Allowances

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Purpose

The purpose of this policy is to provide guidance in respect of the clothing allowance, attendance allowance, and exceptional incapacity allowance.

Policy

Clothing Allowance

1. A clothing allowance may be awarded to a member or Veteran under the authority of subsections 38(4-8) of the *Pension Act* for pensioned conditions or section 60 of the *Veterans Well-being Act* (VWA) for disability award conditions.
2. A clothing allowance may be awarded to a member or Veteran in the following circumstances:
    a. The member or Veteran is in receipt of a disability pension or disability award or pain and suffering compensation for an amputation of the leg at or above a Symes' amputation.
    b. The member or Veteran is in receipt of a disability pension or disability award or pain and suffering compensation for an amputation of the arm at or above the wrist.
    c. The member or Veteran is in receipt of a disability pension or disability award or pain and suffering compensation for two amputations as described in a) and b) above.
    d. The member or Veteran is in receipt of a disability pension or disability award or pain and suffering compensation for a disability causing wear and tear of clothing.
    e. The member or Veteran is in receipt of a disability pension or disability award or pain and suffering compensation for a disability that requires the purchase of specially made apparel. This does not include minor alterations to a ready-made or factory product.
    f. The member or Veteran has soiling of clothing as a result of a disability or the treatment of a disability for which he or she is in receipt of a disability pension or disability award or pain and suffering compensation.
3. In special cases, the decision maker can examine all the circumstances of the case and use discretion in determining whether or not a clothing allowance should be awarded. Examples:

a. A Veteran has a disability pension for Reynaud's Disease which requires her to purchase additional clothing for warmth.
b. A member has a disability award for severe burns which requires him to purchase special clothing.

4. In the case of multiple entitled disabilities which warrant an award of a clothing allowance, the following applies:
    a. One clothing allowance will be awarded if the wear and tear affects the same article of clothing.
    b. Two or more clothing allowances may be awarded if the wear and tear affects more than one article of clothing, the need of an appliance, or the need for an allowance for soiling.
5. The guidelines used in the determination of the amount of the clothing allowance (i.e. grade level), can be found in Chapter 6 of the Table of Disabilities.
6. A clothing allowance may be discontinued the date of the next monthly payment when the member or Veteran ceases to use a brace or appliance, no longer requires or does not use specially made clothing, or if the circumstances leading to the award for soiling no longer exist.
7. A clothing allowance ceases to be paid on the first day of the month following the death of the member or Veteran.

Attendance Allowance

8. An attendance allowance may be awarded to a pensioner under the authority of subsections 38(1-3) of the *Pension Act*. Attendance allowance is not available under the Veterans Well-being Act.
9. An attendance allowance may be awarded to a pensioner when all of the following circumstances are met:
    a. The pensioner is in receipt of at least a 1% disability pension or prisoner of war compensation;
    b. The pensioner is totally disabled, whether by reason of military service or not; and
    c. The pensioner is in need of attendance.
10. The guidelines used in the determination of an award of attendance allowance, including the determination of the amount of the award (i.e. grade level), can be found in Chapter 5 of the Table of Disabilities. The amount of the award is based upon the degree of the attendance required by the member or Veteran.
11. Although subsection 38(2) of the *Pension Act* indicates that the Department may cease the award of an attendance allowance in certain circumstances where a pensioner enters a hospital under the jurisdiction of the Department, it does not preclude the award or increase of an attendance allowance while a member or Veteran is hospitalized. For the purposes of this policy, a hospital is any institution that offers acute, chronic or nursing home care.
12. The amount of an attendance allowance paid to a pensioner who is not hospitalized is determined strictly by the degree of the need for attendance. The amount actually paid out by the member or Veteran for the attendance is not a consideration.
13. As per subsections 29(2) and 38(3) of the *Pension Act*, an attendance allowance ceases to be paid the first day of the month following the death of the pensioner unless:
    a. the pensioner was in receipt of an attendance allowance; and
    b. the pensioner was receiving additional pension on behalf of a spouse, common-law partner and/or children, with whom he or she was residing at the time of death, or where it is determined that additional pension was payable.

    In this case, the attendance allowance may be continued to the survivor for a period of one year commencing on the first day of the month following the death of the member or Veteran.

14. In lieu of a living survivor, dependent children may continue to receive the attendance allowance in equal payments.
15. Paragraphs 13-14 are not applicable in cases where the attendance allowance was awarded after the pensioner's death under subsections 48(2) and 38(1) of the *Pension Act*. Under 38(3), the attendance

allowance may continue to be paid to the survivor for one year following the death of the pensioner if the pensioner was "in receipt of attendance allowance" at the time of death (i.e. the attendance allowance was awarded before the date of the pensioner's death).

