Veterans Affairs Canada | Anciens Combattants Canada

Additional Pain and Suffering Compensation

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Purpose

This policy provides guidance for the administration of the Additional Pain and Suffering Compensation (APSC).

Policy

Veterans Well-being Act, sections 42, 43, 56.6, 56.7, 56.8, 73, 78.1, 78.2, 84, 85, 87.1, and Schedule 4

Pension Act, section 72

Veterans Well-being Regulations, sections 1.1, 48, 54, 54.1, 54.2, 54.3, 54.4, 54.5, 63.1

General

1. The APSC was developed to recognize and compensate Veterans for the non-economic loss associated with service-related permanent and severe impairments that cause barriers to re-establishment.
2. The eligibility for APSC is based upon the existence of a service-related permanent and severe impairment, and the amount payable is based on the severity of the impairment.
3. The APSC is a non-taxable monthly benefit.

Application

4. The Department may already have on file all the necessary information to grant a favourable APSC decision. If so, the Department may notify the member or Veteran of its intent to waive the application, and the individual can choose whether to accept this waiver. Additional information or documents may be requested by the Department. (See Waiver of Requirement for Application policy.)

5. If a waiver is not possible, applications for the APSC and for an increase in the APSC grade level must be made in writing by the member/Veteran or the member's/Veteran's legal representative. They shall include:

    a. a complete and signed approved departmental application form(s), which contains a declaration attesting to the truth of the information provided. A signed letter may be acceptable in lieu of an application form if it is accompanied by a signed affidavit or declaration attesting to the truth of the information provided; and
    b. medical reports or other records which document the disability creating the permanent and severe impairment and the barrier to re-establishment (if the Department does not already have this information on file); and
    c. at the request of the Minister, other information that is necessary to determine eligibility and grade level.

    Where possible, existing information on file should be utilized.

6. For more information on when an application is made, see Application to the Minister policy.

Still-serving Members

7. The APSC is not payable until the individual becomes a Veteran, i.e., the day after the day of their release from the Canadian Armed Forces (CAF). However, a member of the CAF may apply for the APSC and the Department may consider the application and render a decision prior to release.
8. The Department may consider a serving member's circumstances when determining whether an application for the APSC will be considered prior to release. For example, the Department may consider whether the member is in the process of releasing from the CAF, or how soon they are expected to release. The Department may decide not to make an eligibility decision until such time as the member's release is imminent.
9. When considering an application for the APSC from a member, the Department may decide to render an eligibility decision and defer the assessment of the grade level until the member releases from the CAF. In this case, the Department may request additional information needed at the time of the assessment.

Eligibility

10. The APSC is payable to a Veteran who suffers from one or more disabilities:
    a. that are creating a permanent and severe impairment; and
    b. that are creating a barrier to re-establishment in civilian life; and
    c. for which the Veteran has been granted a Disability Award, and/or Pain and Suffering Compensation, and/or a Disability Pension (collectively referred to as a "disability benefit").
11. For greater certainty, a disability benefit is still "granted" even if no amount has been paid due to the Veteran's assessments and deemed assessments exceeding 100%.
12. When determining whether the Veteran has a permanent and severe impairment, only disabilities for which the Veteran has been granted a VAC disability benefit are to be considered. (For more information, see the Overlapping Medical Conditions section of this policy.)
13. Disabilities resulting from service in the CAF on or before April 1, 1947, or from service in the Korean War are not to be considered with respect to APSC.
14. For those with service in both the Royal Canadian Mounted Police and the CAF, a disability can only be considered with respect to APSC if at least partial entitlement has been granted in relation to the CAF service.
15. For the purposes of the *Veterans Well-being Act*, an individual is considered a "Veteran" the day after the day of their release from the CAF.

