

# **DMG Chapter 61: Attendance Allowance and Disability Living Allowance**

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## **General rules on entitlement 61001 - 61050**

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# Introduction 61001 - 61020

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## AA

61001 AA is a benefit designed to help severely disabled people who need

1. attention from another person **or**
2. supervision from another person **or**
3. another person to watch over them.

61002 There is only one AA component made with two rates which are

1. the higher rate **and**
2. the lower rate.

Severely disabled people may be entitled to either of these rates. The rate depends on the level of attention, supervision or watching over a person needs<sup>1</sup>.

1 SS CB Act 92, s 64

61003 - 61007

## DLA

61008 DLA is a benefit that depends on a person's need for care and help with mobility arising from a

disability<sup>1</sup>. It is the functional deficiency, physical or mental **and** whether

**1. care needs or**

**2. mobility needs or**

**3. both care and mobility needs**

which result from the functional disability satisfy any of the entitlement conditions<sup>2</sup>.

1 R(DLA) 3/06; 2 SS CB Act 92, s 72(1)(a) to (c) & 73(1)(d)

### **Example**

Amy, aged nine, has behavioural problems and learning difficulties. Medical evidence indicates mental health problems but there is no diagnosis as to the disabilities which Amy suffers. The DM accepted that, despite no diagnosis, Amy

was unable to control her behaviour and was at risk of substantial danger requiring continual supervision throughout the day. The DM accepted that the supervision Amy required was substantially in excess of a nine year old who does not have Amy's disability.

61009 DLA is made up of two components. These are

**1. the care component and**

**2. the mobility component.**

A disabled person may be entitled to one or both components. See guidance in DMG 61603 for claims with evidence of one component only.

61010 There is a range of disability conditions relating to care and mobility needs. Satisfying any one of the conditions gives entitlement.

61011 There are three rates of the DLA care component and two rates of the DLA mobility component. The rate of benefit payable depends on which of the disability conditions are satisfied.

### **Primary qualifying conditions**

61012 The three primary qualifying conditions which apply to AA and DLA are

**1. age and**

**2. residence, presence and competency and**

**3. disability.**

Although there is no formal order of consideration of these conditions, if either of the first two are not satisfied, then the third need not be considered.

## Age

61013 To be entitled to AA a person must be

1. pensionable age or over **and**
2. not entitled to DLA or PIP<sup>1</sup>.

**Note:** From 6.12.18<sup>2</sup> the age condition changed from age 65 to pensionable age<sup>3</sup>. See DMG Chapter 75 for guidance on the meaning of pensionable age.

1 SS CB Act 92, s 64(1); SS (DLA) Regs, Sch 1, para 7; WRA 12, s 83, SS (PIP) Regs, reg 25-27;  
2 Pensions Act 07, s 13(3); 3 SS CB Act 92, s 64(1)

61014 To be entitled to DLA a person must be

1. under pensionable age **and**
2. in the case of

**2.1** the lower rate of the mobility component, aged five or over (see DMG 61251 et seq) **or**

**2.2** the higher rate of the mobility component, aged three or over (five years or over before 09.04.01).

**Note:** From 6.12.18<sup>1</sup> the age condition changed from being under age 65 to being under pensionable age<sup>2</sup>. See DMG Chapter 75 for guidance on pensionable age.

1 Pensions Act 07, s 13(3); 2 SS CB Act 92, s 75(1)

## The residence and presence and competency conditions

61015 To become entitled to AA or DLA a person must satisfy the residence and presence conditions, and competency condition, under UK law (see DMG Chapter 07).

## Day for payment of AA and DLA

### AA

61016 AA is a weekly benefit payable on Mondays unless

1. it is linked with another benefit **and**

**2.** the DM arranges for it to be paid on that benefit's payday<sup>1</sup>.

There are also circumstances when AA can be paid daily (see DMG 61881 et seq).

1 SS (C&P) Regs, reg 22(3) & Sch 6

## **DLA**

61017 DLA is a weekly benefit, payable on Wednesdays, unless

**1.** it is combined with another benefit **and**

**2.** the DM arranges for it to be paid on that benefit's payday<sup>1</sup>.

1 SS (C&P) Regs, reg 22(3) & Sch 6

61018 The amount payable is the total of the care component and mobility component awarded. It is normally paid four weekly (see DMG 61017 for exceptions). But in certain cases it can be paid on a daily basis (see DMG 61881 et seq).

61019 Following the transition from AA to DLA, former AA recipients retain the right to weekly payments and Monday paydays. If DLA is combined with another benefit, it is paid at the same interval as the other benefit.

## **Provision of NINO**

61020 For AA and DLA there is a specific requirement<sup>1</sup> for a claimant to provide sufficient information or evidence to establish their NINO. See DMG Chapter 02 for full guidance.

1 SS A Act 92, s 1(1A) & (1B)

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### Customer Case Management Adult and Children's Medical Guidance

61021 General information on the likely care and mobility needs arising from the more commonly occurring medical conditions can be found in the Customer Case Management Adult and Children's Medical Guidance.

61022 The Medical Guidance is available to all DMs. They are produced by Medical Policy in consultation with

1. the DLA Advisory Board **and**
2. many organizations representing disabled people and health professionals.

61023 The Medical Guidance provides information which can help the DM to understand the evidence provided on claims. It is also useful in helping the DM to decide when and from whom to seek further medical advice. References to the Medical Guidance will be made in this Chapter.

### Referrals to Medical Services

61024 If the DM has difficulty in interpreting the medical evidence the case may be referred to Medical Services for advice. In the event of an appeal, the advice should be put before the tribunal for comment. DMs should consider the guidance in DMG Chapter 03 when giving consideration to a medical opinion. Where the Medical Services advice conflicts with the claimed needs, the DM should consider whether further evidence needs to be obtained.

**Note:** Medical Services have no authority to determine claims and cannot advise directly on whether a person satisfies one of the disability tests.

61025 Before submitting a case to Medical Services, the DM should be clear on why help is needed. Examples of cases where Medical Services may help are where

1. there is a discrepancy between

- 1.1 the description of the effects of a particular condition in the Medical Guidance **and**

**1.2** any evidence submitted by the claimant **or**

**2.** there are inconsistent statements in the claim pack **or**

**3.** there is a corroborative statement which is inconsistent with claimed needs **or**

**4.** the medical condition does not appear in the Medical Guidance **or**

**5.** a prognosis is needed to help in determining duration of award **or**

**6.** there is doubt as to what type of further evidence may be needed.

61026 Any request for medical advice should normally contain

**1.** a brief explanation of the problem **and**

**2.** a list of the evidence **and**

**3.** any authorities consulted.

All sources of reference should be shown. This indicates to Medical Services how far the DM has progressed in the investigations.

