

Chapter 7

EXCEPTIONAL INCAPACITY ALLOWANCE

7.01 - Cross Reference to the Veterans Affairs Canada (VAC) Policies

The provisions of this Chapter should be read in conjunction with the following policies: [Allowances](#), [Date Payable – Disability Benefits, Allowances, Prisoner of War/Detention Benefit Compensation](#), [Pain and Suffering Compensation](#), and [Application to the Minister](#).

7.02 - Requirements for the Award of Exceptional Incapacity Allowance

The requirements for the award of Exceptional Incapacity Allowance (EIA) are laid down in section 72 of the *Pension Act*.

7.03 - Aim

The aim of these guidelines is to establish the standards to be used by adjudicators in arriving at equitable decisions when dealing with applications for EIA.

7.04 - General Approach

The award under Section 72 **should not be considered an extension of the 100% disability pension**; it is a new and different award and is not a pension/award but an allowance. “Disability” is defined in the *Pension Act*; however, this is not the case for “incapacity”. Nevertheless, it is accepted that “incapacity” has a much broader meaning than “disability”, it may involve considerations other than medical (1-28), e.g. ability to work, social activities, family problems, etc. In any case, the pensioner must be in receipt of either a disability pension under the *Pension Act* in the amount set out in Class 1 of the Schedule1 (i.e. 98% or greater), or a disability pension in a lesser amount than 98%; and compensation paid under the *Pension Act*; and/or a Disability Award/Pain and Suffering Compensation paid under the *Veterans Well-being Act* before they are considered eligible for EIA.

In determining whether the incapacity is “exceptional”, account shall be taken of the extent to which the disability for which a member is receiving a pension/award/compensation has left them in a helpless condition and/or in continuing pain and discomfort and/or has resulted in loss of enjoyment of life and/or shortened

their life expectancy and/or any other criteria of similar or like nature (1-15), e.g. psychological considerations. Any or all of the enumerated factors need not be individually present to an exceptional degree (1-22); it suffices that any one of these factors or a combination of two or more of these factors may produce an exceptional incapacity.

In assessing the amount of incapacity involved, the adjudicator must consider the **whole** of the pensioned/awarded/compensated primary conditions, the **whole** of the pensioned/awarded/compensated consequential conditions (*partially pensioned/awarded/compensated conditions are considered as wholly pensioned/awarded/compensated conditions for purpose of considering an EIA) and those non-pensioned/non-awarded/non-compensated conditions which are shown to affect, or be affected by the pensioned/awarded/compensated conditions (1-27-V, Q-369, Q-1030, E-7631).

It is important to be cognizant of the fact that it is difficult and frequently impossible to medically separate the impact of pensioned/awarded/compensated and non-pensioned/non-awarded/non-compensated conditions in a severely disabled person and in such cases, one can fairly assume such impact exists.

It is to be reaffirmed that Section 72, by its terms, represents a deliberate departure from the intention or principle which prevails in the award of a pension/award/compensation. The Section does not authorize the award of an additional "pension". It authorizes the payment of an "allowance" if certain conditions are fulfilled.

Nothing in Section 72 indicates that it must be predicted wholly on pensionable/awardable/compensable disabilities nor, by the same token, does it exclude from the determination of exceptional incapacity that part of the incapacity which is attributable to non-pensionable injury or disease. (Federal Court of Appeal Judgement, January 25, 1980).

Account should be taken of the "synergism" principle, i.e. the total effect of the pensioned/awarded/compensated disabilities may be greater than the sum of the effects of the disabilities taken independently. Mental and physical deterioration due to age is not excluded in the determination of exceptional incapacity. (E-2100, E-7631).

Pensioners who are paraplegics, double amputees, certain cases of blindness or certain psychiatric cases are automatically granted EIA as per the Table of Disabilities to Article 7.09. This does not preclude these particular pensioners from receiving a higher rate than called for by the Table of Disabilities to Article 7.09 if they are also seriously handicapped by other acceptable, severe disabilities. Paragraph 2 of Section 72 of the

Pension Act and (1-3) states that account may be taken of the degree to which incapacity is lessened by treatment or the use of prostheses. In the case of double amputee pensioners in the Grade 5 and 4 category, the Table was drawn up on the basis that the amputated limbs are fitted with a prosthesis.

An award of EIA is paid whether the member is living at home or in an institution or hospital, etc.