Exceptional Incapacity Allowance

16. A Veteran who is receiving the Exceptional Incapacity Allowance (EIA) under the *Pension Act* is not eligible to be paid the APSC.
17. If a Veteran was previously in receipt of the EIA, but is no longer in receipt at the time of the APSC application, the Veteran may be eligible for the APSC.
18. A Veteran who is receiving the APSC is not eligible to be paid the EIA.
19. If a Veteran is not receiving the APSC and applies for the EIA, the following rules apply:
    a. The Department must first determine whether the Veteran is eligible for the APSC.
    b. If the Veteran meets all of the eligibility criteria for the APSC, the Veteran will be awarded APSC. The EIA application will be deemed to be an APSC application, and the decision will be deemed to be made under the *Veterans Well-being Act*.
    c. If the Department determines that the Veteran is not eligible for the APSC, the EIA application will continue under the *Pension Act*. If all other EIA criteria are met, the Veteran will be awarded EIA.
20. If a CAF member applies for the EIA (even if they received a preemptive favourable APSC decision under section 75.2 of the *Veterans Well-being Act*), the following rules apply:
    a. The Department shall find the member to be ineligible for APSC, as members are not eligible for APSC.
    b. The remaining APSC eligibility criteria need not be considered.
    c. The member's EIA application will continue under the *Pension Act*. If all other EIA criteria are met, the member will be awarded EIA (and any APSC decision under section 75.2 would be withdrawn.)
21. If a CAF member receives an unfavourable EIA decision, there will be no deemed APSC application. If the member wishes to be considered for the APSC upon release, they will be required to submit an application.
22. For additional information on the EIA, see Allowances policy.

Amount Payable

23. The amount of APSC payable corresponds to the Veteran's extent of permanent and severe impairment (grade level 1, 2 or 3), as set out in Column 2, Schedule 4 of the *Veterans Well-being Act*. Rates are indexed annually; payments are made monthly and are not pro-rated.

Date Payable

24. The APSC begins to be payable on the later of:
    a. the first day of the month in which the application for the APSC was made (see Application to the Minister policy);
    b. the day that is one year prior to the first day of the month in which the application for the APSC is approved; and
    c. the first day of the month in which the applicant becomes a Veteran.
25. The date payable of the APSC cannot pre-date the date payable for the disability benefit for the disability(ies) causing the permanent and severe impairment. However, there is an exception for Disability Pensions that become payable on a date other than the first day of the month. The APSC can be paid as of the first day of the same month that the Disability Pension became payable.
26. The date payable of the APSC cannot pre-date April 1, 2019 (the coming into force date).
27. An increase to the APSC resulting from an application for an APSC reassessment by the Veteran begins to be payable on the later of:
    a. the first day of the month in which the application for a reassessment is made; and
    b. the day that is one year before the first day of the month in which the decision to increase the APSC is made.
28. An increase or decrease to the APSC resulting from the Minister's own initiative, or a decrease resulting from an application by the Veteran, begins to be payable on the first day of the month after the month in which the decision is made.

Duration of Benefit

29. The APSC ceases to be payable on the earlier of:
    a. the first day of the month after the month in which the Department determines that the Veteran is no longer eligible; and
    b. the first day of the month after the month in which the Veteran dies.
30. See also the Cancellation section of this policy

Determination of a Permanent and Severe Impairment

31. As per section 54 of the *Veterans Well-being Regulations*, a **permanent and severe impairment** is:
    a. an amputation at or above the elbow or the knee; or
    b. the amputation of more than one upper or lower limb at any level; or
    c. a total and permanent loss of the use of a limb; or
    d. a total and permanent loss of vision, hearing or speech; or
    e. a severe and permanent psychiatric condition; or
    f. a severe and permanent limitation in mobility or self-care; or
    g. a permanent requirement for supervision.
32. For the purposes of this policy:
    a. "**Permanent**" means that the impairment or requirement is expected to persist indefinitely despite treatment or interventions. With respect to the impairment, although the signs and symptoms may wax and wane over time, further recovery is not anticipated.

b. An "**inordinate amount of time**" is defined as significantly more time than it would take an individual of the same age to complete the activity in the absence of the impairment.
c. An "**inordinate frequency**" is defined as completing the activity significantly more often than an individual of the same age in the absence of the impairment.
d. "**Supervision**" is defined as requiring the presence of another person to ensure safety in performing activities of daily living.
e. "**Activities of Daily Living**" (ADLs) are:

- **Mobility (considered 1 ADL)**
  - Transfers – changing the position of the body independently (e.g., positioning the body from lying to sitting; sitting to standing; lying on the back to lying on the side).
  - Maneuvering – moving the body from one point in space to another (e.g., climbing stairs, walking, using a manual or powered wheelchair, or scooter for medical reasons).

  Mobility is being looked at as a separate ADL from Self-care to ensure that it is adequately evaluated.

- **Self-care (6 ADLs)**
  - Feeding – eating and drinking of prepared foods (e.g., cutting up food, buttering bread).
  - Washing – washing of face, trunk, extremities and hair.
  - Dressing – putting on and taking off all pieces of indoor and outdoor clothing.
  - Grooming/Foot Care/Personal Care – brushing of hair and teeth, shaving and make-up application; skin and nail care; cleansing and personal care associated with toileting.
  - Toileting – continence of bowel and bladder; using toilet facilities.
  - Taking medication – preparing and self-administering medication.