61027 The questions should refer specifically to the effects of the medical conditions in each individual case. General inquiries about disability needs arising from a particular medical condition should be avoided where possible. General advice may not always be relevant and may be misleading.

## **Examination and report**

61028 If the evidence in the claim form and advice from Medical Services is still insufficient to decide the disability questions, the DM may

**1.** request further evidence such as a report from the GP's or hospital's records

**2.** request a HCP examination report<sup>1</sup>.

**Note:** The DM may request other reports, for example from a physiotherapist, as necessary

1 SS Act 98, s 19(1)(a)

61029 Reports will be provided by a HCP approved by the Secretary of State<sup>1</sup>. A HCP<sup>1</sup> is a

**1.** registered medical practitioner **or**

**2.** registered nurse **or**



**3.** registered occupational therapist or physiotherapist<sup>2</sup>**or**

**4.** member of such other regulated profession<sup>3</sup> as prescribed.

**Note:** For the purposes of **4.** no other professions have been prescribed as HCPs at present.

1 SS Act 98, s 39(1); 2 Health Act 1999, s 60; 3 NHS Reform & Health Care Professions Act 2002, s 25(3);  
SS Act 98, s 39(1)

### **Failure to attend for examination**

61030 The DM must decide the claim or revise the decision against the person<sup>1</sup> if the DM refers the person to a Medical Adviser or HCP (see DMG 61028) **and** the person fails to attend for examination without good cause.

**Note:** Further information on medical evidence can be found at DMG Chapter 01.

1 SS Act 98, s 19(3)

61031 - 61050

## **AA and DLA care component 61051 - 61250**

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# AA and DLA care component - the disability conditions 61051 - 61080

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## AA and DLA care component - the disability conditions

61051 To satisfy the disability conditions for AA, a person must need<sup>1</sup>

1. attention from another person **or**
2. supervision from another person **or**
3. another person to watch over them.

1 SS CB Act 92, s 64(2) & (3)

61052 To satisfy the disability conditions for the DLA care component, a person

1. must need<sup>1</sup>

**1.1** attention **or**

**1.2** supervision **or**

**1.3** watching over

as in DMG 61051 **or**

2. cannot prepare a cooked main meal even if they have the ingredients<sup>2</sup>.

1 SS CB Act 92, s 72(1)(b) & 72(1)(c); 2 s 72(1)(a)(ii)

## The day condition

61053 The day condition is satisfied if a person is so severely disabled physically or mentally that, they require from another person

1. frequent attention throughout the day in connection with bodily functions<sup>1</sup>**or**
2. continual supervision throughout the day in order to avoid substantial danger to themselves or

others<sup>2</sup>.

1 SS CB Act 92, s 64(2)(a); s 72(1)(b)(i); 2 s 64(2)(b), s 72(1)(b)(ii)

## The night condition

61054 The night condition is satisfied if a person is so severely disabled physically or mentally that, **at night** they require

**1.** prolonged or repeated attention in connection with bodily functions from another person<sup>1</sup>**or**

**2.** another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over them in order to avoid substantial danger to themselves or others<sup>2</sup>.

1 SS CB Act 92, s 64(3)(a), s 72(1)(c)(i); 2 s 64(3)(b); s 72(1)(c)(ii)

## Rates of AA

### Higher rate

61055 AA is payable at the higher rate if a person satisfies **both** the day condition and the night condition or is terminally ill (see DMG 61491 et seq)<sup>1</sup>.

1 SS CB Act 92, s 65(3)

### Lower rate

61056 AA is payable at the lower rate if a person satisfies **either** the day condition or the night condition<sup>1</sup>.

1 SS CB Act 92, s 65(3)

61057 - 61060

## Rates of DLA care component

### Highest rate

61061 The highest rate is awarded to people who are so severely disabled physically or mentally that they satisfy the day condition (DMG 61053) **and** the night condition (DMG 61054)<sup>1</sup>.

1 SS CB Act 92, s 72(4)(a)

### Middle rate

61062 The middle rate is awarded to people who are so severely disabled physically or mentally that

they satisfy the day condition (DMG 61053) **or** the night condition (DMG 61054)<sup>1</sup>.

1 SS CB Act 92, s 72(4)(b)

## Lowest rate

61063 The lowest rate is awarded to people who are so severely disabled physically or mentally that

- 1.** they need attention from another person for a significant portion of the day in connection with their bodily functions (whether during one period or a number of periods)<sup>1</sup> **or**
- 2.** they cannot prepare a cooked main meal for themselves even if they have the ingredients<sup>2</sup> (provided they are 16 years old or over).

1 SS CB Act 92, s 72(1)(a)(i); 2 s 72(1)(a)(ii)

## Change of rate

61064 A person may be awarded only one of the rates. If a person

- 1.** has satisfied the disability condition at a lower rate for three months **and**
- 2.** then begins to satisfy the conditions for a higher rate

only the lower rate is payable until the conditions for a higher rate component have been satisfied for three months<sup>1</sup>.

1 SS CB Act 92, s 72(4)

## Example

A woman makes a claim on 6 February. She has satisfied the conditions for the middle rate for over three months. On 8 January, her condition has deteriorated and the conditions for the highest rate are now satisfied. The DM awards the middle rate from 6 February and the highest rate from 8 April.

## Special provisions

61065 Special provisions apply for people who are

- 1.** terminally ill<sup>1</sup> (see DMG 61491 et seq) **or**
- 2.** under 16 years of age<sup>2</sup> (see DMG 61520 et seq) **or**
- 3.** undergoing renal dialysis<sup>3</sup> (see DMG 61220 et seq).

1 SS CB Act 92, s 72(5); 2 s 72(1A); 3 SS (DLA) Regs, reg 7



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### Preparation of the cooked main meal

61081 The “main meal test” determines a person’s ability to perform key daily tasks. It is a hypothetical test to calibrate the severity of a person’s disability<sup>1</sup>. It is not a test of cooking ability or of the person’s ability to survive or enjoy a reasonable diet without assistance. It is a measurement of a person’s physical and mental capacity to carry out complex functions. A cooked main meal means a meal for one person freshly cooked on a traditional cooker.