7.05 - Determining Factors

In determining whether the incapacity suffered by a member of the forces is exceptional, account will be taken, as required by Subsection 72(2) of the Act, of the extent to which the disability for which they are receiving pension/award/compensation has:

- (a) left the member in a helpless condition;
- (b) left them in continuing pain and discomfort;
- (c) resulted in loss of enjoyment of life;
- (d) shortened their life expectancy.

It has been judicially held that the language of subsection 72(2) does not restrict the scope of the term “exceptional incapacity” in that any such limitation would restrict the generality or the “reach” of subsection 72(1)(b). The language of subsection 72(2) points to Parliament’s intention that in determining whether the incapacity suffered is exceptional, certain objective tests must be taken into account. These tests, as found under subsection 72(2) are not, however, to be read as restricting the general requirement of subsection 72(1)(b), which is that exceptional incapacity is to be determined by **whatever criteria are relevant**. The purpose of subsection 72(2) is to make clear that account must be taken of the matters mentioned **along with other relevant factors** in determining whether an incapacity is exceptional. (See Federal Court of Appeal Judgement January 25, 1980.)

Taking each factor into consideration separately, the following points should be observed:

- a) **Helplessness**
“Helplessness” may be judged by referring to the evidence submitted on an Attendance Allowance claim and, more particularly, the evidence presented by the veteran, their spouse or family, an Area Counsellor’s Report, or by any other cogent evidence material to the evaluation as to the extent of the applicant’s degree of dependence.

b) Continuing Pain and Discomfort

As pain is subjective, the degree of pain is most difficult to judge. It is accepted, medically, that there is a wide variation in the individual reaction to pain dependent on the personal pain threshold. An intermittent pain, even if moderately severe, described where a person is completely mobile requiring little medication, would not be considered exceptional. Pain requiring constant medication or treatment for attempts to control the pain could well be exceptional. Conditions causing severe and continuous discomfort may also be considered exceptional, e.g. shortness of breath requiring almost constant use of oxygen, intractable pruritus and continuous vertigo, etc. In all cases of continuing pain and discomfort the relief given by medication or treatment is to be taken into consideration.

c) Loss of Enjoyment of Life

When considering this factor, helplessness, continuing pain and discomfort and shortening of life expectancy must be taken into consideration. In addition, the inability to work (if still of working age), the premature inability to partake in social events (including sports) which previously were part of the individual's lifestyle, are also considerations. In addition to disabilities mentioned in Table of Disabilities 7.09, loss of hearing, impotence and serious disfigurement are also important contributory factors as are the adverse psychological effects resulting from the pensioned conditions.

d) Shortening of Life Expectancy

Life expectancy varies in different individuals depending on constitutional heredity, environmental and possible other factors. Each person's individual life expectancy should be evaluated on its own merits based on, and supported by, acceptable medical evidence, and not necessarily in relation to national average. Even if a person is in their 80's, the presence of a pensioned/awarded/compensated condition such as heart disease, chronic chest disease, diabetes, etc., may still be significant in reducing life expectancy.

e) Psychological Complications

This factor is not mentioned as such in the Act but will be considered if there is medical evidence that the recognized disabilities have resulted in these types of complications, e.g. feelings of rejection and depression resulting in withdrawal from society because of a loss of independence, loss of dignity, disfigurement, impotence, etc. This problem is not to be confused with the psychiatric cases listed in the Table to Article 7.09.

7.06 - The Determination of Grade Levels Under Section 72

1. These guidelines will require VAC to consider each Section 72 application through a process of comparing the severity of the incapacity suffered by the applicant to the defined profiles for each grade level set out below. In this context a type or precedent system will have to be adhered to by VAC in order to provide appropriate consistency and predictability of adjudication.
2. Notwithstanding the establishment of these guidelines with reference to the grade levels for EIA, it will be necessary for VAC to adjudicate each application under Section 72 on its individual merits due to the fact that many claims possess unique combinations of multiple disabilities and resultant incapacities.
3. The guidelines are applicable, essentially, to multiple disability claims and do not necessarily alter the employment of the current Table of Disabilities with reference to more straight forward application, i.e. various types of amputation or particular combinations of amputations, et al.
4. The evidence to be considered in determining the grade levels of EIA to be awarded in individual applications may include non-medical evidence and documentation in addition to medical evidence and documentation. (See Interpretation Hearing 1-28, Pension Review Board.)
5. It is to be recognized with reference to multiple disability claims that the inter-relationship of pensioned/awarded/compensated disabilities and non-pensioned/non-awarded/non-compensated conditions is a strong element in a high majority of such applications and will have to be given due consideration by VAC in adjudicating the individual grade levels of EIA. (See Federal Court of Appeal Decision, January 25, 1980).
6. The profile of an exceptionally incapacitated individual is arrived at through a review and evaluation of a number of significant pronouncements and decisions on the legal interpretation of Section 72 of the *Pension Act* established over the years by the Federal Court of Appeal of Canada, the Pension Review Board and VAC, including the following:
 - a. The Federal Court of Appeal Decision of January 25, 1980, in relation to EIA;
 - b. Interpretation Decisions of the Pension Review Board (1-15, 1-22, 1-27, 1-28);
 - c. The VAC Medical Guideline 2/82 of December, 1982;

