

## MAXIMIZING VA BENEFITS FOR PROGRESSIVE NEUROLOGICAL DISORDERS

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## Alexis Ivory



- \* Senior Staff Attorney, NVLSP Training Dept. & Lawyers Serving Warriors
- \* Previously served as Counsel to BVA
- \* Helped develop NVLSP's VA Benefit Identifier App
- \* Veterans Benefits Manual author

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## AGENDA

- \* About the disabilities
- \* How to get service connection
- \* How to rate the disabilities
- \* Secondary Issues
- \* SMC
- \* Additional benefits
- \* Review



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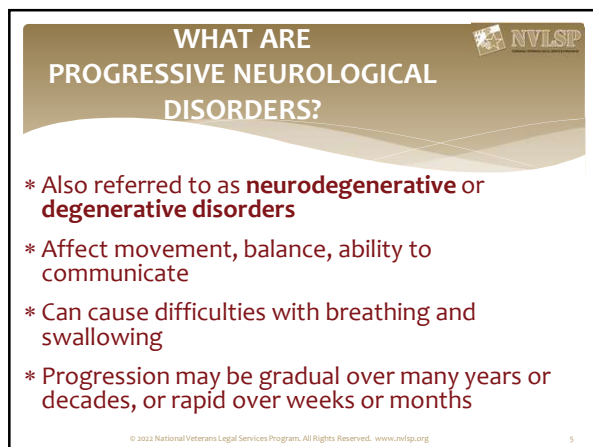
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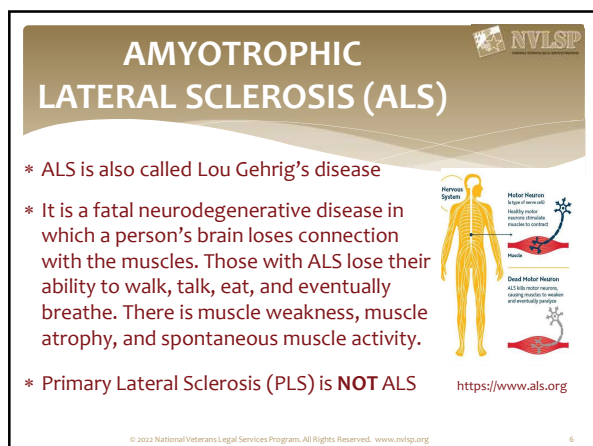
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**Facts About ALS**

- 5,000+ people are diagnosed per year
- 2-5 years is the average life expectancy
- 10 percent of cases are inherited through a mutated gene
- 90 percent of cases occur without family history
- \$2 billion is the estimated cost to develop a drug to slow or stop the progression of ALS
- \$250,000 is the estimated out-of-pocket cost for caring for a person with ALS
- Every 90 minutes someone is diagnosed and someone passes away from ALS

**There is NO CURE for ALS**

<https://www.als.org>

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**SYMPTOMS**  
Progressive loss of muscle control. ALS gradually prohibits the ability to:  
• Speak  
• Swallow  
• Walk  
• Grasp objects  
• Move  
• Breathe

**DIAGNOSIS**  
Difficult to diagnose. ALS is often diagnosed by ruling out other diseases, which may take months or years.

**MILITARY**  
Veterans are more likely to get ALS. ALS impacts veterans regardless of the branch of service served in and affects those who served in both peacetime and war.

**Amyotrophic Lateral Sclerosis (ALS) Symptoms**

- swallowing problems
- bladder/bowel issues
- paralysis
- muscle weakness
- trouble speaking
- breathing problems

<https://www.als.org> <https://www.verywellhealth.com/als-and-ms-symptoms-2440783>

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**ALS & THE VA**

- \* VA OIG released a report on VA's accuracy of SC claims involving ALS in 11/2018  
\* [www.va.gov/oig/pubs/VAOIG-18-00031-05.pdf](https://www.va.gov/oig/pubs/VAOIG-18-00031-05.pdf)
- \* Reviewed 100 ALS claims completed from 4/2017-9/2017
- \* Found 71 errors in 45 of the claims
- \* Estimated 430 of the 960 ALS claims decided during that period had errors (45%)

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## ALS & THE VA

**\* VA OIG found:**

- \* Of the 430 cases w/ errors, 230 Vets received improper payments:**
  - \* \$750,000 in underpayments**
  - \* \$649,000 in overpayments**
- \* Other errors had potential to affect Vet's benefits, such as failing to obtain sufficient medical evidence to decide the claim**

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## ALS & THE VA

**\* Errors found by VA OIG:**

- \* 32 errors – RO incorrectly processed SMC**
  - \* Missed or incorrectly denied; Granted or continued at wrong level; Granted prematurely w/out sufficient evidence**
- \* 21 errors – RO improperly evaluated complications of ALS**
  - \* Missed or incorrectly denied SC for complications; Granted SC or continued at wrong level; Evaluated prematurely w/out sufficient evidence**
- \* 9 errors – RO assigned incorrect effective dates**
  - \* For ALS, complications of ALS, and SMC**

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## ALS & THE VA

**\* Errors found by VA OIG:**

- \* 4 errors – RO failed to grant additional benefits related to adapted housing or automobiles, or included an incorrect determination of Vet's entitlement to a lower adapted housing benefit**
- \* 3 errors – RO included inaccurate or conflicting info in decision about the benefits awarded or effective dates**
- \* 1 case w/2 errors – RO proposed to stop SC for ALS due to a lack of qualifying service; but failed to keep claim for increase pending. After establishing qualifying service, RO failed to grant increased SMC for ALS**

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## MULTIPLE SCLEROSIS (MS)



