



MAXIMIZING VA BENEFITS FOR PROGRESSIVE NEUROLOGICAL DISORDERS

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

1



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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

2



AGENDA

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



© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

3

ABOUT THE DISABILITIES

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

4

WHAT ARE PROGRESSIVE NEUROLOGICAL DISORDERS?

* Also referred to as **neurodegenerative** or **degenerative disorders**

* Affect movement, balance, ability to communicate

* Can cause difficulties with breathing and swallowing

* Progression may be gradual over many years or decades, or rapid over weeks or months

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

5

AMYOTROPHIC LATERAL SCLEROSIS (ALS)

* ALS is also called Lou Gehrig's disease

* It is a fatal neurodegenerative disease in which a person's brain loses connection with the muscles. Those with ALS lose their ability to walk, talk, eat, and eventually breathe. There is muscle weakness, muscle atrophy, and spontaneous muscle activity.

* Primary Lateral Sclerosis (PLS) is **NOT** ALS

<https://www.als.org>

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

6

Facts About ALS

7

SYMBOLS
Progressive loss of muscle control
ALS gradually prohibits the ability to:
- Speak - Grasp objects
- Swallow - Move
- Walk - 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

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

8

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

* 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%)

9

ALS & THE VA

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

10

ALS & THE VA

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

11

ALS & THE VA

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

12

MULTIPLE SCLEROSIS (MS)

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:

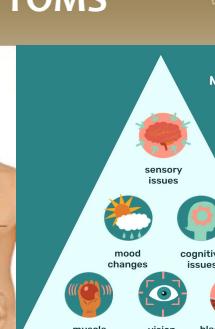
- Pain
- Hypoesthesia
- Paresthesia

Bowel:

- Incontinence
- Diarrhea or constipation

Urinary:

- Incontinence
- Frequency or retention



Multiple Sclerosis (MS) Symptoms

- sensory issues** (brain icon)
- mood changes** (sun icon)
- cognitive issues** (gear icon)
- muscle weakness** (hand icon)
- vision changes** (eye icon)
- bladder/bowel issues** (cup icon)

<https://www.news-medical.net/health/Multiple-Sclerosis-t28MS.aspx>

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

PARKINSON'S DISEASE



NVLSP

PARKINSON'S DISEASE

NVLSP

* 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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

16

Parkinson's Disease Symptoms

NVLSP

https://peakandwellness.com/

17

**HOW TO GET
SERVICE CONNECTION**

NVLSP

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

18

5 THEORIES OF SERVICE CONNECTION

NVLSP

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

5

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

19

DIRECT SERVICE CONNECTION

NVLSP

* **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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

20

DIRECT SERVICE CONNECTION

NVLSP

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)**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

21

DIRECT SERVICE CONNECTION

DIRECT SERVICE CONNECTION

STATUTORY PRESUMPTION

SURVEY #1

NVLSP

* 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



© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

25

**ALS
PRESUMPTIVE SC**

NVLSP

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)



© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

26

**ALS
PRESUMPTIVE SC**

NVLSP

* **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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

27

**ALS
PRESUMPTIVE SC**

NVLSP

- * 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)*

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

28

**SERVICE CONNECTION
FOR MS**

NVLSP

- * **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)*

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

29

MS - PRESUMPTIVE SC

NVLSP

- * 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)*

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

30

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

31

SURVEY #2

* How can Parkinson's Disease be service connected?

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



© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

32

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

33

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)

PARKINSON'S DISEASE DIRECT SC

PARKINSON'S DISEASE PRESUMPTIVE SC – AGENT ORANGE

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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

37

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)

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

38

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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

39

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)**

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

40

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)**

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

41

HOW ARE THESE DISEASES RATED?

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

42

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

100

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

43

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

44

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

45

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%**



© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

46

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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

47

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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

48

RATING MS

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org 49

RATING

PARKINSON'S DISEASE

NVLSP

* 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%

**MINIMUM
30**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org 50

RATING

PARKINSON'S DISEASE

NVLSP

* **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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org 51

TDIU

NVLSP

- * **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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

52

SECONDARY SC

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

53

SECONDARY SC

NVLSP

- * **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**

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

54

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

55

DISABILITIES POTENTIALLY SECONDARY TO ALS, MS, & PD

*** SPEECH DIFFICULTIES, INCLUDING HOARSENESS**

- * DC 6516 – Chronic Laryngitis
- * DC 6519 – Complete Organic Aphonias
- * 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

56

DISABILITIES POTENTIALLY 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

57

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

NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

58

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

NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

59

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

NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

60

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

NVLSP

*** 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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

61

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

NVLSP

*** 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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

62

**DISABILITIES POTENTIALLY
SECONDARY TO ALS & MS**

NVLSP

*** 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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

63

**DISABILITIES POTENTIALLY
SECONDARY TO ALS & MS**

NVLSP

*** RECURRENT URINARY TRACT INFECTIONS**

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

* Rate as voiding function or UTI, whichever is predominant

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

64

**DISABILITIES POTENTIALLY
SECONDARY TO ALS**

NVLSP

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

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



© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

65

**DISABILITIES POTENTIALLY
SECONDARY TO MS**

NVLSP

*** 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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

66

DISABILITIES POTENTIALLY SECONDARY TO PD

DISABILITIES POTENTIALLY SECONDARY TO PD

DISABILITIES POTENTIALLY SECONDARY TO PD

**DISABILITIES POTENTIALLY
SECONDARY TO PD**

 NVLSP

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

- * **Motor Symptoms**
www.parkinsons.va.gov/Consortium/PtEduBrochures/2020_PtEdBrochure_Motor_WestLA.pdf
- * **Non-Motor Symptoms**
www.parkinsons.va.gov/Consortium/PtEduBrochures/2020_PtEduBrochure_NonMotorSymptoms_SF.pdf

