DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

[redacted]

VA File Number
[redacted]

Represented By:
AGENT OR PVT ATTY-EXCLUSIVE CONTACT NOT REQUESTED
Rating Decision
11/02/2017

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era. You served in the Air Force from [redacted] We received a Notice of Disagreement from you on August 8, 2014 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. The decision to not separately evaluate service connection for loss of use of both lower extremities, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 100 percent effective March 23, 2016.

2. As the previous decision was clearly and unmistakably erroneous, service connection is established for urinary incontinence, residuals of Parkinson's disease with an evaluation of 20 percent effective November 7, 2016. An evaluation of 40 percent is assigned effective August 4, 2017.

3. The decision to not separately evaluate service connection for bowel impairment, residuals of

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Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 30 percent effective March 23, 2016.

4. The decision to not separately evaluate service connection for aparaxia, right upper extremity, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 20 percent effective March 23, 2016.

5. The decision to deny service connection for aparaxia, left upper extremity, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 20 percent effective March 23, 2016.

6. The decision to fail to separately evaluate service connection for swallowing impairment, difficulty chewing, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 10 percent effective March 23, 2016.

7. The decision to not separately evaluate service connection for hypophonia, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 10 percent effective March 23, 2016.

8. The decision to not separately evaluate service connection for facial impairment right side, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 0 percent effective March 23, 2016.

9. The decision to not separately evaluate service connection for facial impairment, left side, residuals of Parkinson's disease was clearly and unmistakably erroneous; therefore, service connection is established with an evaluation of 0 percent effective March 23, 2016.

10. Entitlement to special monthly compensation (SMC) based on loss of use of both lower extremities is granted from March 23, 2016. Entitled to additional aid and attendance allowance under 38 U.S.C. 1114, subsection (r)(1) and 38 CFR 3.350(h) subject to the provisions of 38 CFR 3.552(b)(2) on account of entitlement under subsection (o), and in need of regular aid and attendance and being in need of regular aid and attendance from March 23, 2016. THIS IS A FULL GRANT OF YOUR APPEAL FOR ENTITLEMENT TO SMC. (claimed as SMC-T).

11. Entitlement to specially adapted housing is established.

12. Entitlement to automobile or other conveyance and adaptive equipment is established.

EVIDENCE

[redacted]

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- VA Medical Opinion, VAMC Phoenix dated, October 26, 2017

REASONS FOR DECISION

1. Whether the decision to not separately evaluate service connection for loss of use of both lower extremities, residuals of Parkinson's disease was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for loss of use of both lower extremities, residuals of Parkinson's disease with an

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evaluation of 100 percent effective March 23, 2016.

The recent VA exam opinion addendum states that is more likely than not that you have either Parkinson's Disease or Parkinsonism, as a result of the event causing anoxic encephalopathy. All doubt has been resolved in favor your claim.

An evaluation of 100 percent is assigned from March 23, 2016, the date VA received your claim.

We have assigned a 100 percent evaluation for your loss of use of both lower extremities, residuals of Parkinson's disease based on:
• Loss of use of both feet

As the previous decision dated May 17, 2016, was clearly and unmistakably erroneous, service connection is established for gait impairment, right and left lower extremity residuals of Parkinson's disease with an evaluation 100 percent effective March 23, 2016. Prior VA rating dated May 17, 2016, did not consider the medical evidence noted in your VA file and private medical evidence showing you have loss of use of both lower extremities as noted by your private physician in 2012. All evidence herein was of record at the time of the original decision. You are wheelchair bound, and are required adult day care and have minimal stimulation of both lower extremities. Your antalgic gait and short shuffling steps, in conjunction with your private medical evidence showing loss of use of your lower extremities, entitles you to 100 percent evaluation for both lower extremities. Evidence received shows you suffered a heart attack in August 2011, with concurrent development of Parkinson's disease as the same time as per your private physician Dr. Flitman. Evidence also shows in July 2012, you had severe lower extremity impairment noted on the VA Form 21-2680, Examination for the need for aid and attendance received July 22, 2013, or within one year from the date of the examination. In applying the rule of reasonable doubt, the evidence clearly shows you had Parkinson's symptoms as early as 2011. Entitlement to service connection is granted effective the date of receipt of your claim or March 23, 2016. All ascertainable residuals are now assigned March 23, 2016, based on medical evidence of record at the time of the original VA rating decision.

We have previously assigned a 30 percent evaluation for your Parkinson's disease based on:
• Minimum evaluation of 30 percent is assigned for ascertainable residuals. However, since the original grant of service connection was in error, we have now assigned an evaluation for all residuals as it is a greater benefit in this case.

This is the highest schedular evaluation allowed under the law for loss of use of both feet.

2. .Whether the decision to not separately evaluate service connection for urinary impairment and incontinence, residuals of Parkinson's disease was clearly and unmistakably erroneous

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the

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record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for urinary incontinence, residuals of Parkinson's disease with an evaluation of 20 percent effective November 7, 2016, date of the private Disability Benefits Questionnaire as it was received within one year of the report.

