

Chapter 7 EXCEPTIONAL INCAPACITY ALLOWANCE

7.01 - Cross Reference to the VAC Policy Manual

The provisions of this Chapter should be read in conjunction with article 72(1) and article 72(3) (4) of Veterans Affairs Canada Policy Manual.

7.02 - Requirements for the Award of Exceptional Incapacity Allowance

The requirements for the award of Exceptional Incapacity Allowance 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 E.I.A.

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 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 (I-28), e.g. ability to work, social activities, family problems, etc. In any case, the pensioner must be in receipt of a Class I pension before he is considered eligible for E.I.A.

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 has left him in a helpless condition and/or in continuing pain and discomfort and/or has resulted in loss of enjoyment of life and/or shortened his life expectancy and/or any other criteria of similar or like nature (I-15), e.g. psychological considerations. Any or all of the enumerated factors need not be individually present to an exceptional degree (I-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 primary conditions, the whole of the pensioned consequential conditions (*partially pensioned conditions are considered as wholly pensioned conditions for purpose of considering an E.I.A) and those non-pensioned conditions which are shown to affect, or be affected by the pensioned conditions (I-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 and non-pensioned conditions in a severely disabled person and in such cases, one can fairly assume such impact exists.

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7.04 - General Approach...CONTINUED

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. 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 predicated wholly on pensionable 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 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 E.I.A. 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 (I-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 E.I.A. is paid whether the member is living at home or in an institution or a 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 he is receiving pension has:

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

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7.05 - Determining Factors...CONTINUED

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 himself, his 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 man 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

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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 his 80"s, the presence of a pensioned 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 Veterans Affairs Canada 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 Veterans Affairs Canada in order to provide appropriate consistency and predictability of adjudication.
2. Notwithstanding the establishment of these guidelines with reference to the grade levels for Exceptional Incapacity Allowance, it will be necessary for Veterans Affairs Canada 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 Exceptional Incapacity Allowance to be awarded in individual applications may include non-medical evidence and documentation in addition to medical evidence and

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documentation. (See Interpretation Hearing I-28, Pension Review Board.)

5. It is to be recognized with reference to multiple disability claims that the inter-relationship of pensioned disabilities and non-pensioned conditions is a strong element in a high majority of such applications and will have to be given due consideration by Veterans Affairs Canada in adjudicating the individual grade levels of Exceptional Incapacity Allowance. (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 Veterans Affairs Canada, including the following:
 - a) The Federal Court of Appeal Decision of January 25, 1980, in relation to Exceptional Incapacity Allowance;
 - b) Interpretation Decisions of the Pension Review Board (I-15, I-22, I-27, I-28);
 - c) The Veterans Affairs Canada 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 Exceptional Incapacity Allowance pursuant to Section 72 of the Canada Pension Act:

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7.06 - The Determination of Grade Levels under Section 72...CONTINUED

Grade Five

a) Incapacity suffered as a consequence of the inter-relationship of pensioned disabilities which produces a synergistic effect on the veteran's ability to cope with his general state of disablement. This concept recognizes that a severe incapacity can result from the veteran's pensioned disabilities making up his 100% pension;

or

b) Incapacity resulting from the onset of a minor non-pensioned condition(s) which affects or is affected by the pensioned disabilities of the veteran/applicant;

or

c) Incapacity arising as a consequence of the aging factor, the degree of helplessness, the loss of enjoyment of life, the extent of pain and discomfort, the shortening of life expectancy, psychological complications or other material E.I.A. factors, wherein such factors impact on the ability of the applicant to manage his pensioned 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 the applicant is approaching a state whereby his 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 Exceptional Incapacity Allowance 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, et 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.

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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 Exceptional Incapacity Allowance 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 conditions and the pensioned 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 his 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 Exceptional Incapacity Allowance 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 conditions and the pensioned 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

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7.06 - The Determination of Grade Levels under Section 72...CONTINUED

carry on with his day to day activity and the veteran is approaching the need for institutionalization due to the seriousness of his 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 Exceptional Incapacity Allowance with particular regard to the prerequisites outlined in subparagraphs (a), (c), (d) and (e) of the Grade Five profile description;

Grade One

or

- b) The severity of the cumulative effect of the non-pensioned conditions and the pensioned 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 his day to day activity or in circumstances where the applicant is institutionalized due to the seriousness of his 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 pensioner indicates his/her wish to apply for an Exceptional Incapacity Allowance 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 s/he receives pension at Class 1 rates, the effective date of the award would be the date of application. In no case shall the effective date of an Exceptional Incapacity Allowance pre-date the date of the decision awarding a Class 1 pension.

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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 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.

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TABLE TO ARTICLE 7.09		
<u>Exceptional Incapacity</u>		<u>Rate</u>
<u>Paraplegia:</u>		
1.	Paraplegics (total cord lesion)	GRADE 1
<u>Amputations:</u>		
2.	Quadruple and triple amputees	GRADE 1
3.	Totally confined to a wheelchair	GRADE 2
	self-propulsion not possible	
4.	Totally confined to wheelchair	GRADE 3
	propelled by pensioner	
5.	Bilateral above-elbow amputee	GRADE 3
6.	Bilateral above knee amputee	GRADE 4
7.	Bilateral upper limb amputee,	GRADE 4
	1 below elbow, 1 above elbow	
8.	Double amputee, 1 above knee,	GRADE 4
	1 above elbow	
9.	Bilateral amputee, 1 above knee,	GRADE 5
	1 below knee	
10.	Double amputee, 1 above knee	GRADE 5
	1 below elbow	
11.	Bilateral below elbow amputee	GRADE 5
12.	Bilateral below knee amputee	GRADE 5
13.	Double amputee, 1 below elbow,	GRADE 5
	1 below knee	
<u>Blindness:</u>		
14.	Total blindness (no perception of light)	GRADE 1
	with a significant secondary disability	

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TABLE TO ARTICLE 7.09....CONTINUED		
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 out doors	GRADE 5
Exceptional Incapacity		Rate
<u>Loss of Bladder and Bowel Control:</u>		
19.	Loss of bladder and bowel control has been considered to increase Exceptional Incapacity Allowance by \$400 per annum, or by one grade.	
<u>Psychiatric:</u>		
<u>NOTE:</u>	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 requiring 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 longterm hospitalization as a life-preserving measure, able to care for himself in hospital but with minimal to slight ability to take part in recreational 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