

The New Veterans Charter: What are the Gaps for Special Needs Veterans and their Families?

*Prepared by the Special Needs Advisory Group
For Veterans Affairs Canada
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- 1. There is a gap that the New Veterans Charter (NVC) fails to properly compensate and financially protect Special Needs Veterans and their families.**
 - a) The criteria used to determine the disability award are not representative of the true impact of the disability to the Special Needs Veteran.
 - b) There is no form of Disability Award compensation that recognises catastrophic injury.
 - c) The Disability Award calculation fails to recognize the family of the Special Needs Veteran.
 - d) There is the potential that a Special Needs Veteran in receipt of Earnings Loss Benefit for life may not qualify for Permanent Incapacity Allowance, which was designed to compensate for earning loss potential.

- 2. There is a gap that the NVC does not adequately recognise the families of Special Needs Veterans for the purpose of providing tangible programs, benefits and services.**
 - a) Caregiver services are not being offered to the Special Needs Veteran. This forces the spouse and/or children to become the primary caregiver.
 - b) There is no form of compensation for the economic impact resulting from a family member having to be the primary caregiver of a Special Needs Veteran.

1. There is a gap that the New Veterans Charter (NVC) fails to properly compensate and financially protect Special Needs Veterans and their families.

- a) The criteria used to determine the Disability Award are not representative of the true impact of the disability to the Special Needs Veteran.*

The International Classification of Functioning, Disability and Health (ICF), is a classification system of health and health-related domains developed by the World Health Organization. It is the international standard by which disabilities are defined. The domains within the ICF are classified from body, individual and societal perspectives by means of two lists: a list of body functions and structure, and a list of domains of activity and participation. Since an individual's functioning and disability occurs in a context, the ICF also includes a list of environmental factors.

When determining a Disability Award under the NVC the Quality of Life Conversion Table is used (VAC Table of Disabilities, 2006), which takes into account the levels of impairment and activity, but fails to adequately address participation. Participation, as defined by the ICF encompasses the broad areas of: learning and applying knowledge; general tasks and demands; communication; mobility; self-care; domestic life; interpersonal interactions and relationships; major life areas; community; social and civic life; and environmental factors. All of these areas are critically important when determining the level of disability of an individual.

By these ICF standards, the Quality of Life Conversion Table falls woefully short for the Special Needs Veteran. Imagine the scenario of the soldier who traumatically loses his hand and forearm in combat versus the soldier who has a planned, surgical amputation of his hand and forearm because of an injury that did not heal properly, and this was deemed to be the best course of action medically. Both of these people would be compensated identically under the NVC, however, it is easy to see that the issues for these soldiers may be very different. The soldier injured traumatically could have greater disfigurement and worse psychological repercussions than the soldier who had time to prepare psychologically for an amputation. There are many areas in terms of continuing pain and suffering, loss of enjoyment in life, shortening of life expectancy, and loss of dignity that could be dramatically different, yet these two individuals would be compensated identically under the NVC.

A new rating system that encompasses all areas of an internationally accepted standard, the ICF, must be used to determine a true level of disability of a Special Needs Veteran. Though the NVC states that quality of life is taken into consideration, numerous critical factors are missing which would enable a true assessment of disability, and in fact, when determining percentage of disability, it appears that only the impairment is considered. This must change in order to make the NVC Disability Award equitable for all veterans.

1. There is a gap that the New Veterans Charter (NVC) fails to properly compensate and financially protect Special Needs Veterans and their families.

b) There is no form of Disability Award compensation that recognises catastrophic injury.

The Disability Award does not compensate for catastrophic injuries that invariably Special Needs Veterans suffer. Special Needs Veterans with a single injury assessed at 100% combined with multiple minor pensioned conditions are capped by VAC at 100% and the Disability Award is based solely on the 100% rating. However the cumulative rating of all the pensioned conditions that the Special Needs Veteran may have could be well in excess of 100%. The NVC does not take this into account in the Disability Award determination.

It is possible for some Veterans with multiple less debilitating pensioned conditions to achieve a 100% disability rating through the aggregate rating of all the pensioned conditions. For instance, a Veteran with 5 pensioned conditions each assessed at 20% would be classified as a Special Needs Veteran by virtue of the cumulative effects of each pensioned condition adding up to 100%. It is very possible that this "Special" Needs Veteran while classed as such could be a fully functioning, fully re-integrated veteran, but would be in receipt of a 100% Disability Award and may not have life long debilitating continuing physical or psychological pain and suffering issues.

Whereas, another Special Needs Veteran, for example a quadriplegic, would be entitled to the same 100% Disability Award. Yet this Special Needs Veteran has suffered a singular catastrophic injury and will be severely challenged forever. The Disability Award as it is currently structured does not recognize catastrophic injuries. It is incomprehensible to think that both these Special Needs Veterans examples are similar in awarding an identical Disability Award. There needs to be some form of recognition of exceptional catastrophic injuries that result in a lifetime of continued pain and suffering.