An evaluation of 40 percent is assigned from August 4, 2017, the date of the VA exam based on facts found.

We have assigned a 20 percent evaluation for your urinary incontinence, residuals of Parkinson's disease based on:
• Requiring the wearing of absorbent materials which must be changed less than two times per day

A higher evaluation of 30 percent is not warranted for neurogenic bladder unless the evidence shows:
• Obstructed voiding symptoms including:
;Urinary retention requiring intermittent or continuous catheterization.

Additionally, a higher evaluation of 40 percent is not warranted for neurogenic bladder unless the evidence shows:
• Urinary frequency symptoms including:
;Awakening to void five or more times per night; or,
Daytime voiding interval less than one hour; or,
• Voiding dysfunction symptoms including:
&;The wearing of absorbent materials which must be changed two to four times per day is required.

An evaluation of 40 percent is granted for the required wearing of absorbent materials which must be changed two to four times per day. A 40 percent evaluation is also assigned whenever there is a daytime voiding interval of less than one hour, or awakening to void five or more times per night. A higher evaluation of 60 percent is not warranted unless evidence demonstrates use of an appliance or the wearing of absorbent materials which must be changed more than four times per day.

3. Whether the decision to not separately evaluate service connection for bowel impairment, residuals of Parkinson's disease was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the

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record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for bowel impairment, residuals of Parkinson's disease with an evaluation of 30 percent effective March 23, 2016.

An evaluation of 30 percent is assigned from March 23, 2016.

We have assigned a 30 percent evaluation for your bowel impairment, residuals of Parkinson's disease based on:
- Occasional involuntary bowel movements
- Wearing of pad

A higher evaluation of 60 percent is not warranted for impairment of sphincter control unless the evidence shows extensive leakage and fairly frequent involuntary bowel movements.

4. Whether the decision to not separately evaluate service connection for aparaxia, right upper extremity, residuals of Parkinson's disease was clearly and unmistakably erroneous

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for aparaxia, impairment right upper extremity residuals of Parkinson's disease with an evaluation of 20 percent effective March 23, 2016.

An evaluation of 20 percent is assigned from March 23, 2016, date of claim.

We have assigned a 20 percent evaluation for your aparaxia, impairment right upper extremity residuals of Parkinson's disease based on:
- Mild incomplete paralysis of the major extremity

A higher evaluation of 40 percent is not warranted for paralysis of the lower radicular nerve group unless the evidence shows nerve damage is moderate.

5. Whether the decision to deny service connection for aparaxia, left upper extremity, residuals of Parkinson's disease was clearly and unmistakably erroneous.

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Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for aparaxia, left upper extremity, residuals of Parkinson's disease with an evaluation of 20 percent effective March 23, 2016, the date of your claim.

An evaluation of 20 percent is assigned from March 23, 2016.

We have assigned a 20 percent evaluation for your aparaxia, left upper extremity, residuals of Parkinson's disease based on:
• Mild incomplete paralysis of the minor extremity

A higher evaluation of 40 percent is not warranted for paralysis of the radial nerve unless the evidence shows nerve damage is severe.

6. Whether the decision to not separately evaluate service connection for swallowing impairment, difficulty chewing, residuals of Parkinson's disease was clearly and unmistakably erroneous

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for swallowing impairment, difficulty chewing, residuals of Parkinson's disease with an evaluation of 10 percent effective March 23, 2016.

An evaluation of 10 percent is assigned from March 23, 2016, the date of your claim.

We have assigned a 10 percent evaluation for your swallowing impairment, difficulty chewing, residuals of Parkinson's disease based on:
• Moderate incomplete paralysis

A higher evaluation of 30 percent is not warranted for paralysis of the 10th cranial nerve unless the evidence shows nerve damage is severe.

7. Whether the decision to not separately evaluate service connection for hypophonia,

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residuals of Parkinson's disease was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for hypophonia, residuals of Parkinson's disease with an evaluation of 10 percent effective March 23, 2016.

An evaluation of 10 percent is assigned from March 23, 2016.

We have assigned a 10 percent evaluation for your hypophonia, residuals of Parkinson's disease based on:
- Moderate incomplete paralysis

A higher evaluation of 20 percent is not warranted for paralysis of the 9th cranial nerve unless the evidence shows nerve damage is severe.

8. Whether the decision to not separately evaluate service connection for facial impairment right side, residuals of Parkinson's disease was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for facial impairment right side, residuals of Parkinson's disease with an evaluation of 0 percent effective March 23, 2016.

A noncompensable evaluation is assigned from March 23, 2016.

We have assigned a noncompensable evaluation for your facial impairment right side, residuals of Parkinson"s disease based on:
- Mild incomplete paralysis

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

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A higher evaluation of 10 percent is not warranted for paralysis of the 7th cranial nerve unless the evidence shows nerve damage is moderate.