33. A "**Permanent and severe impairment**" is evident if the Veteran has at least **one** of the following:
    a. An amputation, or loss by physical separation, of a limb at or above the elbow or the knee;
    b. Two or more amputations of limbs at or above the ankle, or at or above the wrist;
    c. The permanent loss of use of a limb, such as permanent paralysis of an arm or a leg such that the limb is ineffective in carrying out activities of daily living. Consideration should also be given to severe amputations that contribute to the loss of use of a limb at any level;
    d. Complete and permanent loss of vision of both eyes worse than or equal to 20/200 or 6/60 with best correction in the better eye or a visual field extent of less than 20 degrees in diameter;
    e. Total and permanent loss of hearing with a Decibel Sum Hearing Loss (DSHL) of at least 300 decibels in each of the two ears at the 500, 1000, 2000 and 3000 Hz frequencies;
    f. Total and permanent loss of speech where audible communication is insufficient to meet needs of everyday speech and conversation;
    g. A psychiatric condition or neurocognitive disorder, diagnosed according to the most recent version of the *Diagnostic Statistical Manual of Mental Disorders*, for which the Veteran requires ongoing regular treatment, and which results in the Veteran suffering from severe and frequent symptoms (presenting at least once per week) which significantly interfere with functioning in the areas of thought and cognition; emotion, behaviour and coping; and/or activities of daily living;
    h. A severe and permanent limitation in Mobility or Self-care (see paragraph 34 below for more information); **or**

i. The need for supervision at least three times per week for at least one hour per visit to ensure safety in performing activities of daily living.

34. A **severe and permanent limitation in Mobility or Self-care** is evident where the Veteran, all or substantially all of the time, has at least **one** of the following limitations (a-g):

- **Mobility**

a. unable to transfer or maneuver independently (i.e., requires total assistance), even with the aid of medication, therapy, or an assistive device (e.g., cane, crutches, walker, wheelchair, shower lift);

b. able to perform less than 50% of the tasks associated with transferring or maneuvering without the assistance of another person (i.e., requires maximal/significant assistance; Veteran provides less than half of the effort);

c. takes an inordinate amount of time, to transfer or maneuver, even with the aid of medication, therapy, or an assistive device (e.g., cane, crutches, walker, wheelchair);

- Examples: Veteran takes significantly more time to transfer from sitting to standing even with the use of raised seating due to chronic pain, limited flexibility or coordination; walking is limited to 50 m or less before resting.

- **Self-Care (must demonstrate the impairment with at least two Self-care activities)**

d. unable to perform any of the tasks associated with **two** Self-care activities independently (i.e., requires total assistance);

- Examples: Veteran is fed by another person and requires another person to dress him or her; Veteran is totally incontinent and unable to manage incontinent supplies and personal care without the assistance of another person.

e. able to perform less than 50% of the tasks associated with **two** Self-care activities without the assistance of another person (i.e., requires maximal/significant assistance; Veteran provides less than half of the effort with each Self-care activity);

- Examples: Veteran needs assistance with foods that require utensils to be used and Veteran needs assistance with closures and getting clothing over his/her head; Veteran requires a permanent colostomy and needs the assistance of another person with most aspects of colostomy care.

f. takes an inordinate amount of time to complete **two** Self-care activities even with the aid of medication, therapy or an assistive device (e.g., reachers, toilet safety rails; shower chair);

- Examples: Veteran takes medication for chronic pain but still takes significantly more time to perform tasks associated with bathing and grooming.

g. has an inordinate frequency in how often **two** Self-care activities are completed daily, causing significant interference with his or her ability to participate in normal daily activities;

- Example: Veteran suffers from chronic ulcerative colitis which causes noticeable increase in the frequency of bowel movements and/or soiling during flare-ups, requiring the need for frequent personal care. This causes the Veteran to have frequent absences from work, and the Veteran limits social community activities.

OR

- **Cumulative Effects of Limitations in Activities of Daily Living**

h. Experiences limitations in most of the ADLs defined in paragraph 32.e, which when taken together have an equivalent impact on the person as the limitations in 34.a-g above.