One could argue, based on interpretation of the Canadian Charter of Rights and Freedoms (1982), that the Disability Award could be viewed as discriminating against the most vulnerable, the most severely challenged, the most at risk sub-component of the Special Needs Veteran community by not having a mechanism to recognize and compensate the severely injured particularly those suffering from a catastrophic injury from those with an aggregation of lesser less debilitating injuries. These two types of Special Needs Veterans are not the same and any determination identifying them as the same or equal degree of pain and suffering is discriminatory.

The criteria used in the determination of the Disability Award needs to be revised to ensure that those Special Needs Veterans suffering from permanent, debilitating catastrophic injuries are compensated commensurate with the severity of their injury(ies) recognizing the uniqueness of lifetime of physical or psychological pain and suffering.

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- c) *The Disability Award calculation fails to recognize the family of the Special Needs Veteran.*

VAC, as stated in the Canada Gazette (April 2006), determined that *“The disability award is paid in recognition of pain and suffering, physical and/or psychological loss, functional impairment and impact on the member's or Veteran's overall quality of life and the impact on the lives of the member's or Veteran's family.”* However, the Table of Disabilities only measures the Veteran's loss and does not take into account the Family's loss despite VAC's statement that the NVC is for Veterans and their families.

For example an unmarried bilateral amputee would be assessed at 100% for the determination of the Disability Award. In the same manner, a married bilateral amputee would also be assessed the same 100% for the determination of the Disability Award, without however any recognition of the family (spouse and/or child(ren)) and their pain and suffering. Furthermore, the inevitable secondary trauma syndrome (STS) issues (collateral damage) or the continuing pain and suffering that will be experienced forever by the entire family has not been considered or compensated.

Fast et al (2008) report, *Wounded Veterans, Wounded Families*, contains two sets of recommendations, the very first recommendation 'Entitling families' states *“Wounded families should be entitled to compensation just as are Wounded Veterans.”*

It is very evident that the current structure of the Disability Award fails to recognize the family of the Special Needs Veteran in that it awards identical Disability Awards based solely on the physical or psychological injury to single and married veterans (with or without children) without recognizing the loss that the family has incurred. VAC needs to ensure that the Disability Award calculation recognizes the family of the Special Needs Veteran. VAC needs to demonstrate very clearly how it intends to live up to the NVC assertion that the Family has been considered. The inequality in the criteria determining the Disability Award is clear evidence that VAC has not recognized the Family and their pain and suffering as a result of a service related injury to their loved one.

1. There is a gap that the New Veterans Charter (NVC) fails to properly compensate and financially protect Special Needs Veterans and their families.

- d) *There is the potential that a Special Needs Veteran in receipt of Earnings Loss Benefit for life may not qualify for Permanent Incapacity Allowance, which was designed to compensate for earning loss potential.*

The purpose of the Permanent Incapacity Allowance (PIA), as stated in the Canada Gazette (April 2006), is to compensate the Veteran for the loss of earnings potential and career progression he/she may experience after becoming severely disabled (physically or psychologically) due to military service. However, in certain cases, Veterans on extended Earnings Loss Benefit (ELB) who are permanently unable to work as a direct result of a service-related physical or psychological disability may not qualify for PIA and therefore not receive any form of compensation for the disability's impact on earning's potential and career progression.

As defined in section 40 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act (CFMVRCA) Regulations*, in order to be eligible for PIA, a Veteran must have a "permanent and severe impairment". Although the design of PIA is to compensate for economic loss, nowhere in this program's eligibility criteria is a Veteran's ability to work explicitly considered. It's likely, however, that the disability's impact on a Veteran's earning's potential and career progression is considered implicitly by the nature and extent of the disability. In any case, a Veteran may continue to work and progress in his or her career without affecting his or her eligibility for PIA.

Eligibility for the extended Earnings Loss Benefit (ELB), on the other hand, requires that a Veteran's disability (physical or psychological) be permanent in nature, and must preclude him/her from performing any 'suitable gainful' occupation. According to the Veterans Program Policy Manual (Vol. 5), a Veteran deemed as having a 'total and permanent incapacity' (TPI) will be eligible to receive the extended ELB. A TPI assessment, resulting in the eligibility for extended ELB, represents a substantial impact on earnings potential and career progression since the extended ELB relegates the Veteran to collecting only 75% of their pre-release salary without any pay increases until they reach the age of 65 (or cease to be TPI). If a Veteran ceases to have a TPI, he/she will still have suffered (and may continue to suffer) a loss in earnings potential and career progression for the period of time they were unable to work.

The rigid eligibility criteria for PIA may preclude some Veterans from receiving the deserved compensation that PIA was designed for. Compare the following two case scenarios, for example:

Case 1: A Captain is injured in a mine blast and loses both legs below the knee. This Veteran completes rehab, and re-enters the workforce in a managerial position which he received due to his rank and prior education. This veteran will collect PIA at Grade

level 2 and very plausibly continue to have a successful career including salary increases and promotions.

