

CHAPTER 4**PAIRED ORGAN OR LIMB DISABILITIES****4.01 - Cross Reference to Veterans Affairs Canada Policy Manual**

The provisions of this chapter should be read in conjunction with Article 36 of the Veterans Affairs Canada Policy Manual.

4.02 - Requirements for the Award of Entitlement under the Paired Organ Policy

The requirements for the award of entitlement under the Paired Organ Policy are laid down in Section 36 of the Pension Act which reads as follows:

"Where a member of the forces who is in receipt of a pension on account of the loss of, or permanent loss of the use of one of the paired organs or limbs of his body suffers, either before or after the said loss or loss of use, the loss of, permanent loss of the use of or impairment of that organ or limb from any cause whatever, an additional pension shall, on application, be awarded to that member in an amount equal to fifty percent of the pension that would have been awarded to him if the loss of, permanent loss of the use of or impairment of that organ or limb had occurred in such circumstances that a pension would have been payable under Section 21."

4.03 - Assessment of Disability in the Paired Organ (as opposed to limb)

(Full Entitlement held for Primary Organ)

As paired organs have a complementary and common function, the total loss of one such organ may have little immediate overall effect. Impairment of or loss of the second organ of the pair commonly results in a major increase in disability. Hence, the loss of function must be assessed as a single entity when both organs become pensionable even if the second organ is pensioned under Section 36. This is best illustrated by the example of a veteran pensioned for blindness in the right eye (primary condition) and through natural causes suffers total blindness in the left eye (secondary, would-be-pension condition). If one-half of the normal assessment for the left eye only were to be considered, this would result in an assessment of $\frac{1}{2} \times 30\% = 15\%$ under Section 36. In fact, by losing

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the total sight in the left eye, a complete loss of function has resulted. Therefore, the paired organ assessment under Section 36 should more properly be calculated as:

$$\frac{100\% - 30}{2} = \frac{70\%}{2} = 35\%$$

(See also Examples 1, 2 and 3 in Annex I).

4.04 - Assessment of Disability in the Case of Limbs

(Full Entitlement held for Primary Limb)

The loss of the second limb or loss of use or impairment of the second limb is no less disabling and is assessable in its own right, subject only to the principle that the overall or combined assessments for all pensioned conditions (including the award under Section 36) may not exceed 100%. This is fully demonstrated in Example 4 Annex I.

4.05 - Fractional or Partial Entitlement for Primary Organ or Limb

Entitlement held on a fractional or partial basis only in respect of the primary organ or limb does not preclude an award under Section 36. Indeed, in such cases, the paired organ or limb will be pensioned under Section 36 and pension paid at one-half of the actual disability in the case of a limb, regardless of the size of the fractional entitlement held for the primary organ or limb. In other words, the additional pension in respect of the paired organ or limb will be calculated in accordance with Articles 4.03 and 4.04 above, as appropriate, as if the pensioner held full entitlement for the primary organ or limb. This again is amply demonstrated in Examples 5 and 6, in Annex I.

4.06 - Assessments for Diseases of or Injury to Lungs

Entitlement for pulmonary disease under Section 21 of the Pension Act almost invariably includes both lungs and Section 36 is, therefore, not applicable.

4.07 - Entitlement on a Consequential Basis (Subsection 21(5))

Where the disability in the paired organ or limb is pensionable either on a consequential basis under Subsection 21(5) or under Section 36 of the Pension Act, the condition will be pensioned and assessed under Section 36 only where a greater assessment will

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result. (See Veterans Affairs Canada Policy Manual, Article 36, Paragraph 4).

4.08 - Assessment of Specific Disability in Accordance with the Table of Disabilities

The assessment of a specific disability for which entitlement is awarded under Section 36 will be in accordance with the figures listed in the appropriate Table referring to that disability.

4.09 - Assessment under Section 36 not to be added to other assessments except after death

1. It will be noted from the wording of Section 36 that where an award is made, the pensioner is entitled to an amount equal to 50% of the pension for that condition that would have been awarded to him if the loss of, permanent loss of the use of, or impairment of, that organ or limb had occurred in such circumstances that a pension would have been payable under Section 21. It follows, therefore, that the assessment under Section 36 is not to be added to the assessments for other pensioned conditions to give a total combined assessment but is to be shown as a separate assessment. For example, in Example 3 in Annex I, attached, the award under Section 36 amounts to 7½%. The Veterans Affairs Canada 865 will reflect the last line of the calculation as shown in the example and the actual award will be shown as 7½%. The pensioner will then be paid one-half of the rate applicable to his status at the 15% rate in terms of dollars and cents.
2. Where the primary condition is pensioned at 5% or more, and where 50% of the actual assessment for an organ or limb pensioned under Section 36 results in a percentage of less than 5%, an additional monthly pension based on one-half of the actual assessment will be paid. This applies in all cases irrespective of the actual assessment of the paired organ or limb, even though this may be less than 5%, e.g. (1) given an actual assessment of 5% for the paired organ/limb under Section 36, the award will be shown as $\frac{1}{2} \times 5\% = 2\frac{1}{2}\%$, and a monthly pension at one-half of the 5% and monthly rates are not listed. Given an actual assessment of 4% for the paired organ or limb, the equivalent of a monthly pension at this rate will be calculated as $\frac{4}{100} \times 100\%$ rate. The award will be shown as $\frac{1}{2} \times (4/100 \times 100\%)$ and a monthly pension will be paid at this rate.