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

70

ADVOCACY ADVICE

 NVLSP

* 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
- * **MS**
www.benefits.va.gov/compensation/docs/Multiple_Sclerosis.pdf
- * **Parkinson's Disease**
www.benefits.va.gov/compensation/docs/Parkinsons_Disease.pdf

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

71

**SPECIAL MONTHLY
COMPENSATION**

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

72

SPECIAL MONTHLY COMPENSATION

NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

73

SMC RATES EFFECTIVE 12/1/2021

NVLSP

NO DEPENDENTS

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

74

SMC(K) – LOSS OR LOSS OF USE

NVLSP

*** 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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

75

38 C.F.R. § 4.63

LOSS OF USE OF HAND OR FOOT

NVLSP

* 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**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

76

38 C.F.R. § 4.64

LOSS OF USE OF BOTH BUTTOCKS

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

77

SMC(s) – HOUSEBOUND

NVLSP

* **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**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

78

SURVEY # 3

NVLSP

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

A. Yes

B. No

C. Not Sure

QUIZ TIME!

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

79

ANSWER

NVLSP

A

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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

80

SMC(L) – AID & ATTENDANCE

NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

81

HIGHER LEVELS OF SMC

 NVLSP

*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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

82

**SMC(r-1)
ELIGIBILITY**

 NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

83

**SMC(r -2)
ELIGIBILITY**

 NVLSP

* **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)

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

84



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))

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

85



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

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

86



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)

© 2022 National Veterans Legal Services Program. All Rights Reserved. www.nvlp.org

87

ADDITIONAL BENEFITS

VA AUTOMOBILE ALLOWANCE & ADAPTIVE EQUIPMENT



NVLSP
National Veterans Legal Services Program

- * **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.

VA AUTOMOBILE ALLOWANCE & ADAPTIVE EQUIPMENT

HOUSING GRANTS

SPECIALLY ADAPTED HOUSING (SAH) GRANT



NVLSP

SPECIAL HOME ADAPTATION (SHA) GRANT



NVLSP

- * **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**



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**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

94



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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

95



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**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

96

**VA CAREGIVER
PROGRAM**

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

97

**VA CAREGIVER
PROGRAM**

NVLSP

* 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

98

**VA CAREGIVER
PROGRAM**

NVLSP

* 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**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

99

**VA CAREGIVER
PROGRAM**

 NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

100

**VA CAREGIVER
PROGRAM**

 NVLSP

*** 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

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

101

**VA CAREGIVER PROGRAM
HELPFUL WEBSITES**

 NVLSP

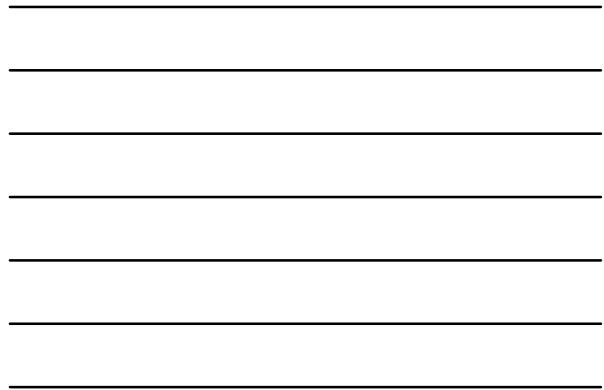
*** www.caregiver.va.gov/index.asp**

*** 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#**

© 2022 National Veterans Legal Services Program, All Rights Reserved. www.nvlp.org

102



SC REVIEW				NVLSP
	ALS	MS	Parkinson's Disease	
Presumptive	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)
Direct		38 C.F.R. §§ 3.303(b), 3.309(a) (chronicity or continuity of symptomatology)	38 C.F.R. §§ 3.303(b), 3.309(a) (chronicity or continuity of symptomatology)	38 C.F.R. § 3.305(d) (delayed direct)
Secondary			38 C.F.R. § 3.310(d)(1)(i) (Presumed secondary to mod or severe TBI)	



RATINGS REVIEW			
	ALS	MS	Parkinson's Disease
Minimum Rating	100% under DC 8017 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> If secondary conditions support 30% or more, rate under DCs for secondary conditions 	30% under DC 8004 <ul style="list-style-type: none"> If secondary conditions support 30% or more, rate under DCs for secondary conditions
Secondary Conditions	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.		
Consider TDIU	Did neurological disability render Vet unable to maintain or obtain substantial gainful employment?		
Consider SMC	Has Vet lost use of a creative organ or use of extremities. Does Vet need aid and attendance?		
Additional Benefits	VA automobile allowance & adaptive equipment; clothing allowance; SAH and SHA; HISA grant; Caregiver benefits		



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:

NVLSP TRAINING OPPORTUNITIES