**Note:** This applies to the lowest rate of the DLA care component only.

1 Moyna v. Secretary of State; R(DLA) 7/03

61082 The definitive interpretation of the cooking test is now that of the House of Lords<sup>1</sup>. This requires taking a broad view over the relevant period of time taking into account the available evidence of the claimant’s abilities and testing them against the hypothetical test. This can be done by looking at the

person's abilities to perform activities involved in cooking, including direct evidence of actual difficulties with cooking, such as gripping, lifting, bending, planning, as well as indirect evidence of other activities using the same bodily functions that are normally used in cooking, for example, eating, washing, driving, shopping, cleaning, being aware of danger, or any other physical or mental activity using the same bodily functions as are normally used in cooking.

1 Moyna v. Secretary of State; R(DLA) 7/03

61083 The meal must be a traditional one and freshly prepared on a daily basis, not a pre-prepared or frozen meal which merely requires reheating. Factors such as diet, culture and the type of facilities or equipment available are not relevant to the test. Whether a person **actually** prepares and cooks a main meal is not the issue; it is whether that person is capable of performing the necessary skills such as

1. handling utensils
2. turning water, electricity and gas taps on and off
3. peeling and chopping vegetables
4. using a cooker
5. coping with hot pans.

**Note:** This list is not exhaustive.

61084 People unable to perform the tasks associated with preparing a cooked main meal for themselves are not normally able to carry out other daily tasks which require similar skills.

61085 Claimants who can physically manage all the tasks necessary to prepare a cooked main meal, could satisfy the test if they would be at risk of injury whilst cooking. The risk must be of real and tangible danger.

### **Example**

John has epilepsy and experiences frequent fits without warning. Although he is physically capable of performing the tasks needed to prepare the cooked main meal there is a risk that he might have a fit whilst chopping vegetables or standing over a cooker. He cannot prepare a daily cooked meal because the disability makes the task dangerous and so he therefore satisfies the test.

61086 The ability to plan a main meal is also important. Some people who have a mental disability may be able to carry out all the different tasks involved separately, but may still be unable to prepare and cook a main meal. This is because they cannot plan it or do all the necessary tasks in a logical way without help.

61087 Claimants who are unable because of mental disability to start to prepare a meal or to carry it



through once started, will satisfy the condition. The lack of motivation to cook or the fear of cooking must be the result of mental disability.

61088 - 61100

## **Attention with bodily functions**

61101 Attention is defined as some personal service of an active nature in connection with bodily functions, including

- 1.** breathing
- 2.** dressing
- 3.** drinking
- 4.** eating
- 5.** eliminating waste products
- 6.** getting into or out of bed
- 7.** hearing
- 8.** seeing
- 9.** sitting
- 10.** sleeping
- 11.** walking
- 12.** undressing **and**
- 13.** functions of the brain<sup>1</sup>.

It does **not** in general include cooking, shopping, keeping the house clean, or other domestic tasks which are commonly done by one person for the benefit of another<sup>2</sup>.

1 R(DLA) 1/07; 2 R(A) 2/80 Appendix

61102 Where a domestic task is closely associated with a bodily function and performed as part of a continuous single episode of attention in connection with that bodily function, the domestic task may form part of that episode of attention<sup>1</sup>.

## Example

A disabled person with arthritis is incontinent at night. Because of the arthritis she needs help to change and wash her soiled clothing and bedding. If after helping her to change the carer rinses or puts the soiled clothing and bedding to soak, that will form part of the attention being given. The consequences of the incontinence must be dealt with on the spot to qualify.

61103 Attention must be required to be provided in the physical presence of the disabled person and will generally involve physical or personal contact. It may also be given by means of the spoken word, only where there is physical presence. Examples of attention by means of the spoken word include

1. guiding a blind person in unfamiliar surroundings will involve giving oral directions
2. reading personal correspondence to a person with a visual impairment
3. encouraging a person with a mental disability or illness to eat, wash, dress, get out of bed or some other activity where he would not otherwise do so.

This list is not exhaustive. Also, DMs must not overlook the need to check the usual requirements of mental/physical disablement and whether that is **so severe** that the person reasonably requires attention (not merely assistance) in connection with one or more specific “bodily function”, and what precisely the relevant impairment of function is.

61104 The DM should look at the evidence and consider<sup>1</sup>

1. whether the person has a disability
2. what bodily functions are impaired
3. whether the person reasonably requires attention in connection with those functions
4. how often the attention is required and how long it takes.

1 Mallinson v. Secretary of State for Social Security; R(A) 3/94

61105 To satisfy the conditions of entitlement, attention has to be reasonably required, not medically required<sup>1</sup>. However, any medical attention (such as from a District Nurse), that is reasonably required should be aggregated with other attention requirements, giving consideration to frequency as well as quantity. It is the amount of attention **regularly required** that is the determining factor, not the amount of attention **received**. (See DMG 61535 also).

1 R(A) 3/86

## Example

Someone may provide more attention than is actually needed. They may check if the person needs to go to the toilet during the night when there is no evidence of incontinence.

61106 The amount of attention required to satisfy the conditions of entitlement is not defined in legislation. This should be decided from the

**1.** frequency and pattern of the person's need for attention **and**

**2.** evidence of the person's requirements over a period of time<sup>1</sup>.

**Note:** Someone may manage without attention even though it is reasonably required.

1 R(A) 2/74; R(A) 4/78

61107 Attention required to enable a person to carry out a reasonable level of social or leisure activity is reasonably required<sup>1</sup>. The DM should consider whether it is reasonable for a person with the claimant's disability to want to undertake a particular activity. It may be that there are activities in which the disabled person cannot take part, whatever attention is given. Such attention is not reasonably required.

1 Secretary of State for Social Security v. Fairey; R(A) 2/98

61108 Examples of bodily functions for which attention may be required are in DMG 61120 - 61136. The list is not exhaustive, and DMs should use their own judgment in each case. Some functions considered on their own may need relatively little help but combined with others may bring a person within the scope of AA or DLA (care). Further guidance is available in the Children and Adult Medical Guidance.

61109 DMs must also have regard to the fact that some guidance or supervision needs that are considered for the award of the DLA lower rate mobility component, can also go towards attention or supervision needs qualifying a person for entitlement to the DLA care component<sup>1</sup>. See DMG 61393.

1 R(DLA) 4/01

61110 - 61119

## **Breathing**

61120 A disabled person may need a considerable amount of help with breathing from somebody else. Further guidance is available in the Children and Adult Medical Guidance.