- Example: Requiring minimal assistance from another person with 4 ADLs may have an equivalent impact to the limitation caused by requiring the assistance of another person

with 50% or more of the tasks associated with 2 Self-care activities, or the limitation caused by taking an inordinate amount of time to complete 2 Self-care activities (i.e., the limitations described in paragraphs 34.e and f above).
- Example: Has intractable pain, as defined by Veterans Affairs Canada on the disability assessment of the relevant condition (e.g., severe, persistent, ongoing pain that is unresponsive to the usual treatment modalities).

Determination of a Barrier to Re-establishment in Civilian Life

35. As per section 1.1 of the *Veterans Well-being Regulations*, a **barrier to re-establishment in civilian life** means the presence of a disability or a temporary or permanent physical or mental health problem that limits or prevents an individual's reasonable performance in civilian life of their roles in the workplace, home, or community.
36. To determine whether a disability creates a barrier to re-establishment, the nature of the disability must be analyzed to determine how, and to what extent, the disability limits the Veteran's performance in civilian life of their roles in the workplace, home, or community. It is these limitations which must be the focus when identifying whether a barrier exists.
37. It is important to determine the existence and degree of any associated symptoms of the disability and how those symptoms limit the Veteran's functioning. If the symptoms of the disability prevent the Veteran from doing activities in relation to their roles at home, work and/or in the community (e.g., perform work, engage in interpersonal relationships) then it can be determined that a barrier to re-establishment exists.
38. The focus of the identification of barriers must be related to the disability for which the Veteran has received a disability benefit and that is creating the permanent and severe impairment.
39. If a Veteran in receipt of the APSC improves or optimizes his or her barriers to re-establishment through a rehabilitation plan (or by some other means), this will not result in cancellation of the benefit.

Overlapping Medical Conditions

40. In some situations, it may be difficult to medically separate the impact of a disability for which a disability benefit has been granted from other disabilities for which a disability benefit has not been granted. In circumstances where there is a reasonable doubt or uncertainty as to whether the permanent and severe impairment is due to the disability for which the applicant is in receipt of a disability benefit, then the reasonable doubt or uncertainty may be resolved in the Veteran's favour (see Benefit of the Doubt policy).

Determination of Grade Level

41. The APSC is payable at three grade levels, based on the extent of the Veteran's permanent and severe impairment.
42. The Veteran's extent of impairment will be assessed. This assessment is based on any relevant factor, including the need for institutionalized care, the need for supervision and assistance, the degree of the loss of use of a limb, the frequency of symptoms, and the degree of psychiatric or neurocognitive impairment creating a barrier to re-establishment in civilian life.
43. The assessment only considers the effects of the disability(ies) for which the Veteran has received a disability benefit and that is creating the permanent and severe impairment. However, in some situations, it may be difficult to medically separate overlapping medical conditions resulting from the effect of an entitled disability and a non-entitled disability. In circumstances where this occurs, the uncertainty may be resolved in the Veteran's favour.
44. The extent of impairment ranges from Grade 3 (least severe) to Grade 1 (most severe).

Reassessment

45. A Veteran may apply in writing for a reassessment of their extent of impairment. (See the Application section of this policy for more information).
46. A reassessment may be conducted on application by the Veteran if there is evidence of a change in the Veteran's circumstances.
47. The Department may also initiate a reassessment, without application from the Veteran.
48. A reassessment may result in an increase or decrease to the Veteran's grade level, or may result in no change.
49. The effective date of any increase or decrease in the APSC grade level is set out in the Date Payable section of this policy.

Medical Examinations and Other Information

50. For the purposes of determining the Veteran's eligibility for the APSC, the Veteran's continued eligibility for the APSC, the Veteran's extent of impairment, or whether the extent of impairment has changed, the Department may:
    a. require the Veteran to undergo a medical examination or assessment by a person specified by the Minister; and/or
    b. require that the Veteran provide medical reports, records or other necessary information.

Suspension

51. The Minister may suspend the payment of the APSC to a Veteran who fails to submit requested information, or who fails to undergo a medical examination or assessment required by the Department.
52. Before suspending the payment to a Veteran, the Minister shall provide the Veteran with written notification of the reasons for the suspension and the effective date of the suspension.
53. In cases where the Department decides to suspend the APSC, the suspension shall begin on the first day of the month. This will ensure that APSC payments are not prorated.
54. A suspension will be lifted once the requested information or documents have been received or once the Veteran undergoes the required medical examination or assessment. Payments will be resumed from the date on which the payment was suspended.