A noncompensable evaluation is assigned unless there are ascertainable residuals.

9. Whether the decision to not separately evaluate service connection for facial impairment, left side, residuals of Parkinson's disease was clearly and unmistakably erroneous.

Clear and unmistakable errors are errors that are undebatable, so that it can be said that reasonable minds could only conclude that the previous decision was fatally flawed at the time it was made. A determination that there was clear and unmistakable error must be based on the record and the law that existed at the time of the prior decision. Once a determination is made that there was a clear and unmistakable error in a prior decision that would change the outcome, then that decision must be revised to conform to what the decision should have been.

As the previous decision was clearly and unmistakably erroneous, service connection is established for facial impairment, left side, residuals of Parkinson's disease with an evaluation of 0 percent effective March 23, 2016.

A noncompensable evaluation is assigned from March 23, 2016.

We have assigned a noncompensable evaluation for your facial impairment, left side, residuals of Parkinson's disease based on:
• Mild incomplete paralysis

Note: In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met. {38 CFR §4.31}

A higher evaluation of 10 percent is not warranted for paralysis of the 7th cranial nerve unless the evidence shows nerve damage is moderate.

A noncompensable evaluation is assigned unless there are ascertainable residuals.

10. Entitlement to special monthly compensation based on loss of use. Entitlement to special monthly compensation based on the need of a higher level of care and in being in need of the regular aid and attendance of another person (claimed as SMC-T/R1).

Entitlement to special monthly compensation is warranted in this case because criteria regarding loss of use of both lower extremities were met from March 23, 2016. Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (l) and 38 CFR 3.350(b) on account of loss of use of both feet from March 23, 2016. This is a full grant of appeal, and is now closed.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (k) and 38 CFR

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3.350(a) on account of anatomical loss of a creative organ from September 12, 2011.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (l) and 38 CFR 3.350(b) on account of being so helpless as to be in need of regular aid and attendance while not hospitalized at U.S. government expense from September 12, 2011.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (p) and 38 CFR 3.350(f)(4) at the rate equal to subsection (m) on account of entitlement to the rate equal to subsection (l) with additional disability, dementia independently ratable at 100 percent from September 12, 2011, to March 22, 2016.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (p) and 38 CFR 3.350(f)(4) at the rate equal to subsection (o) on account of entitlement to the rate equal to subsection (o) with additional disability, coronary artery disease independently ratable at 100 percent from March 23, 2016.

Entitled to special monthly compensation under 38 U.S.C. 1114, subsection (o) and 38 CFR 3.350(e) on account of loss of use of both feet and being so helpless as to be in need of regular aid and attendance from March 23, 2016.

Entitled to additional aid and attendance allowance under 38 U.S.C. 1114, subsection (r)(1) and 38 CFR 3.350(h) subject to the provisions of 38 CFR 3.552(b)(2) on account of entitlement under subsection (o), and in need of regular aid and attendance and being in need of regular aid and attendance from March 23, 2016.

VAMC treatment, and private medical evidence show you have severe Parkinson's disease residuals with minimal speech, inability to ambulate and require the constant aid and attendance of another person and continuous adult day care at the VA Medical Center. June 2017, treatment report shows you inappropriate behavior has increased and you have very sporadic movement of activities of daily living. VAMC treatment also shows you are in need of higher level of care as your symptoms deem of can no longer attend Adult Daycare in May 2017. Your private physician notes you would be institutionalized if it was not for your spouse. Your physician also notes your condition is progressive and incurable and will continue to worsen.

Recent VA examination shows you cannot independently shower, clean yourself, or dress. You can feed yourself only when your food is cut. Your caregiver gives you showers and the VA examiner notes you cannot do any household chores. You can only walk with short festinating steps and tend to fall on occasion. You were taken to the ER for choking due to your inability to swallow. Your recent cognitive assessments shows you have severe dementia with severe impairment.

Given the totality of the evidence as noted by your treating physician, and current VA inpatient treatment and adult daycare reports, entitlement to special monthly compensation due to R-1 is as noted above is granted March 23, 2016, the date you became entitled under the law, and the date of receipt of your claim.

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11. Entitlement to specially adapted housing.

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) may be extended when the veteran is permanently disabled as the result of the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

Entitlement to special housing assistance is established based on this level of impairment which is caused by the service-connected condition of impairment of both lower extremities due to your Residuals of Parkinson's disease.

12. Entitlement to automobile or other conveyance and adaptive equipment or for adaptive equipment only.

A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance and of basic entitlement to necessary adaptive equipment will be made when the veteran is entitled to compensation under chapter 11 of title 38, United States Code and has loss or permanent loss of use of one or both feet which is the result of injury or disease incurred or aggravated during active military service. Entitlement to automobile and adaptive equipment is established based on this level of impairment.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.

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