### **Example**

People with severe respiratory problems may only be able to breathe reasonably well when propped up in bed. If they slide down the bed they may become very breathless. If they are unable to pull themselves back upright, they are likely to need repeated propping up in bed.

## **Cleanliness and skin protection**

61121 Help with washing, cleaning teeth, and caring for the hair, nails and skin may be needed, because a person is

- 1.** physically incapable of carrying out these tasks **or**
- 2.** so disturbed mentally as to neglect personal hygiene.

## **Dressing and undressing**

61122 Dressing and undressing are usually only needed at the beginning and end of the day. But it may be a long slow process for those who are disabled physically or mentally. For example a person with severe arthritis may not have enough function in the hands to do up buttons. Further guidance is available in the Children and Adult Medical Guidance.

61123 There may be a reasonable need for attention even though a person is able to perform this function. For example, a person with dementia may not even recognize the need to dress and may need to be reminded repeatedly to do so. Further guidance is available in the Children and Adult Medical Guidance.

## **Eating and drinking**

61124 Severe disability can lead to difficulty with cutting up food or with feeding. If a person has special cutlery or other aids this should be taken into account when assessing the amount of help that is needed.

## **Getting into or out of bed**

61125 A person may need help in getting in and out of bed. But the possession of suitable aids should be considered when assessing the need for attention.

## **Going to the toilet (elimination of waste products)**

61126 Incontinence is a feature of many disabilities. A disabled person may be physically incapable of getting to the toilet in time because

- 1.** of general infirmity **or**
- 2.** the person does not get enough warning of the need to go to the toilet.

61127 Incontinence may also occur when a mentally disabled person is unaware of the need to go to the toilet.

61128 Other needs connected with incontinence, such as help with clothing, changing bedding and emptying commodes, should also be taken into account. Further guidance is available in the Children and Adult Medical Guidance.

61129 Help with going to the toilet is not limited to people who are incontinent. It can include help

- 1.** to get there **or**
- 2.** with clothes whilst there **or**
- 3.** on and off the toilet **or**
- 4.** with wiping.

## **Hearing**

61130 If a person with severe hearing difficulties needs a third party to interpret in order to communicate with another, the interpreter is providing attention with the bodily functions of hearing (and normally speaking). In a two-way conversation however, where the parties are signing or lip reading rather than speaking to communicate, that will not amount to attention as communication is being maintained normally.

Someone who has to speak more loudly or slowly, or listen more carefully is not providing attention. Only if there is an element of service involved is the other party to a two-way conversation providing attention; for example, when teaching a deaf person to learn sign language.

61131 Attention is reasonably required if communication is made significantly more efficient or effective by the use of an interpreter, having regard to the practicability and desirability, from the point of view of privacy, of having another person in attendance. If communicating through an interpreter is made significantly more efficient or effective than communicating through writing, or trying to converse with a person who has to shout loudly, then it could be considered that the services of an interpreter are reasonably required<sup>1</sup>.

1 R(DLA) 2/02; R(DLA) 3/02

61132 Attention in connection with bodily functions should include 'unusual efforts' reasonably required to attract the claimant's attention in order to initiate communication<sup>1</sup>. Any 'unusual efforts' however must not be 'de minimis' and must be more than reaching out and tapping a shoulder, stamping, switching a light on momentarily to count as attention.

1 R(DLA) 3/02

## **Seeing**

61133 A visually impaired person may need

- 1.** help with reading letters **or**
- 2.** help with choosing appropriate clothing **or**

3. guidance, which may be given by touch or by the spoken word<sup>1</sup>, to avoid injury when walking in unfamiliar surroundings.

1 Mallinson v. Secretary of State for Social Security; R(A) 3/94

## **Sitting**

61134 Attention may be needed if a person cannot get up from a chair. The use of any suitable furniture or special aids a person has should be considered when assessing care needs.

## **Sleeping**

61135 The inability to sleep does not in general, give rise to additional needs for adults. But assistance to a person who, through discomfort or distress, is unable to sleep without relief should be taken into account. Some people may need comforting or settling after disturbed sleep, (for example someone who has a mental illness or children who have bad dreams). Others may need help to turn over to become comfortable in bed. These requirements should also be taken into account.

1 R(A) 3/78

## **Example**

Simon suffered with schizophrenia and claimed benefit for night needs as he frequently woke during the night with extreme anxiety and depression, resulting in night terrors. In order to help him settle down his wife had to talk to him and calm him down before he could get back to sleep. This happened once or twice a night and took about an hour each time to settle him. This occurred on 4 to 5 nights per week. The DM decided that Simon was entitled to the middle rate care component for attention with night needs, for a period of 3 years, to see if his present medication improved his condition in the future.

## **Taking medication**

61136 A person with impaired manual dexterity may not be able to administer their own medication. A person who is confused may need attention to ensure the correct dose of medication is taken at the right time.

## **Turning over in bed**

61137 Many disabilities make it difficult to turn over in bed. This may lead to skin damage, for example to a person who has lost skin sensation as in paraplegia or some other neurological disorder. There is a great risk of the skin breaking down and pressure sores forming if the person is not regularly turned each night. Such a person also needs regular attention to the skin. Further guidance is available in the Children and Adult Medical Guidance.

## **Frequent - by day**

61138 The ordinary definition of frequent is “occurring often or in close succession”. Whether attention

is given frequently depends on the length of time which passes between each spell of attention<sup>1</sup>.

1 R(DLA) 5/05

61139 “Frequent” means several times - not just once or twice<sup>1</sup>. Attention given three times should not automatically be taken to mean frequent. All the facts of the case should be taken into consideration.

The attention must be required throughout the day<sup>2</sup>.

1 R(A) 2/80 Appendix; 2 SS CB Act, s 72(1)(b)(i)

### **Example**

Attention given first thing in the morning, again at lunch time and again in the evening, is not normally regarded as frequently throughout the day.

## **Alternatives to attention or supervision**

61140 The need for attention or supervision may be reduced or removed by practical solutions. These may be in the form of an aid, or appliance, or some other measure.

### **Example 1**

Someone who needs help to use the toilet because of difficulty climbing stairs may be able to use a commode downstairs unaided.

### **Example 2**

Someone who needs help getting out of bed at night to take medication may not need that help if the medication were to be placed by the bedside.

61141 Although items may be available to reduce the effects of a person’s disability, the DM must decide whether it is

**1. reasonable and**

**2. practicable**

for that disabled person to obtain and use them<sup>1</sup>.