- \* A disease of the central nervous system where the immune system attacks the protective myelin sheath that covers nerve fibers
- \* It interferes with the transmission of nerve signals between the brain, spinal cord, and rest of the body
- \* It is slowly progressive
- \* It causes multiple and varied neurologic symptoms and signs and the occurrence of remissions and exacerbations in the symptoms

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## MS SYMPTOMS



### Main symptoms of Multiple sclerosis

**Central:**

- Fatigue
- Cognitive impairment
- Depression
- Unstable mood

**Visual:**

- Nystagmus
- Optic neuritis
- Diplopia

**Speech:**

- Dysarthria

**Throat:**

- Dysphagia

**Musculoskeletal:**

- Weakness
- Spasms
- Ataxia

**Sensation:**

- Pain
- Hypoesthesias
- Paresthesias

**Bowel:**

- Incontinence
- Diarrhea or constipation

**Urinary:**

- Incontinence
- Frequency or retention

**Multiple Sclerosis (MS) Symptoms**

sensory issues

mood changes

cognitive issues

muscle weakness

vision changes

bladder/bowel issues

<https://www.news-medical.net/health/Multiple-Sclerosis-k28MS129.aspx>

<https://www.verywellhealth.com/als-and-ms-symptoms-2440783>

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## PARKINSON'S DISEASE



- \* Parkinson's disease is a progressive nervous system disorder that affects movement
- \* Symptoms start gradually, sometimes starting with a barely noticeable tremor in just one hand. Tremors are common, but the disorder also commonly causes stiffness or slowing of movement
- \* Symptoms often begin on one side of the body and usually remain worse on that side, even after symptoms begin to affect both sides

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## PARKINSON'S DISEASE



\* Parkinsonism is a disease process separate and distinct from Parkinson's disease

\* Also called *atypical Parkinson's disease* or *Parkinson's plus*, it is a general term that refers to a group of neurological disorders that cause movement problems similar to those seen in Parkinson's disease

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## Parkinson's Disease Symptoms



<https://peakptandwellness.com/>

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## HOW TO GET SERVICE CONNECTION

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## 5 THEORIES OF SERVICE CONNECTION



- \* Direct
- \* Aggravation
- \* Statutory Presumption
- \* Secondary
- \* Caused by VA Medical Treatment or Voc Rehab



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## DIRECT SERVICE CONNECTION



**\* 3 Elements of Direct SC:**

- 1) Existence of current disability
  - \* Diagnosis not required
- 2) In-service event, disease, or injury
- 3) Link between current disability and in-service event, disease, or injury
  - \* At least as likely as not (50% probability or more) related

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## DIRECT SERVICE CONNECTION



### Chronicity

- \* If chronic disease diagnosed in service, later manifestations of same disease at any later date SC, unless clearly attributable to intervening causes
- \* Only for chronic diseases listed in 38 C.F.R. § 3.309(a)
  - \* Includes ALS, MS, and PD
  - \* 38 C.F.R. § 3.303(b)

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## DIRECT SERVICE CONNECTION



**Continuity of Symptomatology**

- \* If symptoms of a chronic condition “noted” during service, but first diagnosed as chronic disease after service, SC warranted if continuity of symptoms from service to diagnosis
- \* If lay person is competent to observe condition, medical evidence “noting” condition not required
- \* Only for chronic diseases listed in 38 C.F.R. § 3.309(a)
- \* 38 C.F.R. § 3.303(b)

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## DIRECT SERVICE CONNECTION



**Delayed Direct Service Connection**

- \* SC established if event, injury, disease in service caused Vet to suffer disability/disease years later
- \* Usually requires medical opinion that current disability is at least as likely as not (50% chance) related to military service
- \* VA often required to obtain medical nexus opinion under its duty to assist the Vet

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## STATUTORY PRESUMPTION



- \* Congress has directed that certain conditions are to be presumed SC, unless affirmative evidence proves particular Vet's condition unrelated to service
- \* Permits VA to assume that disease was incurred in or due to service, even if no evidence directly links the condition to service
- \* Medical opinion linking current disability to Vet's service not needed
- \* Law presumes a medical linkage exists

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**SURVEY #1**



\* What is the easiest theory under which a Vet can be service connected for ALS?

- A. Direct SC
- B. Presumptive SC
- C. Secondary SC
- D. Aggravation



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**ALS  
PRESUMPTIVE SC**



**B**

\* VA presumes that ALS is connected to service if it manifest at **ANY TIME** after a Vet's discharge or release from active service (with a few exceptions)

\* 38 C.F.R. § 3.318(a)



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**ALS  
PRESUMPTIVE SC**



\* **Exceptions to the presumption of SC for ALS:**

1. There is affirmative evidence that ALS was not incurred during or aggravated by active service
2. There is affirmative evidence that ALS is due to Vet's own willful misconduct
3. Vet did not have active, continuous service of 90 days or more

\* 38 C.F.R. § 3.318(b)

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## ALS PRESUMPTIVE SC



- \* National Guard service generally does not meet the requirements of “active” military, naval, or air service for the presumption
- \* Active duty for training of 90 days does not qualify unless the individual was disabled (or died) as a result of a disease or an injury incurred or aggravated in the line of duty during that ADT
- \* *Bowers v. Shinseki*, 748 F.3d. 1351 (Fed. Cir. 2014)

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## SERVICE CONNECTION FOR MS