(See also the Report of the Special Committee to Study Procedures under the *Pension Act*, pp. 79-148, and also the submissions made to the Special

Committee to Study Procedures under the *Pension Act* by the National Council of Veterans Associations in Canada - Preliminary Submission of Mr. H.C. Chadderton on E.I.A., pp.58-70; Submission of Mr. Brian N. Forbes on E.I.A., pp. 28 - 45)

Subject to the foregoing, the following represents a general “profile” for each grade level of EIA pursuant to Section 72 of the *Pension Act*:

Grade Five

- a. Incapacity suffered as a consequence of the inter-relationship of pensioned/awarded/compensated disabilities which produces a synergistic effect on their ability to cope with their general state of disablement. This concept recognizes that a severe incapacity can result from their pensioned/awarded/compensated disabilities making up their 100% pension; **or**
- b. Incapacity resulting from the onset of a minor non-pensioned/non-awarded/non-compensated condition(s) which affects or is affected by the pensioned/awarded/compensated disabilities of the veteran/applicant; **or**
- c. Incapacity arising as a consequence of the aging factor, the degree of helpless, the loss of enjoyment of life, the extent of pain and discomfort, the shortening of life expectancy, psychological complications or other material EIA factors, wherein such factors impact on the ability of the applicant to manage their pensioned/awarded/compensated disabilities; **or**
- d. Incapacity flowing from a deterioration of the general lifestyle of the applicant so as to result in a negative impact on the veteran’s social, psychological, business or domestic circumstances; **or**
- e. The existence of evidence or circumstances wherein they are approaching a state whereby their activities of daily living are in jeopardy.

Grade Four

- a. An increase in the level of incapacity suffered by the applicant when compared to the profile of a grade five recipient of EIA with particular regard to the prerequisites outlined in subparagraphs (a), (c), (d), and (e) of the Grade Five profile description;
- b. The onset of a medical condition of a major nature, i.e., coronary heart disease; cancer condition; diabetic condition; stroke, at al., or a number of minor medical conditions whose cumulative impact have progressed to the extent that these conditions are affecting or being affected by the applicant’s other disabilities.

Grade Three

- a. An increase in the level of incapacity suffered by the applicant when compared to the profile of a Grade Four recipient of EIA with particular regard to the prerequisites outlined in subparagraphs (a), (c), (d) and (e) of the Grade Five profile description; **or**
- b. The onset of two major medical conditions or one major medical condition together with a number of minor medical conditions whose cumulative effect have progressed to the extent that these medical conditions are affecting or are affected by the applicant's other disabilities;
- c. The severity of the cumulative effect of the non-pensioned/non-awarded/non-compensated conditions and the pensioned/awarded/compensated disabilities have reached such a level so as to significantly incapacitate the applicant, without specific regard to the number of medical conditions, in circumstances where the applicant is approaching a position of being unable to reasonably carry on with their day to day activity.

Grade Two

- a. An increase in the level of incapacity suffered by the applicant when compared to the profile of a Grade Three recipient of EIA with particular regard to the prerequisites outlined in subparagraphs (a), (c), (d) and (e) of the Grade Five profile description; **or**
- b. The onset of three major medical conditions or two major medical conditions together with a number of minor medical conditions whose cumulative effect have progressed to the extent that these conditions are affecting or are affected by the applicant's other disabilities; **or**
- c. The severity of the cumulative effect of the non-pensioned/non-awarded/non-compensated conditions and the pensioned/awarded/compensated disabilities have reached such a level so as to significantly incapacitate the applicant, without specific regard to the number of medical conditions, in circumstances where the applicant is approaching a position of being unable to reasonably carry on with their daily activity and they are approaching the need for institutionalization due to the seriousness of their incapacity.