1 R(A) 3/86; R(A) 1/87

61142 It is also essential to consider the **consequences** of any suggested solution<sup>1</sup>. The DM should seek advice from Medical Services where it is not clear that an item is medically appropriate. It may be necessary to seek further evidence about the claimant’s home circumstances, for example from the carer.

61143 - 61149

## Continual supervision

61150 Supervision is **not** attention. It is a more passive concept, such as being in the same room as a disabled person and prepared to intervene if necessary<sup>1</sup>. To satisfy the supervision test the following conditions must be satisfied

- 1.** the medical condition is such that it might give rise to a substantial danger (see DMG 61171) to the disabled person or someone else **and**
- 2.** the substantial danger is not too remote a possibility **and**
- 3.** there is need for supervision to ensure that the disabled person avoids the substantial danger **and**
- 4.** the supervision needed is continual<sup>2</sup>.

1 R(A) 1/88 Appendix; 2 R(A) 1/83

61151 Continual supervision is different from continuous supervision. Continual means that the supervision must be going on all the time subject to only brief interruptions.

61152 People who have adequate warnings of epileptic fits, for example, may not need continual supervision as they can summon assistance in time.

61153 If attacks are unpredictable, it may be necessary for somebody to be on hand in case an attack occurs<sup>1</sup>. Where there is no warning, the frequency of fits is not relevant, unless the risk of substantial danger is such a remote possibility that it can be disregarded<sup>2</sup>.

1 R(A) 1/88 Appendix; R(A) 2/89; 2 R(A) 3/90

61154 If another person's presence is necessary to reduce the substantial dangers of a sudden attack then that may satisfy the continual supervision condition. Benefit should not be refused solely on the grounds that even if someone is present, that person would not be able to act quickly enough to avoid the substantial danger<sup>1</sup>.

1 R(A) 4/92

61155 People who are mentally competent

- 1.** should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing **and**



2. would not necessarily need continual supervision<sup>1</sup>.

1 R(A) 5/90

61156 - 61160

## **Watching over - by night**

61161 “Watching over” should be given the ordinary dictionary meaning and should be distinguished from supervision. The person does not need to be actually looking at the disabled person for the whole of the time. It is enough that the person is awake for the purpose of watching over the disabled person for the necessary period or periods.

61162 - 61163

## **Frequent intervals**

61164 The frequent intervals need not be spread throughout the night<sup>1</sup>, but can be concentrated in one part of the night.

1 SS CB Act 92, s 72(1(c)(ii)

## **Prolonged and repeated**

61165 “Prolonged” has been defined as “some little time”<sup>1</sup>. As a starting point for DMs, anything less than 20 minutes is unlikely to be “prolonged”. However, DMs should consider each case on its own facts and look for factors that may result in attention of less than 20 minutes being prolonged<sup>2</sup>.

1 R(A) 2/80 Appendix; 2 R(DLA) 5/05

61166 “Repeated” means more than once. It suggests that there is a certainty in the attention that is required - it is not a one-off or occasional requirement<sup>1</sup>.

1 R(A) 2/80 Appendix

61167 - 61170

## **Substantial danger**

61171 This phrase should not be too narrowly construed<sup>1</sup>. Substantial danger can result from a fall, exposure, neglect and in many other circumstances. The word substantial is left to discretion in each case.

1 R(A) 1/73

61172 Healthy people recognize the potential dangers of traffic, and electricity and gas supplies. People with certain mental disabilities may be unaware of these dangers and put themselves at risk of serious injury. Further guidance is available in the Children and Adult Medical Guidance.

61173 People with certain mental disabilities may create danger for others without being aware of the consequences of their actions; for example they may lash out at others, or they may turn on a gas fire but not light it.

61174 People may be at risk as a result of fits (such as epilepsy). Other medical conditions can give rise to blackouts and these need similar consideration. Further guidance is available in the Children and Adult Medical Guidance.

61175 People may be of substantial danger to themselves if there is a risk of suicide. Continual supervision **may** be needed to reduce the risk of harming themselves. But this may not eliminate all the substantial danger. See also DMG 61154<sup>1</sup>.

1 R(A) 3/93

61176 - 61178

## **Falling**

61179 A person may be at risk of substantial danger because of physical disability. For example, certain disabilities may put a person at risk of falling<sup>1</sup>. These falls should be distinguished from accidental falls which could happen to anybody. Further guidance is available in the Children and Adult Medical Guidance.

1 R(A) 5/90

61180 Where a person is at risk of falling as a result of disability, the DM should consider

- 1.** whether the falling is predictable
- 2.** if predictable, whether the person can reasonably be expected to avoid the risk unless supervised
- 3.** if unpredictable, whether the falling may result in substantial danger to the person
- 4.** whether the risk of substantial danger is too remote<sup>1</sup>.

1 R(A) 3/89

61181 - 61199

## Night and day

61200 Night should normally be taken to mean that period of inactivity through which each household goes in the dark hours. There may be considerable variations between different households which need to be considered. There must however be an objective content to the word night. Where the disabled person has abnormal sleeping habits “night” should be assessed objectively by reference to a hypothetical household and whether the carer would reasonably consider that he or she was providing night care<sup>1</sup>. Day should be taken to mean any time which is not considered to be night.

1 R(A) 1/78; R(A) 1/04

### Example 1

Jasmin, a 5 year old child, went to bed at 8pm and at 10pm her father took her to the toilet. This was attention relevant to the day condition and not the night condition as her parents went to bed at 11pm. The household therefore shut down at 11pm.

### Example 2

George is aged 81 and suffers from dementia. He has always had a pattern of having very little sleep for a maximum of 4 to 5 hours per night. He has always risen early, sometimes as early as 4.30am or even earlier. He often got up early and would go out walking. He had previously had an allotment and would often visit that allotment as early as 4.30am. Once he was up he spent a lot of time out of doors. At times he would become confused forgetting even his name, his destination or the purpose of his trip. George satisfies the night “watching over” provision as his resident carer would consider that 4.30am was night.

## Renal dialysis

61201 In renal dialysis cases the guidance in DMG 61200 can be modified. Night and day should follow the pattern of dialysis, if this differs from the household’s pattern. For example, where the setting up and recalibration of dialysis equipment is carried out during the day but the dialysis is undertaken at night, this preparation should also be counted as night attention.

## Day and night needs

61202 People at risk of danger by day are not necessarily at risk at night. For example, a person with dementia who wanders by day and needs supervision may sleep soundly at night. Such a person is in need of supervision by day but not by night. Further guidance is available in the Children and Adult Medical Guidance.