Cancellation

55. There are two circumstances under which the APSC may be cancelled:
    a. If the situation that gave rise to a suspension of APSC payments is not resolved within six months from the effective date of the suspension, the Department may cancel the APSC.
    b. If the Veteran's eligibility or grade level was based on a misrepresentation or concealment of a material fact by the Veteran, the Department may cancel the APSC.
56. On cancelling the payment of the APSC, the Department shall provide the Veteran with written notification of the reasons for the cancellation, the effective date of the cancellation, and their rights of review.
57. In cases where the APSC is cancelled without a suspension, the payment shall be discontinued effective the date of the next payment (i.e., the first day of the month). If the APSC has been suspended, the cancellation will be effective from the date of the suspension.

Death of the Veteran

58. In the event that a Veteran dies prior to receiving an APSC payment(s) to which they became entitled while still living, that APSC payment(s) is to be paid to the Veteran's survivor, or if there is no survivor, to the Veteran's estate as set out in section 87.1 of the Act.
59. For the purpose of paragraph 58:
    a. The Veteran becomes entitled to the APSC payment(s) once a favourable decision has been rendered by the Department.
    b. A survivor is defined as:
        i. The Veteran's spouse who was, at the time of the Veteran's death, residing with them; or
        ii. The person who was, at the time of the Veteran's death, cohabitating with them in a conjugal relationship and had done so for a period of at least one year.

Review of Decisions

60. A Veteran who has new evidence to present to the Department with respect to an APSC decision may request a Departmental review.
61. A Veteran who is dissatisfied with any APSC decision or with a Departmental review decision may apply to the Veterans Review and Appeal Board for a review of the decision.
62. For more information, see Review of Decisions

Annex A: Transitional Provisions for APSC

Veterans Transitioning from CIA to APSC

1. If the Career Impact Allowance (CIA) was payable to a Veteran on March 31, 2019, the Veteran will automatically be eligible for the APSC as of April 1, 2019.
2. For this transitional group, no application for APSC is required.
3. For the CIA to be payable on March 31, 2019, the Veteran can be:
    a. already in receipt of CIA by March 31, 2019;
    b. approved for CIA by March 31, 2019 but not yet in receipt of payments; or
    c. approved for CIA after March 31, 2019 with a date payable of March 31, 2019 or earlier (either as a result of a first decision or an amended decision following a first or second level review).
4. When transitioning from CIA to APSC, the extent of the Veteran's permanent and severe impairment will be assigned the same grade level as it was for CIA. For example, if the Veteran was approved for CIA at Grade 2, he/she will have an extent of impairment at Grade 2 for APSC, and will receive the corresponding APSC amount. This APSC grade level can never be decreased as long as the Veteran remains eligible for the benefit.
5. It is only the CIA grade level that is protected when the Veteran is transitioned to the APSC, not the CIA monthly amount.
6. The amount of APSC payable corresponds to the Veteran's assigned grade level (1, 2 or 3), as set out in Column 2, Schedule 4 of the *Veterans Well-being Act*. Amounts payable are indexed annually; payments are made monthly and are not pro-rated.
7. Subject to the paragraphs above, the payment of APSC to this transitional group is otherwise governed by the APSC provisions in the *Veterans Well-being Act*.
8. For more information on transitional provisions related to the CIA, see Annex A of the Income Replacement Benefit policy.

CIA Grade Level Increases

9. If a Veteran's CIA grade level is increased post-April 1, 2019 (for example as a result of a review decision or reassessment decision), their APSC grade level will be correspondingly increased, effective April 1, 2019.

Still-serving Members

10. For the purpose of this section, a "still-serving member" is a CAF member who has not released from the CAF before March 31, 2019 (i.e., they will release on or after March 31, 2019).
11. For still-serving members who have received an unfavourable CIA decision:
    a. their CIA application and the CIA decision will be deemed not to have been made; and
    b. if they wish to be considered for the APSC, they will be required to submit an application.
12. For still-serving members who have received a favourable CIA decision:
    a. their CIA application and the CIA decision will be deemed not to have been made; and
    b. they will be deemed to have applied for the APSC on April 1, 2019.
13. For still-serving members who have applied for CIA prior to April 1, 2019 and their application is still pending as of April 1, 2019:
    a. their CIA application will be deemed not to have been made; and
    b. they will be deemed to have applied for the APSC on April 1, 2019.

External references

Allowances

Benefit of Doubt

Review of Decisions

Waiver of Requirement for Application

Veterans Well-being Act, sections 113, 114, 133