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3. Where the primary organ or limb is pensioned at less than 5%, and the paired organ or limb is assessed at 5% or more, a gratuity only will be paid in respect of the primary organ or limb and a monthly pension equal to one-half of the assessment of the paired organ or limb will also be paid (see Example 7 in Annex I).
4. Where the primary condition is pensioned at less than 5% and the paired organ or limb pensioned under Section 36 is assessed at less than 5%, a gratuity only will be paid for the primary condition, and an additional gratuity equivalent to one-half of the actual assessment of the paired organ or limb will be paid (see Example 8 in Annex I).
5. While pensions for awards under Section 36 must be paid in accordance with paragraph 1 during the pensioner's lifetime, after his death, the award will be added to the assessments for all other pensioned conditions for the purposes of determining Survivor Benefits under Section 45, 48(3), 49 and Subsections 34(6) and (7). For these provisions of the Pension Act, assessments consisting of a whole number and fraction will be taken to the next higher whole number, e.g. 7½% will be taken to 8%.
6. Further, during the pensioner's lifetime, awards under Section 36 are to be to assessments for all other pensioned conditions to determine whether the pensioner is totally disabled for Exceptional Incapacity Allowance purposes within the meaning of Section 72 and are to be considered as a factor to determine whether, and the extent to which, the pensioner may be exceptionally incapacitated for the purposes of Section 72. Assessments consisting of a whole number and a fraction will be taken to the next higher whole number.

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4.10 - Examples - An Integral Part of Instruction

The examples or illustrations contained in Annex I to this Chapter, form an integral part of this instruction and are to be read and used in conjunction with this instruction.

EXAMPLES		ANNEX I
1.	Entitlement under Section 21 for loss of vision Right Eye	
		Assessment = 30%
	Award under Section 36 for loss of vision Left Eye	
	Assessment of entire visual disability = 100%	
	Left Eye pensioned at $\frac{(100 - 30)}{2} = \frac{1}{2} \times 70\% = 35$	
	Total award: 30% + 35% = 65%	
2.	Entitlement under Section 21 for loss of Right Eye	
		Assessment = 40%
	(Loss of vision 30% and loss of eye 10%)	
	Award under Section 36 for impaired vision left eye 6/24	
	Assessment of entire visual disability = 80%	
	Left Eye pensioned at $\frac{(80 - 30)}{2} = \frac{1}{2} \times 50\% = 25\%$	
	Total award: 40% + 25% = 65%	
3.	Entitlement under Section 21 for (total) deafness Right Ear	
		Assessment = 20%
	Award under Section 36 for impaired hearing left ear (35 d.b.)	
	Assessment of entire hearing loss = 35%	
	Left ear pensioned at $\frac{(35 - 20)}{2} = \frac{1}{2} \times 15\% = 7\frac{1}{2}$	
	Total award: 20% + 7$\frac{1}{2}$% = 27$\frac{1}{2}$%	
4.	Entitlement under Section 21 for mid thigh amputation Right Leg	
		Assessment = 70%
	Award under Section 36 for below knee amputation left leg	
		Assessment = 50%

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	Left leg pensioned at $\frac{1}{2} \times 50\% = 25\%$
	Total Award: $70\% + 25\% = 95\%$

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5.	Entitlement under Section 21, on a 2/5ths aggravation basis, for (total) deafness Right Ear
	Assessment of entire hearing loss = 35%
	Pensioned at - 8%
Award under Section 36 for impaired hearing left ear (35 d.b.)	
	Assessment of entire hearing loss = 35%
	Left ear pensioned at $(35 - 20) = \frac{1}{2} \times 15\% = 7\frac{1}{2}\%$
	Total award: $8\% + 7\frac{1}{2}\% = 15\frac{1}{2}\%$
6.	Entitlement under Section 21, on a 1/5th aggravation basis for below knee amputation Right Leg
	Assessment = 50%
	Pensioned at - 10%
Award under Section 36 for mid-thigh amputation left leg	
	Assessment = 70%
	Left leg pensioned at $\frac{1}{2} \times 70\% = 35\%$
	Total award: $10\% + 35\% = 45\%$
7.	Entitlement under Section 21, on a 1/5th aggravation basis, for (total) deafness Right Ear
	Assessment = 20%
	Pensioned at - 4%
Award under Section 36 for impaired hearing left ear (35 d.b.)	
	Assessment of entire hearing loss = 35%
	Left ear pensioned at $(35 - 20) = \frac{1}{2} \times 15\% = 7\frac{1}{2}\%$
	Total award: $4\% + 7\frac{1}{2}\% = 11\frac{1}{2}\%$
	Right (primary) ear - Final payment of 4%
	Left ear - monthly pension of $7\frac{1}{2}\%$
8.	Entitlement under Section 21 for loss of right testicle
	Assessment = 4%
Award under Section 36 for Spermatocele left testicle	

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	Assessment = 3%
	Total award: 4% + 3% = 7%
Final payment of 4% for right testicle	
Final payment at half of 3% for left testicle.	