61203 Many disabled people feel at risk from fire or burglars during the night etc, and there may be a need for someone to sleep in the same house. This does not fulfil the night “watching over” condition.

## Period throughout which

61204 The “period throughout which”<sup>1</sup> condition is met if a person satisfies the conditions of entitlement to either component, in a general sense, throughout the relevant period. The DM should take a broad view, look at the whole period and determine whether the claimant can fairly be described as satisfying the conditions of entitlement<sup>2</sup>. This does not mean that care needs have to be required on

1. any particular day and/or night **or**
2. a specific number of days and/or nights each week.

Taking the whole period into account involves an exercise in judgement rather than a simple arithmetical calculation of frequency.

1 SS CB Act 92, s 72(1); 2 R(A) 2/74

61205

## Significant portion

61206 The word “significant” should be given its ordinary meaning of not negligible or trivial. What may amount to a “significant portion of the day” depends largely on a person’s individual circumstances. An hour may be considered reasonable in many cases. Attention required for a period of less than an hour may be sufficient if

1. attention is provided on a considerable number of small occasions and produces other disruptions to the carer’s affairs **or**
2. the attention required is very intense (such as cleaning up after faecal incontinence or administering complex therapies)<sup>1</sup>.

1 Ramsden v. Secretary of State for Work and Pensions; R(DLA) 2/03

## So severely disabled physically or mentally

61207 The phrase “so severely disabled physically or mentally” raises two important issues that must be considered when deciding if someone satisfies any of the statutory tests<sup>1</sup>. These are

1. does the claimant have a disability, i.e. do they have a functional deficiency, physical or mental **and**
2. do the care needs to which the functional deficiency give rise, satisfy any of the statutory tests and if so which.

Medical evidence although important and extremely useful is not essential, it is important in helping to decide whether the claimant has a disability and if so helping to determine the extent of their care needs.

The absence of a diagnosis does not mean the claimant cannot make a claim to DLA. Consideration of all the evidence about the functional abilities of the claimant together with medical evidence and relevant findings of fact made in relation to those abilities will help to decide whether the disability is such as to satisfy one or more of the statutory tests<sup>2</sup>.

1 SS CB Act 92, s 72(1)(a) to (c) & 73(1)(d); 2 R(DLA) 3/06

61208 Where there is a claim from a claimant who indulges in violent, criminal or irresponsible behaviour, the DM should consider whether it is within the claimant's power to avoid behaving as they did<sup>1</sup>. If it is not within their power to avoid such behaviour, the claimant may be disabled within the criteria of the legislation<sup>2</sup>.

1 R(DLA) 3/06; 2 SS CB Act 92, s 72(1)(a) to (c) & 73(1)(d)

61209 There is no free standing need for a severe disability. The claimant must have a functional deficiency either physical or mental and the care or mobility needs arising from that functional deficiency must satisfy the statutory tests. If the appropriate level of care or mobility needs exist and are caused by the functional deficiency of the person, this will be sufficient. The severity of the disability is therefore determined by reference to the needs that arise and not by reference to the general nature of the disabling condition<sup>1</sup>. If the disability is such that the person comes within any of the conditions of entitlement, then the person is "so severely disabled"<sup>2</sup>.

1 R(DLA) 10/02; 2 SS CB Act 92, s 64, s 72 & 73

61210 - 61219

## Renal dialysis 61220 - 61250

61220 People undergoing renal dialysis may satisfy the

1. disability test for the middle rate of the DLA care component **or**
2. AA day condition if they undergo dialysis by day **or**
3. AA night condition if they undergo dialysis by night.

61221 A person satisfies the appropriate provision in DMG 61220 if

1. they regularly undergo renal dialysis for two or more sessions each week<sup>1</sup>**and**
2. either

2.1 their type of dialysis **normally** requires attention or supervision<sup>2</sup>**or**

2.2 in their particular case they require another person

2.2.a to provide attention in connection with bodily functions **or**

2.2.b to supervise them to avoid substantial danger to themselves<sup>3</sup> during dialysis sessions.

However, if people undergo renal dialysis by day **and** night they can only satisfy the day or night condition, not both<sup>4</sup>.

1 SS (AA) Regs, reg 5(2)(a); SS (DLA) Regs, reg 7(2)(a)(i); 2 SS (AA) Regs, reg 5(2)(b)(i); SS (DLA) Regs, reg 7(2)(a)(i) & (ii); 3 SS (AA) Regs, reg 5(2)(b)(ii); SS (DLA) Regs, reg 7(2)(a)(iii); 4 SS (AA) Regs, reg 5(1)(c); SS (DLA) Regs, reg 7(1)(c)

61222 Any attention required during the period of dialysis need not be frequent by day, or repeated or prolonged by night. Similarly, any supervision or watching over required need not be continual by day or for a prolonged period or at frequent intervals at night. To satisfy the conditions in DMG 61220, the attention or supervision need only be something more than a minimal level of attention or supervision<sup>1</sup>.

1 R(A) 1/93

61223 Each case should be considered on its merits. But haemodialysis and intermittent peritoneal dialysis normally require attention or supervision. For guidance on night and day in renal dialysis cases see DMG 61201. Further guidance is available in the Children and Adult Medical Guidance.

## Exceptions

61224 A person cannot be deemed to satisfy either the day condition or the night condition if the renal dialysis

**1.** is carried out under the NHS **and**

**2.** is out-patient treatment **and**

**3.** is carried out

**3.1** in a hospital or similar institution **and**

**3.2** with the assistance or supervision of any member of the hospital staff<sup>1</sup>.

1 NHS Act 06 ; NHS (Wales) Act 06; NHS Act (Scotland) 78; SS (AA) Regs, reg 5(3); SS (DLA) Regs, reg 7(2)(b)

61225 Any period spent receiving treatment for renal dialysis as in DMG 61224 **can** be counted towards

**1.** the DLA care component

**1.1** three month qualifying period<sup>1</sup> (DMG 61461 **1.**) **and**

**1.2** six month prospective test<sup>2</sup> from 26.8.93 (DMG 61461 **2.1**) **or**

**2.** the six month qualifying period for the day or night condition for AA.

1 SS CB Act 92, s 72(2)(a)(i); 2 s 72(2)(b)(i)

61226 Where DMG 61225 applies, payment of the DLA care component can only be made during periods where the conditions in DMG 61221 are satisfied.