- \* **The 2 most common ways to establish SC for MS**
  - \* Presumptive SC as a chronic condition first manifesting w/in a post-service presumptive period
  - \* Direct SC
- \* **NOTE: MS is NOT a MUCMI presumed to be caused by Gulf War service**
  - \* Chronic multi-symptom illnesses of partially understood etiology and pathophysiology, such as . . . MS, will not be considered medically unexplained
  - \* 38 C.F.R. § 3.317(a)(2)(ii)

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## MS - PRESUMPTIVE SC



- \* MS is a chronic disease for which SC will be presumed if it first manifests following to a degree of at least 10% disabling within 7 years after separation from service
- \* **Diagnosis w/in time period not required**
  - \* 38 C.F.R. §§ 3.307(a)(3) and 3.309(a)

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## MS - DIRECT SC



### \* Direct SC

#### \* As a chronic disease, SC is warranted on a direct basis if:

- \* MS is first diagnosed in service
- \* MS not diagnosed in service, but symptoms are noted in service, continue following service, and are eventually diagnosed as MS

\* 38 C.F.R. § 3.303(b) and § 3.309(a)

#### \* SC can also be based on a medical opinion linking MS to an event, disease, or injury in service (delayed direct SC)

- \* Advocates should get a supportive medical opinion is almost all claims based on the theory of direct SC

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## SURVEY #2



### \* How can Parkinson's Disease be service connected?

- A. Direct SC
- B. Presumptive SC
- C. Secondary SC
- D. All of the above



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## SC FOR PARKINSON'S DISEASE



### \* Parkinson's disease can be granted SC under multiple theories:

#### \* Direct SC

- \* As a chronic condition
- \* At least likely as not due to in-service injury, event, or disease

#### \* Presumptive SC

- \* Due to AO exposure
- \* Due to Camp Lejeune contaminated water
- \* As a chronic condition manifesting after separation

#### \* Secondary SC

- \* Secondary to moderate to severe TBI

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## PARKINSON'S DISEASE DIRECT SC



### \* Direct SC

- \* Parkinson's disease is a chronic condition under 38 C.F.R. § 3.309(a) (listed as "paralysis agitans"—another term for PD), subject to SC on a direct basis if
  - \* First diagnosed in service
  - \* Not diagnosed in service, but symptoms are noted in service, continue following service, and are eventually diagnosed as PD
  - \* 38 C.F.R. § 3.303(b) and § 3.309(a)

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## PARKINSON'S DISEASE DIRECT SC



- \* SC can also be based on a medical opinion linking PD to an event, disease, or injury in service (delayed direct SC)
- \* BVA has granted SC for PD on direct basis as due to burn pit exposure based on a private medical nexus opinion:
  - \* No. 16-54 083 (Jan. 1, 2020)
  - \* No. 190723-15821 (May 6, 2020)
  - \* No. 191127-46173 (July 13, 2020)
  - \* Not precedential
- \* Advocates should try to get a supportive private medical opinion in all burn pit cases

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## PARKINSON'S DISEASE PRESUMPTIVE SC – AGENT ORANGE



- \* SC for Parkinson's disease can be granted on a presumptive basis as due to Agent Orange exposure
  - \* Must manifest to a disabling degree of at least 10% anytime after service
    - \* 38 C.F.R. §§ 3.307(a)(6) and § 3.309(e)
  - \* "Parkinsonism" also presumed related to Agent Orange exposure as of Jan. 1, 2021
    - \* Any condition that causes a combination of abnormal movements, such as tremors, slow movement, impaired speech, and muscle stiffness

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## PARKINSON'S DISEASE PRESUMPTIVE SC – AGENT ORANGE



### \* VA will presume AO exposure for Vets who:

- \* Served on the land, inland waterways, or territorial waters of Rep. of Vietnam any time from 1/9/1962 through 5/7/1975
- \* Served along the Korean DMZ in a specified unit any time from 9/1/1967 through 8/31/71
- \* Regularly and repeatedly operated, maintained, or served on C-123 aircraft that, during the Vietnam war, sprayed AO

### \* VA also “concedes” herbicide exposure for certain Vets who served in Thailand during the Vietnam war

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## PARKINSON'S DISEASE PRESUMPTIVE SC – CAMP LEJEUNE



### \* SC for Parkinson's disease can be granted on a presumptive basis as due to contaminated water at Camp Lejeune

- \* 38 C.F.R. §§ 3.307(a)(7) and 3.309(f)

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## PARKINSON'S DISEASE PRESUMPTIVE SC – CAMP LEJEUNE



### \* Requirements for presumptive SC for PD:

- \* Active duty, active duty for training, or inactive duty for training for no less than 30 days (consecutive or non-consecutive) at Camp Lejeune during the period 8/1/1953 – 12/31/1987
- \* Have diagnosis of Parkinson's disease
- \* Parkinson's disease must manifest to a disabling degree of at least 10% any time after service

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# PARKINSON'S DISEASE PRESUMPTIVE SC – CHRONIC CONDITION



- \* Parkinson's disease (paralysis agitans) is a chronic disease for which SC will be presumed if it first manifests following service
- \* It must manifest to a degree of at least 10% disabling within 1 year after separation from service
- \* Diagnosis w/in time period not required
- \* 38 C.F.R. §§ 3.307(a)(3) and 3.309(a)

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# PARKINSON'S DISEASE SECONDARY SC



- \* **Secondary SC:**
  - \* If a Vet has a service-connected TBI, and the TBI was moderate or severe (at the time of the injury), VA presumes Parkinsonism, including Parkinson's disease, is secondary to TBI, as long as there is no clear evidence to the contrary
  - \* This is a presumption, so no medical nexus evidence needed
  - \* 38 C.F.R. § 3.310(d)(1)(i)

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# HOW ARE THESE DISEASES RATED?

