all TBIs are characterized as concussions; however, military personnel are more likely than civilians to suffer from severe forms, especially those serving in areas of conflict.

Although a large majority of TBI cases occur in non-deployed settings, incidence rates of TBI have been increasing since the early 2000s in both deployed and non-deployed settings. The Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury estimated that as many as 360,000 veterans of Iraq and Afghanistan conflicts had suffered from a TBI, with as many as 90,000 showing long-term complications.

ENDORSEMENTS & OPPOSITION

At present, there have not been any publicly reported endorsements or opposition to this proposed rule. However, there has been some criticism from veterans’ advocacy groups about the validity of tools and criteria used to diagnose TBI, which would be used to determine eligibility for the proposed financial benefits. Criticisms grew significantly among the veteran community when, in June 2016, a VA press release admitted to the misdiagnosis of more than 24,000 veterans with TBI between 2007 and 2015, due in part to the use of underqualified medical professionals.

STATUS

This proposed rule was issued on December 21, 2016, and is open for public comment until February 21, 2017.

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