## Example

A student who undergoes haemodialysis on Tuesdays and Thursdays at the NHS hospital near her university returns home for the summer vacation in July. She undergoes dialysis at home, with her father supervising, until her return to university in September. Dialysis then continues at hospital as before. The middle rate of the DLA care component is payable for the period she spends at home.

61227 The assistance or supervision required with dialysis and provided by hospital staff as in DMG 61224 can count with other attention or supervision needs towards satisfying the day or night conditions.

61228 The higher rate of AA or the highest rate of DLA care component is payable if a person undergoes

**1.** renal dialysis during the day and also satisfies the night conditions **or**

**2.** renal dialysis during the night and also satisfies the day conditions.

But if a person undergoes renal dialysis during the day and satisfies the day conditions for another reason, only the middle rate of the DLA care component or the lower rate of AA is payable.

61229 - 61250



## **DLA mobility component 61251 - 61450**

### **Subpages**

- DLA mobility component - conditions of entitlement 61251 - 61275
- DLA mobility component - definitions 61276 - 61450

# DLA mobility component - conditions of entitlement 61251 - 61275

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[Higher rate](#) 61255

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## Introduction

61251 There are two rates of the DLA mobility component, higher and lower, which cover different needs and circumstances<sup>1</sup>. The higher rate of the DLA mobility component is for people aged three years and over (five years or over for any period before 09.04.01) who are so severely disabled that they satisfy one of the higher rate mobility criteria<sup>2</sup> (see DMG 61255). The lower rate of the DLA mobility component is for people aged 5 years or over<sup>3</sup> who satisfy the lower rate mobility criteria<sup>4</sup> (see DMG 61256). The person does not have to meet the above criteria on any particular day or a specific number of days each week and a broad view should be given to this issue. The residence and presence conditions, and competency condition, in DMG Chapter 07 must also be satisfied.

1 SS CB Act 92, s 73(10) & (11); 2 s 73(1)(a); 3 s 73(10) & (11); 4 s 73(1)(d)

61252 - 61254

## Higher rate

61255 The higher rate is payable to people who

- 1.** are unable or virtually unable to walk because of a physical disability<sup>1</sup> (see DMG 61276 et seq) **or**
- 2.** are severely visually impaired and satisfy the conditions<sup>2</sup> in DMG 61334 - 61339 **or**
- 3.** if **2.** does not apply, then are both deaf and blind and satisfy the conditions<sup>3</sup> in DMG 61340 - 61348 **or**
- 4.** are severely mentally impaired<sup>4</sup> **and**
  - 4.1** display severe behavioural problems<sup>5</sup> **and**
  - 4.2** satisfy the conditions for the highest rate of the DLA care component at DMG 61061<sup>6</sup> (see DMG 61350 - 61380) **or**
- 5.** have had both legs amputated either through or above the ankle<sup>7</sup> (see DMG 61332) **or**

**6.** are for any reason without both legs to the same extent as if they had been amputated either through or above the ankle<sup>8</sup> (see DMG 61332 - 61333).

Further guidance is available in the Adult Medical Guidance.

**Note 1:** The higher rate can only be payable under condition **3.** if condition **2.** does not apply<sup>9</sup>.

**Note 2:** The higher rate is payable only where during most of the period of any award, the condition allows the person from time to time to benefit from enhanced facilities for locomotion (see DMG 61413 - 61414)<sup>10</sup>.

1 SS CB Act 92, s 73(1)(a); SS (DLA) Regs, reg 12(1); 2 SS CB Act, s 73(1AB)(a);  
SS (DLA) Regs, reg 12(1AB)(b); 3 SS CB Act 92, s 73(2)(a) & (b); 4 SS (DLA) Regs, reg 12(5); 5 reg 12(6);  
6 SS CB Act 92, s 73(3)(a)(b) & (c); 7 SS (DLA) Regs, reg 12(1)(b); 8 reg 12(1)(b);  
9 SS CB Act 92, s 73(1AB), s 73(1)(b); 10 s 73(8)

## Lower rate

61256 The lower rate is payable to people who can walk but are so severely disabled mentally or physically (see DMG 61207 et seq) that they need guidance or supervision from another person most of the time when walking out of doors<sup>1</sup> (see DMG 61391 et seq). Any ability the person has to use routes which are familiar to them is disregarded. Further guidance is available in the Adult Medical Guidance.

1 SS CB Act 92, s 73(1)(d)

61257 During most of the period of any award their condition must allow them from time to time to benefit from enhanced facilities for locomotion (see DMG 61413 - 61414)<sup>1</sup>.

1 SS CB Act 92, s 73(8)

61258 The conditions for the lower rate are quite different to those for the higher rate. They relate to the needs people have to enable them to walk out of doors, rather than their inability to walk. Therefore, where a claimant has a disability which prevents them from walking out of doors, there is no entitlement to the lower rate DLA mobility component (see DMG 61392).

**Note:** See DMG 61400 - 61401 for guidance where a mental health disability leading to fear and anxiety prevents people from walking out of doors.

61259 If a person has satisfied the disability conditions at the lower rate for three months, and then begins to satisfy one of the conditions for the higher rate, only the lower rate is payable until the conditions for the higher rate have been satisfied for three months<sup>1</sup>.

1 SS CB Act 92, s 73(11)

61260 There are special provisions for people who

**1.** have a terminal illness<sup>1</sup> (see DMG 61491 et seq)

**2.** are under age 16<sup>2</sup> (see DMG 61520 et seq)

**3.** have the use of an invalid carriage or other vehicle provided by the Secretary of State or who have the use of a prescribed appliance<sup>3</sup> (see DMG 61423 et seq).

1 SS CB Act 92, s 73(12); 2 s 73(4A); 3 s 73(13)

61261 - 61275

## DLA mobility component - definitions 61276 - 61450

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### Unable or virtually unable to walk

61276 One of the conditions for entitlement to the higher rate DLA mobility component is that the disabled person is unable or virtually unable to walk (see DMG 61255 **1.**). People are considered to be unable or virtually unable to walk if their physical condition is such that

**1.** they are unable to walk<sup>1</sup>**or**

**2.** their ability to walk out of doors is so limited when considering

**2.1** the distance over which **or**

**2.2** the speed at which **or**

**2.3** the length of time for which **or**

**2.4** the manner in which

they can make progress on foot without severe discomfort, they are virtually unable to walk<sup>2</sup>**or**

**3.** the effort needed to walk would put their life at risk or be likely to lead to a serious deterioration in their health<sup>3</sup>.