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## RATING ALS



- \* ALS is rated under 38 C.F.R. § 4.124a, DC 8017 – Amyotrophic Lateral Sclerosis
- \* The ONLY rating under DC 8017 is 100%
- \* NOTE: Consider the need for SMC



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## RATING ALS



- \* **Manual M21-1, V.iii.12.C.2.d provides instructions for VA adjudicators:**
- \* If there is NO COMPLICATION warranting a single 100% evaluation, then assign a 100% rating under DC 8017 and include all compensable complications in the description of the diagnosis
- \* Ex: ALS with loss of use of the left foot and partial ninth cranial nerve paralysis

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## RATING ALS



- \* **Manual M21-1, V.iii.12.C.2.d (cont.):**
- \* If a single 100% evaluation is warranted for a COMPLICATION of ALS then assign a 100% rating for that condition with a hyphenated DC. Do NOT assign a separate evaluation under DC 8017 alone – that would be pyramiding
- \* EX: DC 8017-5110 loss of use of both feet
- \* A 100% evaluation for a complication of ALS satisfies the policy that all ALS awards will be assigned at least a 100% evaluation

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## RATING MS



- \* MS is rated under 38 C.F.R. § 4.124a, DC 8018– Multiple sclerosis
- \* The ONLY rating under DC 8018 is **Minimum** Rating of 30%



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## RATING MS



- \* **Manual M21-1 directs VA adjudicators to:**
  - \* Evaluate each affected system or body part separately
  - \* List the DC for MS only once by listing it with the most severely affected function
  - \* Code involvement of other manifestations under the DC assignable for the condition on which the evaluation is based
  - \* Show the remaining conditions as secondary to MS
- \* Manual M21-1, V.iii.12.C.1.b (change date Apr. 16, 2020)

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## RATING MS



- \* This is a change from VA's previous requirement to evaluate MS as a single disability when the combined degree was less than 100%
- \* If the combined evaluation for all disabilities due to MS is 20% or less, assign a 30% evaluation under DC 8018
- \* Manual M21-1, V.iii.12.C.1.b (change date Apr. 16, 2020)

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## RATING MS



\* Example of MS rating decision code sheet:

8018-7542 40% from 12-10-19	Multiple sclerosis with bladder dysfunction
8520 10% from 12-10-19	Weakness of right lower extremity secondary to multiple sclerosis
8520 10% from 12-10-19	Weakness of left lower extremity secondary to multiple sclerosis
7599-7522 0% from 12-10-19	Impotency without penile deformity, secondary to multiple sclerosis

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## RATING PARKINSON'S DISEASE



\* Parkinson's disease is rated under 38 C.F.R. § 4.124a, DC 8004 – Paralysis Agitans

\* The ONLY rating under DC 8004 is **Minimum** rating of 30%



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## RATING PARKINSON'S DISEASE



\* **Manual M21-1 directs VA adjudicators to:**

- \* Evaluate each affected system or body part separately
- \* List the DC for Parkinson's disease only once by listing it with the most severely affected function
- \* Code involvement of other manifestations under the DC assignable for the condition on which the evaluation is based
- \* Show the remaining conditions as secondary to PD

\* Manual M21-1, V.iii.12.C.3.d (change date June 21, 2021) (referencing Manual M21-1, V.iii.12.C.1.b)

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## TDIU



- \* **Vets with SC MS or Parkinson's disease often qualify for TDIU**
- \* **If Vet with SC MS or PD is not rated 100%, but SC disabilities prevent Vet from obtaining or maintaining a substantially gainful occupation, ensure VA awards TDIU**
- \* **38 C.F.R. § 4.16**

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## SECONDARY SC

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## SECONDARY SC



- \* **If SC condition CAUSES or AGGRAVATES a non-service-connected condition, the non-service-connected condition may be service connected**
- \* **38 C.F.R. § 3.310(a)**
- \* **Not relevant how long after service secondary disorder manifested**
- \* **Includes mental conditions caused by physical conditions and vice versa**

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**38 C.F.R. § 4.124a**  
**NEUROLOGICAL CONDITIONS AND  
 CONVULSIVE DISORDERS**

- \* Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, etc., referring to the appropriate bodily system of the schedule.
- \* With partial loss of use of one or more extremities from neurological lesions, rate by comparison with the mild, moderate, severe, or complete paralysis of peripheral nerves

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**DISABILITIES POTENTIALY  
 SECONDARY TO ALS, MS, & PD**

- \* **SPEECH DIFFICULTIES, INCLUDING HOARSENESS**
  - \* DC 6516 – Chronic Laryngitis
  - \* DC 6519 – Complete Organic Aphonia
  - \* DC 8210 – Paralysis of the tenth (pneumogastric, vagus) cranial nerve (severity dependent upon extent of sensory and motor loss to organs of voice, respiration, pharynx, stomach and heart)
    - \* Whichever DC results in the highest rating should be assigned
    - \* Cranial nerves (DC 8210) are rated bilaterally

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**DISABILITIES POTENTIALY  
 SECONDARY TO ALS, MS, & PD**

- \* **SWALLOWING DIFFICULTIES**
  - \* DC 7203 – Stricture of Esophagus
- \* **SLEEP APNEA OR SLEEP APNEA-LIKE CONDITION**
  - \* DC 6847 – Sleep Apnea Syndrome (Obstructive, Central, Mixed)
    - \* MS and PD also could cause a sleep disturbance warranting a rating under DC 9410 – Insomnia