Exceptional Incapacity Allowance

16. 16. An exceptional incapacity allowance (EIA) may be awarded to a pensioner under the authority of subsection 72(1) of the *Pension Act*. EIA is not available under the *Veterans Well-being Act*.
17. An EIA may be awarded to a pensioner when the following legislative criteria are met:
    a. The pensioner is:
        i. in receipt of a Disability Pension under the *Pension Act* in the amount set out in Class 1 of Schedule I (i.e. 98% or greater); **and**
        ii. suffering with an exceptional incapacity that is a consequence of or caused in whole or in part by the pensioned disability;

        OR

    b. The pensioner is:
        i. in receipt of a Disability Pension in a lesser amount than the amount set out in Class 1 of Schedule I of the Pension Act (i.e. a minimum of 1% but less than 98%), and Prisoner of War compensation paid under the *Pension Act*, a Disability Award, and/or Pain and Suffering Compensation paid under the *Veterans Well-being Act*, where the sum of the percentages is equal to or greater than 98%; **and**
        ii. suffering with an exceptional incapacity that is a consequence of or caused in whole or in part by the pensioned disability

    AND

    c. The pensioner is not in receipt of Additional Pain and Suffering Compensation (APSC);

    AND

    d. The pensioner is not eligible for APSC.
18. A Veteran who is receiving the EIA under the Pension Act is not eligible to be paid APSC.
19. 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.
20. A Veteran who is receiving the APSC is not eligible to be paid the EIA.
21. 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 given 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 given EIA.
22. 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 given EIA (and any APSC decision under section 75.2 would be withdrawn.)

23. For additional information on the APSC, see APSC Policy.
24. As per subsection 72(2) of the *Pension Act*, the factors of helplessness, continuing pain and discomfort, loss of enjoyment of life and shortening of the life span are taken into consideration in determining entitlement for an EIA. Other factors, if significant, may also be considered. Usually a pensioner will be suffering to an exceptional degree or scope from one or more of the four factors. Occasionally only one factor is exceptional. On the other hand, none of the factors may be of exceptional degree individually, but the combination of the four factors may produce an exceptional incapacity which would allow for a lower grade level assessment.
25. As per subsection 72(3) of the *Pension Act*, the degree to which the incapacity is lessened by treatment or by the use of prostheses can be taken into account in determining an amount of an allowance. This recognizes that a pensioner whose incapacity has been assessed and is less because of the use of a prosthesis has a degree of function superior to that of the pensioner who has not been able to use a prosthesis and whose incapacity has not been so lessened.
    a. There is no definition of prostheses provided in the *Pension Act* and there are no words limiting its meaning, therefore the true and basic meaning must be attributed to it (e.g. an artificial substitute for a missing body part such as an upper limb, lower limb, eye, or tooth). Examples of prostheses are hearing aids, corrective lenses, false teeth, pacemakers and artificial limbs.
26. Further guidance on the determination of whether or not a pensioner is exceptionally incapacitated and the amount of the award (i.e. grade level) can be found in Chapter 7 of the Table of Disabilities.
27. Section 72 of the *Pension Act* does not preclude an award of an EIA to pensioners hospitalized for long term care.
28. As per subsections 29(2) and 72(5) of the Pension Act, an EIA ceases to be paid the first day of the month following the death of the pensioner unless:
    a. the pensioner was in receipt of an EIA; and
    b. the pensioner was receiving additional pension on behalf of a spouse, common-law partner and/or children, with whom he or she was residing at the time of death, or where it is determined that additional pension was payable.

    In this case, the EIA may be continued to the survivor for a period of one year commencing on the first day of the month following the death of the member or Veteran.
29. In lieu of a living survivor, dependent children may continue to receive the EIA in equal payments.
30. Paragraphs 28-29 are not applicable in cases where the EIA was awarded after the pensioner's death under subsections 48(2) and 72(1) of the *Pension Act*. Under 72(5) the EIA may continue to be paid to the survivor for one year following the death of the pensioner if the pensioner "has been awarded an EIA" at the time of death (i.e. the EIA was awarded before the date of the pensioner's death).

References

Application to the Minister

Date Payable - Disability Benefits, Allowances, and Prisoner of War/Detention Benefit Compensation

Pension Act, sections 38 and 72

Review of Decisions

Veterans Well-being Act, sections 60, 61

Additional Pain and Suffering Compensation