Case 2: A Private is injured in a mine blast, does not lose any limbs, but suffers severe chronic pain due to the blast injury to his back. This Veteran is not able to complete rehab and is assessed as having a TPI. The veteran is placed on extended ELB but does not meet the eligibility requirements for PIA. In this scenario the veteran collects only 75% of his pre-release salary without any chance of salary increases or promotions.

In comparing these two cases it is evident that the stringent PIA eligibility is preventing the allowance from going to the veteran whose need for it is the greatest.

The PIA and extended ELB programs are valuable programs that should be made available to all those who deserve them. A Veteran who cannot work due to a permanent physical or psychological incapacity must receive compensation for the impact that his/her incapacity will have on earning's potential and career progression and should thus be eligible for PIA.

2. *There is a gap that the NVC does not adequately recognise the families of Special Needs Veterans for the purpose of providing tangible programs, benefits and services.*

a) Caregiver services are not being offered to the Special Needs Veteran. This forces the spouse and/or children to become the primary caregiver.

Fast et al (2008) *Wounded Veterans, Wounded Families* report findings conclude that “families have suffered as a result of the service–related disabilities of [a special needs] Veteran. As such, it is apparent that the most significant issues occur in family members and spouses as a result of being forced to become the primary caregivers to a Special Needs Veteran when there are no caregiver resources, including respite care, available or provided through VAC.

VAC has identified family support to “CF Families” as the following; case management services, individual and family counselling services, health benefits, rehabilitation services, and other survivor benefits. However, it is clear that the resources available to families do not “include” families as a separate and functioning system. Indeed, the commitment to families is not apparent in the Canadian Forces Members and Veterans Re-establishment and Compensation Act (2005) or the Regulations pertaining to the Act.

Issues that arise, however, from forcing the spouse or children of a Special Needs Veteran to become the de facto Primary Caregivers are that this changes the family dynamics of the family system. The family system refers to the relationships and roles that family members fulfill in their daily lives with each other. For the purposes of this paper, we will refer to the family system as a “closed system.” This means that a “change in one part of the system will effect a change in another part.” In the Special Needs Veteran’s family system, if the veteran is ailing or cannot fulfill their customary role, the spouse or child(ren) typically take over the role. Without proper caregiver support services offered by VAC, there becomes the risk of marital and family stress and discourse due to the changing of the roles and dynamics.

Although VAC relies on the family of Special Needs Veterans to act in a caregiving role, spouses and children are not trained to be “professional caregivers and personal attendants”. As such, without the training, there becomes the risk of poor care for the Veteran and, for the family; the risk of caregiver burnout becomes extremely relevant. Indeed, as VAC has indicated with its web document, *Protect Yourself Against Caregiver Burnout!* (1999), “caregiving can be extremely demanding”, yet fails to provide any assistance or direct support to the caregiver. Fast et al (2008) research demonstrates that “caregivers felt that they and their families are invisible” and support from VAC does not include the family.

VAC needs to provide/offer caregiver services to the Special Needs Veteran and his/her family in order to live up to the spirit of the NVC where the family is recognized and needs to be fully considered.

2. There is a gap that the NVC does not adequately recognise the families of Special Needs Veterans for the purpose of providing tangible programs, benefits and services.

b) There is no form of compensation for the economic impact resulting from a family member having to be the primary caregiver of a Special Needs Veteran.

The burden and economic impact on caregivers is poorly understood. Grunfeld et al (2004) found that a majority of caregivers experienced an adverse impact on their employment. As workforce participation increases, caregiving could pose even greater financial challenges for many spouses of Special Needs Veterans that work, due mostly to lost wages from reduced work hours, under employment or time out of the workforce. This time out of the workforce for caregiving may compound the emotional and economic impact of the family system. Furthermore, caregiving is expensive in and of itself and can have a significant and negative economic impact on a family. The National Alliance for Caregiving, (1998) study found that 49% of women caregivers suffered “financial hardship” as a result of their caregiving. Additionally, Dettinger, E., & Clarkberg, M., (2002) found that while the costs of providing care are high, the demands on caregivers’ time are also substantial.

Spouses are not provided any form of remuneration from VAC to be compensated for assuming the primary caregiver role for a Special Needs Veteran (with the understanding of the career and economic impact leaving the work force or not having the opportunity to join the work force). Also, it appears that the spouse and/or family of a Special Needs Veteran are not provided any other caregiving opportunities through VAC, such as training or paid respite support. Furthermore, there are no options provided by VAC to the spouse and/or family that give the spouse the option to hire a caregiver service or be paid directly for providing primary caregiving services themselves.

Single Special Needs Veterans have different support needs than married veterans and in many of these cases the parents become the primary caregivers as they are the family. These parents may be older and not sure how to provide care at the appropriate levels to their (adult) children, perhaps to the detriment of the veteran and to the well being of the parents themselves.

VAC needs to recognize the family (spouses, significant others, children and parents) as an integral part of the Special Needs Veteran’s life and in those instances where caregiving services are required VAC needs to compensate the family member(s) who are providing primary caregiver support in recognition of the economic impact on the family.

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