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## DISABILITIES POTENTIALY SECONDARY TO ALS, MS, & PD



### \* CHRONIC CONSTIPATION

- \* DC 7319 – Irritable Colon Syndrome

### \* ERECTILE DYSFUNCTION

- \* DC 7522 –Erectile dysfunction, with or without penile deformity
- \* Also warrants award of SMC(k) for Loss of Use of a Creative Organ

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## DISABILITIES POTENTIALY SECONDARY TO ALS, MS, & PD



### \* VOIDING DYSFUNCTION

- \* DC 7542 – Neurogenic Bladder

- \* Rate as leakage, frequency, or obstructed voiding; or urinary tract infection, whichever is predominant
- \* Only a single evaluation is warranted, even if more than one dysfunction / symptom type is present
- \* May be presented as symptoms only, versus an official diagnosis

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## DISABILITIES POTENTIALY SECONDARY TO ALS, MS, & PD



### \* UPPER EXTREMITIES

- \* DC 8514 for impairment without loss of use (LOU)
  - \* separate evaluations for bilateral involvement
- \* DC 5125 for LOU of one hand
- \* DC 5109 for LOU of both hands
  - \* Look at neurologic exam (gait strength, deep tendon reflexes, sensation, muscle atrophy / weakness) and remaining effective function to assess level of impairment for the upper extremity, to include whether loss of use is present

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## DISABILITIES POTENTIALY SECONDARY TO ALS, MS, & PD



### \* LOWER EXTREMITIES

- \* DC 8520 for impairment without LOU
  - \* separate evaluations for bilateral involvement
- \* DC 5167 for LOU of one foot
- \* DC 5110 for LOU of both feet
  - \* Look at neurologic exam (gait, strength, deep tendon reflexes, sensation, muscle atrophy / weakness) and remaining effective function to assess level of impairment for the lower extremity, to include whether loss of use is present

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## DISABILITIES POTENTIALY SECONDARY TO ALS, MS, & PD



### \* DEPRESSION

- \* DC 9434 –Major Depressive Disorder
  - \* While depression is usually the main mental disorder, Vets can be SC for any mental disorder secondary to ALS, MS, & PD

### \* COGNITIVE IMPAIRMENT OR DEMENTIA

- \* DC 9326 – Major or mild neurocognitive disorder due to another medical condition or substance/ medication-induced major or mild neurocognitive disorder
  - \* Under the Schedule of Ratings – Mental Disorders

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## DISABILITIES POTENTIALY SECONDARY TO ALS & MS



### \* PARALYSIS OF SOFT PALLET WITH SWALLOWING DIFFICULTY AND SPEECH IMPAIRMENT

- \* DC 6521 – Injuries to the Pharynx

### \* LOSS OF SPHINCTER CONTROL WITH OR WITHOUT LEAKAGE

- \* DC 7332 - Impairment of Sphincter Control of Rectum & Anus

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DISABILITIES POTENTIALY  
SECONDARY TO ALS & MS

**\* RECURRENT URINARY TRACT INFECTIONS**

\* DC 7527 – Prostate Gland Injuries, Infections, Hypertrophy, Postoperative Residuals

\* Rate as voiding function or UTI, whichever is predominant

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DISABILITIES POTENTIALY  
SECONDARY TO ALS

**\* RESPIRATORY CONDITIONS – including requirement for tracheostomy**

\* DC 6520 – Stenosis of Larynx – including residuals of laryngeal trauma



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DISABILITIES POTENTIALY  
SECONDARY TO MS

**\* RESPIRATORY CONDITIONS**

\* Any respiratory DCs under 38 CFR § 4.97 – whichever gives the highest rating

**\* VISUAL DISTURBANCES**

\* DC 6090 – Diplopia or internuclear ophthalmoplegia

\* DC 6066 – Decreased visual acuity or blurring of vision

\* DC 6081 – Visual Scotoma

\* DC 6016 – Nystagmus

\* DC 6026 – Optic neuropathy

\* For visual impairment, a single evaluation is warranted either under the general rating formula, OR based on visual impairment criteria (consisting of visual acuity, visual field, and impairment of muscle function)

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## DISABILITIES POTENTIALY SECONDARY TO PD



### \* **STOOPED POSTURE**

#### \* **DC 8211**

- \* Separate evaluations warranted for left side and right side involvement
- \* Bilateral factor does not apply



### \* **BALANCE IMPAIRMENT**

#### \* **DC 6204**

- \* For use when balance impairment is present without lower extremity impairment
- \* Otherwise, consider balance impairment as part of extremity evaluation

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## DISABILITIES POTENTIALY SECONDARY TO PD



### \* **BRADYKINESIA OR SLOWED MOTION**

- \* Consider as part of extremity evaluations

### \* **LOSS OF AUTOMATIC MOVEMENTS – face masking, drooling, etc.**

#### \* **DC 8207**

- \* Separate evaluations warranted for left side and right side involvement
- \* Bilateral factor does not apply

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## DISABILITIES POTENTIALY SECONDARY TO PD



### \* **LOSS OF SENSE OF SMELL**

- \* DC6275 – Complete Loss of Sense of Smell

### \* **CARDIAC CONDITIONS**

- \* DC 7005- Arteriosclerotic Heart Disease

### \* **OSTEOPOROSIS**

- \* DC 5013 – Osteoporosis with Joint Manifestations

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## DISABILITIES POTENTIALLY SECONDARY TO PD



\* **VA's website has helpful Parkinson's Disease Guides:**

\* **Motor Symptoms**

[www.parkinsons.va.gov/Consortium/PtEduBrochures/2020\\_PtEdBrochure\\_Motor\\_WestLA.pdf](http://www.parkinsons.va.gov/Consortium/PtEduBrochures/2020_PtEdBrochure_Motor_WestLA.pdf)