Grade One

- a. An increase in the level of incapacity suffered by the applicant when compared to the profile of a Grade Two recipient of EIA with particular regard to the prerequisites outlined in subparagraphs (a), (c), (d) and (e) of the Grade Five profile description; **or**
- b. The severity of the cumulative effect of the non-pensioned/non-awarded/non-

compensated conditions and the pensioned/awarded/compensated disabilities have reached such a level so as to significantly incapacitate the applicant, without specific regard to the number of medical conditions in circumstances where the applicant is unable to cope with their day to day activity level or in circumstances where the applicant is institutionalized due to the seriousness of their incapacity.

7.07 - Application Required

Subsection 80(1) of the *Pension Act* states that “...no award is payable to a person unless **an application has been made** by or on behalf of the person...”

7.08 - Effective Date

The Minister will notify new Class 1 pensioners of their eligibility to apply for this allowance, at which time they may choose whether or not to apply for it. The date the pension indicates the member/veteran's wish to apply for an EIA would be considered the “date of application”. If the pensioner is found to be suffering an exceptional incapacity that is a consequence of or caused by the disability or disabilities for which they receive pension and an award at Class 1 rates, the effective date of an EIA cannot pre-date **the effective date of the decision** awarding a Class 1 pension under the *Pension Act* or a combination of disability pension and compensation under the *Pension Act* and Disability Award/Pain and Suffering Compensation under the *Veterans Well-being Act* that total 98% or more.

7.09 - Rates of Exceptional Incapacity Allowance

1. The rates prescribed in section 74 of the *Pension Act* are subject to supplements based on the Consumer Price Index (CPI Supplement) in accordance with section 75 of the *Pension Act*. Awards shall be assessed in Grades 1 to 5 in accordance with the Table to Article 7.09.
2. The rates are the minimum award for the average case falling in the category described when there is no other pensioned/awarded/compensated condition contributing materially to the factors identified in section 72 of the *Pension Act*. In assessing the quantum, account has been taken in some cases of the degree to which the incapacity is lessened by the use of prostheses.
3. The value assigned to each Grade is published annually as adjusted to the Consumer Price Index.

TABLE TO ARTICLE 7.09		
Exceptional Incapacity		Rate
Paraplegia:		
1.	Paraplegics (total cord lesion)	GRADE 1
Amputations:		
2.	Quadruple and triple amputees	GRADE 1
3.	Totally confined to a wheelchair, self-propulsion not possible	GRADE 2
4.	Totally confined to a wheelchair, propelled by pensioner	GRADE 3
5.	Bilateral above-elbow amputee	GRADE 3
6.	Bilateral above knee amputee	GRADE 4
7.	Bilateral upper limb amputee, 1 below elbow, 1 above elbow	GRADE 4
8.	Double amputee, 1 above knee, 1 above elbow	GRADE 4
9.	Bilateral amputee, 1 above knee, 1 below knee	GRADE 5
10.	Double amputee, 1 above knee, 1 below elbow	GRADE 5
11.	Bilateral below elbow amputee	GRADE 5
12.	Bilateral below knee amputee	GRADE 5
13.	Double amputee, 1 below elbow, 1 below knee	GRADE 5
Blindness:		
14.	Total blindness (no perception of light) with a significant secondary disability	GRADE 1
15.	Total blindness (no perception of light)	GRADE 2
16.	Perception of light without light projection	GRADE 3
17.	Light projection permitting orientation in familiar surroundings indoors	GRADE 4
18.	Ability to count fingers and to move around in protected areas outdoors	GRADE 5

Loss of Bladder and Bowl Control:		
19.	Loss of bladder and bowel control has been considered to increase Exceptional Incapacity Allowance by \$400 per annum, or by one grade.	
Psychiatric:		
Note: The following guidelines can be fully understood only against the background of the expert opinions and the typed cases which are on record in the office of the Chief, Psychiatric Division, Medical Advisory Branch.		
20.	Totally inert schizophrenic or depressive require complete hospital care, major nursing care.	
21.	Profound depression requiring constant care in hospital to preserve life and showing obvious signs of gross psychic pain and discomfort and total loss of enjoyment of life.	GRADE 1
22.	Severe psychotic disturbance requiring long term hospitalization as a life-preserving measure, able to care for themselves in hospital but with minimal to slight ability to take part in recreation or occupational therapy. The presence of evident distress in the above situation might indicate the higher award.	GRADE 2-3
23.	Requiring home or hospital supervision of a more general nature, able to attend to personal care but capable of only very limited participation in occupational or recreational therapy. Actual level to be determined by evidence of psychic distress and by the degree of loss of enjoyment of family, recreation and the like.	GRADE 4-5