\* **Non-Motor Symptoms**

[www.parkinsons.va.gov/Consortium/PtEduBrochures/2020\\_PtEdBrochure\\_NonMotorSymptoms\\_SF.pdf](http://www.parkinsons.va.gov/Consortium/PtEduBrochures/2020_PtEdBrochure_NonMotorSymptoms_SF.pdf)

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## ADVOCACY ADVICE



\* **DBQs for ALS, MS, and PD elicit information about the varied conditions and symptoms often associated with these diseases**

\* **This info is helpful in determining if Vet is properly rated**

\* **ALS**

\* [www.benefits.va.gov/compensation/docs/ALS\\_Lou\\_Gehrigs\\_Disease.pdf](http://www.benefits.va.gov/compensation/docs/ALS_Lou_Gehrigs_Disease.pdf)

\* **MS**

\* [www.benefits.va.gov/compensation/docs/Multiple\\_Sclerosis.pdf](http://www.benefits.va.gov/compensation/docs/Multiple_Sclerosis.pdf)

\* **Parkinson's Disease**

\* [www.benefits.va.gov/compensation/docs/Parkinsons\\_Disease.pdf](http://www.benefits.va.gov/compensation/docs/Parkinsons_Disease.pdf)

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## SPECIAL MONTHLY COMPENSATION

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## SPECIAL MONTHLY COMPENSATION



### \* SMC is paid if, due to SC disabilities, Vet:

- \* Is housebound
- \* Needs aid & attendance of another
- \* Has loss or loss of use of extremities or parts of extremities
- \* Is blind
- \* Has various combinations of other disabilities

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## SMC RATES EFFECTIVE 12/1/2021 NO DEPENDENTS



- \* 100% (no SMC): \$3,332.06
- \* SMC(K): \$118.33 (each loss/LOU)
- \* SMC(S): \$3,729.64
- \* SMC(L): \$4,146.13
- \* SMC(L ½): \$4,360.47
- \* SMC(M): \$4,575.68
- \* SMC(M ½): \$4,890.07
- \* SMC(N): \$5,205.17
- \* SMC(N ½): \$5,511.35
- \* SMC(O): \$5,818.09
- \* SMC(R-1): \$8,313.61
- \* SMC(R-2): \$9,535.91
- \* SMC(T): \$9,535.91

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## SMC(K) – LOSS OR LOSS OF USE



- \* Vets can receive up to 3 awards of SMC(k)
- \* 2 categories of SMC(k) are relevant to ALS, MS, and PD:
  - \* Anatomical loss or loss of use of:
    - \* One hand
    - \* One foot
    - \* Both buttocks
    - \* One or more creative organs used for reproduction
    - \* One eye
  - \* Complete organic aphonia (constant loss of voice due to disease)

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## 38 C.F.R. § 4.63

### LOSS OF USE OF HAND OR FOOT



- \* Loss of use of a hand or 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
- \* **Determination based on the actual remaining function of the hand or foot, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance and propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis**

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## 38 C.F.R. § 4.64

### LOSS OF USE OF BOTH BUTTOCKS



- \* Loss of use of both buttocks shall be deemed to exist when there is **severe damage to muscle Group XVII**, bilateral (DC 5317) and additional disability rendering 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 rendered by the person's own hands or arms, and, in the matter of postural stability, by a special appliance

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## SMC(s) – HOUSEBOUND



- \* **Vet's with ALS, MS, or PD are often entitled to SMC(s)**
- \* **Vet entitled to SMC(s), if either**
  1. Housebound due to SC disabilities, or
  2. Has the following combination of SC disabilities:
    - \* **One SC disability rated 100% or that alone supports TDIU; and**
    - \* **Additional SC disabilities that combine to at least 60% rating**

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**SURVEY # 3**

**\* Can a Vet receive BOTH SMC(k) and SMC(s)?**

A. Yes  
B. No  
C. Not Sure

**QUIZ TIME!**

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**ANSWER**

**A**

**\* Yes - Vet can receive both SMC(k) and SMC(s)**

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**SMC(L) – AID & ATTENDANCE**

**\* Vet qualifies for regular A&A based on any of the following circumstances:**

- \* The need for regular help to perform everyday living activities
- \* Physical or mental incapacity which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment

**\* Vet can also qualify for SMC(L) with**

- \* Loss or loss of use of both feet
- \* Loss or loss of use of one hand and one foot
- \* Blindness in both eyes with visual acuity of 5/200 or less

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## HIGHER LEVELS OF SMC



\* Awards of SMC(L1/2)-(P) are generally based on combinations of loss or loss of use of different extremities at different levels (or vision loss):

- \* hand, above elbow, near shoulder
- \* below knee, above knee, near hip

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## SMC(r-1) ELIGIBILITY



\* To receive SMC(r-1), Vet must be receiving the maximum SMC(o) benefits (equal to 2 **SMC(L) awards**) and **require:**

- \* Aid and attendance, or
- \* Aid and attendance of another person without which Vet would require hospitalization, nursing home care, or other residential type care

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## SMC(r -2) ELIGIBILITY



\* **SMC(r-2): Special Aid and Attendance Benefits – Higher Level of Care**

- \* Vet receiving the max rate or a rate equal to the max rate of SMC authorized;
- \* Vet meets the requirements for entitlement to the basic or regular A&A; and
- \* Vet needs a higher level of care (a licensed health care professional or someone under the supervision of a professional)

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## SMC FOR ALS

- \* **Manual M21-1 directs VA adjudicators to consider eligibility for SMC in all ALS cases, in particular:**
  - \* **SMC(k) – Loss of Use (extremities, creative organ, etc.)**
    - \* Combinations of loss of use may qualify for higher-levels of SMC
  - \* **SMC(s) – Statutory Housebound**
    - \* Manual M21-1, V.iii.12.C.2.e (change date May 15, 2019)
  - \* **A&A may also be warranted (SMC (L), (r-1), (r-2))**

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## SMC FOR MS

- \* **Vets with MS often qualify for:**
  - \* **SMC (k) – Loss of Use**
    - \* Loss of use of a creative organ
    - \* Loss of use of extremities
    - \* Loss of use of both buttocks
  - \* **May also qualify for SMC(s) or Aid & Attendance in severe cases**

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## SMC FOR PARKINSON'S DISEASE

- \* **Manual M21-1 directs VA adjudicators to consider eligibility for SMC in all PD cases, in particular:**
  - \* **SMC(k) - Loss of use**
    - \* Loss of use of a creative organ
    - \* Loss of use of extremities
    - \* Loss of use of both buttocks
  - \* **Aid & Attendance**
    - \* Regular A&A – SMC (I)
    - \* Special A&A – SMC (r-1)
    - \* Special A&A – Higher level of care SMC (r-2)



\* Manual M21-1, V.iii.12.C.3.e (change date June 21, 2021)  
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# ADDITIONAL BENEFITS

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# VA AUTOMOBILE ALLOWANCE & ADAPTIVE EQUIPMENT

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- \* **Vets with SC ALS are entitled to VA automobile allowance or automobile adaptive equipment!**
- \* **Auto allowance:** Payment of up to \$22,355.72 to help Vet buy a specially equipped new or used vehicle
- \* **Auto adaptive equipment:** Equipment part of or added to vehicle to make it safe for use by Vet, and enable Vet to meet the standards of licensure
- \* **Ex:** automatic transmission, power steering, power brakes, equipment to help Vet into and out of vehicle, etc.

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# VA AUTOMOBILE ALLOWANCE & ADAPTIVE EQUIPMENT

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- \* **Disabilities sometimes associated with SC MS or PD that will qualify Vet for auto allowance or adaptive equipment include:**
- \* **Permanent loss of use of one or both feet**
- \* **Permanent loss of use of one or both hands**
- \* **Permanent impairment of vision in both eyes**

**IMPORTANT!**

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## HOUSING GRANTS





- \* **Specially adapted housing (SAH) grant provides money to severely disabled Vets to assist them in purchasing a home which is specially adapted to their disability**
  - \* Up to \$101,754 for FY 2022
- \* **Special home adaptation (SHA) grant provides money to severely disabled Vets to assist them in adapting a home they already own**
  - \* Up to \$20,387 for FY 2022
- \* **Vets may also receive either of these benefits when they are temporarily residing in the home of a family member**
  - \* SAH up to \$40,983 for FY 2022
  - \* SHA up to \$7,318 for FY 2022

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## SPECIALLY ADAPTED HOUSING (SAH) GRANT



- \* **Vets with SC ALS are entitled to an SAH grant!**
- \* **Disabilities sometimes associated with SC MS or PD that will qualify Vet for an SAH grant:**
  - \* Loss of use of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair
  - \* Blindness in both eyes, having only light perception, plus loss of use of one lower extremity
  - \* Loss of use of one lower extremity together with either the residuals of organic disease or injury or the loss of use of one upper extremity, which so affects the function of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair
  - \* Loss of use of both upper extremities such as to preclude use of the arms at or above the elbows

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## SPECIAL HOME ADAPTATION (SHA) GRANT



- \* **Disabilities sometimes associated with SC ALS, MS, or PD that will qualify Vet for an SHA grant:**
  - \* A permanent and total disability that includes the loss of use of both hands
  - \* A disability due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens

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## HISA GRANT



- \* Vets with SC ALS, MS, or PD qualify for a home improvements and structural alterations (HISA) grant if they require structural alterations to their home to:
  - \* assure the continuation of home health treatment for their disability
  - \* provide them with access to their home or to essential lavatory and sanitary facilities
- \* Lifetime HISA benefit is \$6,800
- \* It can be paid in addition to SAH or SHA

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## HISA GRANT



- \* HISA grant can be used to make improvements and alterations including:
  - \* Lowering kitchen and bathroom sinks and counters
  - \* Improving entrance paths or driveways in immediate area of the home to facilitate access to the home through construction of permanent ramping
  - \* Improving plumbing or electrical systems made necessary due to installation of home medical equipment

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## CLOTHING ALLOWANCE



- \* Vets with SC ALS, MS, or PD may need to use prosthetic or orthopedic devices because of their SC condition
- \* An annual clothing allowance is payable to Vet if a prosthetic or orthopedic device used because of SC ALS, MS, or PD wears out or tears clothing
- \* The clothing allowance is paid either one time or yearly – \$891

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## VA CAREGIVER PROGRAM



- \* **Under the Program of Comprehensive Assistance for Family Caregivers, eligible family members of Vets with SC ALS, MS, or PD, may qualify for:**
  - \* A monthly stipend
  - \* Caregiver training
  - \* Counseling
  - \* Access to CHAMPVA
  - \* Travel benefits when traveling with Vet to appointment
  - \* At least 30 days of respite care

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## VA CAREGIVER PROGRAM



\* **Requirements include:**

- \* Vet has a serious illness or injury (a single or combined SC disability rated 70% or more) that was incurred or aggravated in active service:
  - \* On or after Sept. 11, 2001
  - \* On or before May 7, 1975, or
  - \* **Effective Oct. 1, 2022:** May 8, 1975-Sept. 10, 2001

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## VA CAREGIVER PROGRAM



\* **Requirements include (cont.):**

- \* Vet needs in-person personal care services for a minimum of 6 continuous months based on:
  - \* An inability to perform an activity of daily living; or
  - \* A need for supervision, protection, or instruction
- \* Vet receives care at home or will do so if VA designates a Family Caregiver

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## VA CAREGIVER PROGRAM

**\* Requirements include (cont.):**

- \* Personal care services that would be provided by the Family Caregiver will not be simultaneously and regularly provided by or through another individual or entity
- \* Vet receives ongoing care from a Primary Care Team or will do so if VA designates a Family Caregiver

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## VA CAREGIVER PROGRAM

**\* A Family Caregiver must:**

- 1) Be at least 18 years of age
- 2) Be either:
  - Vet's spouse, son, daughter, parent, stepfamily member, or extended family member; or
  - Someone who lives with the eligible Vet full-time or will do so if designated as a Family Caregiver
- 3) Be initially assessed by VA as being able to complete caregiver education and training
- 4) Complete caregiver training and demonstrate the ability to carry out the specific personal care services, core competencies, and additional care requirements

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## VA CAREGIVER PROGRAM HELPFUL WEBSITES

**\* [www.caregiver.va.gov/index.asp](http://www.caregiver.va.gov/index.asp)**

**\* [www.caregiver.va.gov/pdfs/FactSheets/ExpansionFactsheet\\_11-30-20.pdf#](http://www.caregiver.va.gov/pdfs/FactSheets/ExpansionFactsheet_11-30-20.pdf#)**

**\* [www.caregiver.va.gov/pdfs/FactSheets/CSP\\_Eligibility\\_Criteria\\_Factsheet\\_1-4-21.pdf#](http://www.caregiver.va.gov/pdfs/FactSheets/CSP_Eligibility_Criteria_Factsheet_1-4-21.pdf#)**

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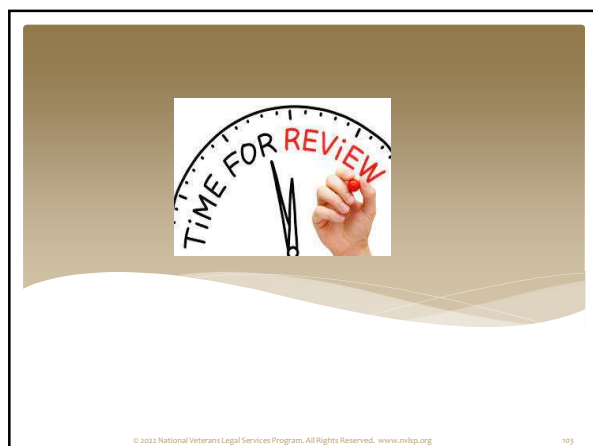
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SC REVIEW			
	ALS	MS	Parkinson's Disease
<b>Presumptive</b>	38 C.F.R. § 3.318 (90-days active service)	38 C.F.R. §§ 3.307(a)(3), 3.309(a) (chronic disease w/in 7 years of discharge)	38 C.F.R. §§ 3.307(a)(6), 3.309(e) (AO) 38 C.F.R. §§ 3.307(a)(7), 3.309(f) (CLCW) 38 C.F.R. §§ 3.307(a)(3), 3.309(a) (chronic disease w/in 1 year of discharge)
<b>Direct</b>		38 C.F.R. §§ 3.303(b), 3.309(a) (chronicity or continuity of symptomatology) 38 C.F.R. § 3.303(d) (delayed direct)	38 C.F.R. §§ 3.303(b), 3.309(a) (chronicity or continuity of symptomatology) 38 C.F.R. § 3.303(d) (delayed direct)
<b>Secondary</b>			38 C.F.R. § 3.310(d)(1)(i) (Presumed secondary to mod or severe TBI)

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RATINGS REVIEW			
	ALS	MS	Parkinson's Disease
<b>Minimum Rating</b>	100% under DC 8017 • If no complication at 100%, rate under DC 8017 • If complication at 100%, rate under DC for complication w/ hyphenated DC 8017	30% under DC 8018 • If secondary conditions support 30% or more, rate under DCs for secondary conditions	30% under DC 8004 • If secondary conditions support 30% or more, rate under DCs for secondary conditions
<b>Secondary Conditions</b>	Consider all secondary conditions, including loss of use of extremities, bladder/bowel symptoms, loss of speech, and difficulties eating. Also consider mental health conditions and cognitive impairment.		
<b>Consider TDIU</b>	Did neurological disability render Vet unable to maintain or obtain substantial gainful employment?		
<b>Consider SMC</b>	Has Vet lost use of a creative organ or use of extremities. Does Vet need aid and attendance?		
<b>Additional Benefits</b>	VA automobile allowance & adaptive equipment; clothing allowance; SHA and SHA; HISA grant; Caregiver benefits		

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## NVLSP VA BENEFIT IDENTIFIER APP




- \* Questionnaire/App: Helps Vets and VSOs figure out what VA service-connected disability benefits or non-service-connected pension benefits they might be entitled to
- \* 3 WAYS to Access:
 



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NVLSP Website

ANDROID APP ON  
 **Google play**

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## NVLSP TRAINING OPPORTUNITIES



- \* NVLSP offers private in-person and webinar training tailored to the needs of your organization
- \* If you are interested in finding out more information or receiving a quote, please contact Director of Training and Publications, Rick Spataro, at [richard@nvlsp.org](mailto:richard@nvlsp.org)

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