The DM should not take account of where people live or the nature of their work.

1 SS (DLA) Regs, reg 12(1)(a)(i); 2 reg 12(1)(a)(ii); 3 reg 12(1)(a)(iii)

61277 - 61279

## Physical or mental disability

61280 The differences between mental and physical disability may not always be obvious but are distinctive. To count towards virtually unable to walk, a person's disability must be physical. Any limitation in a person's ability to walk must be because of a physical disablement not merely a physical manifestation of the person's mental condition. Further guidance is available in the Children and Adult Medical Guidance.

61281 In cases where a claimant's inability or virtual inability to walk is caused by both physical and mental factors, the claimant is entitled to the higher rate of the DLA mobility component if the physical disability is a material cause i.e. if its contribution to the inability or virtual inability to walk is more than de minimis (medical advice should be sought if there is any doubt). The physical cause must be one which is likely to be still current from the start date of and the preceding qualifying period award and throughout the period of the award, but it does not matter at what point in the chain of causation it comes e.g. the physical cause may be subsequent to a mental disability.

61282 Pain, dizziness or other symptoms are not a feature of the claimant's "physical condition as a whole"<sup>1</sup> within the meaning of the legislation<sup>2</sup> unless they have a physical cause. Difficulty in walking which results from pain, dizziness or other symptoms affecting physical functions which are found to have an entirely mental or psychological cause cannot therefore qualify a claimant for the higher rate of DLA mobility component.

1 R(M) 1/88 (Appendix); 2 SS (DLA) Regs, reg 12(1)(a)

61283 Chronic fatigue syndrome, which may also be called post-viral fatigue syndrome or myalgic encephalomyelitis, consists of a mixture of both physical and psychological factors. The lack of physical findings in the medical evidence is not sufficient to show that the limitation is entirely mental in origin. Chronic fatigue syndrome can involve a physical element that is capable of supporting an award of the DLA mobility component at the higher rate even if it is not identifiable as such. The physical element present **may** support an award of the higher rate of the DLA mobility component if

1. the other conditions for an award are met,
2. there is nothing to suggest that the claimant's mobility is wholly or largely limited by the mental component of chronic fatigue syndrome, if it is possible to distinguish it from the physical component.

61284 DMs should note that

1. there must be a physical cause for the claimant's disability and consequent inability to walk

2. the relevant case law<sup>1</sup> must be followed

3. the physical cause does not have to be diagnosed medically

4. the physical disability must contribute to the claimant's inability to walk and must still be present at the time the decision to award the higher rate of the DLA mobility component is made.

1 R(M) 1/88 (Appendix); R(DLA) 4/06

### Example 1

Yasmin has arthritis which is the material cause of her walking disability and she is assessed as being physically able to walk 100 metres at a slow speed. However she also suffers from depression as a result which exacerbates her difficulties with walking. She can only walk 50 metres at a very slow speed. She would satisfy the conditions for being virtually unable to walk as her arthritis is a material physical cause.

### Example 2

Basil has a verruca. This is a temporary condition which has minimal interference with walking and does not cause severe discomfort. He has difficulty walking however the effect is minimal and he would not satisfy the conditions for being virtually unable to walk.

61285 - 61289

### Refusal or reluctance to walk

61290 People with behavioural problems often refuse to walk. Although most behavioural problems result from a mental disability, they can be the result of a reaction to a physical condition over which the person has no control. For example, children with Down's syndrome may be virtually unable to walk<sup>1</sup> or they may refuse to walk despite coaxing. But this does not mean that all people with Down's syndrome are virtually unable to walk.

1 R(M) 2/78

61291 The question the DM should consider is whether the person **could** not walk, rather than **would** not walk<sup>1</sup>. Advice from Medical Services may help in establishing whether a refusal to walk stems from a physical or mental disability (see DMG 61207 et seq) and the likely duration of any difficulty with walking.

1 R(DLA) 3/06; R(M) 3/86

### Example 1

Robert, who had been walking perfectly satisfactorily, decides to stop. However, his refusal to continue further can be overcome with the promise of a reward or the threat of punishment. Therefore the refusal to walk has not arisen from a physical condition over which he has no control.

## **Example 2**

Sabrina refuses to walk to school. This refusal to walk would not have arisen from a physical condition over which she has no control.

61292 People who sometimes refuse to walk as the result of a physical condition can be considered to be suffering from temporary paralysis. The DM should consider whether the frequency and extent of such a temporary paralysis means that they are virtually unable to walk<sup>1</sup> (see DMG 61293).

1 R(M) 3/86

61293 For the purposes of DMG 61292 the DM should consider the

- 1. time and**
- 2. speed and**
- 3. distance and**
- 4. manner of walking out of doors.**

The DM should consider both good and bad days and take a common sense approach, having regard to the proportion of good and bad days and the claimant's behaviour on each type of day.

## **Example 1**

June suffers from Down's syndrome and on one or two occasions a week refuses to walk. At other times her walking ability is unimpaired. Although June can be taken to be unable to walk at those times when she refused to walk (as this is attributable to a physical cause), because her walking ability at other times was unimpaired she does not satisfy the test.

## **Example 2**

Fraser is autistic. There is evidence that his autism has a physical cause. On occasions he suffers from temporary paralysis. There is evidence that Fraser has more bad days than good days. On the bad days he is unable to walk; on the good days he can walk only very short distances with difficulty. Fraser satisfies the test.

61294 - 61299

## **Severe discomfort**

61300 Severe discomfort must arise from the physical act of walking, but it is not necessary for the severe discomfort to first arise or to be increased by walking. If a claimant suffers from physical disablement which affects the physical act of walking, and which causes severe discomfort even when not walking, any walking accomplished despite the severe discomfort must be disregarded.



## Example 1

Denise suffers Porphyria a condition that causes the skin to blister when exposed to sunlight. Although able to walk any exposure to sunlight triggered her condition. Denise's discomfort would not render her virtually unable to walk as it was being out of doors that caused the discomfort and it did not arise from the act of walking itself<sup>1</sup>.

1 R(DLA) 6/99

## Example 2

Ahmed suffered serious multiple injuries in a road traffic accident. As a result Ahmed's foot is extremely painful and stiff and he is in severe discomfort all the time. The severe discomfort does not increase on walking but the nature of the pain alters. Ahmed suffers from a physical disablement which affects the physical act of walking and causes him severe discomfort even when not walking. Any walking Ahmed accomplishes despite the severe discomfort has to be discounted.

61301 A person who can walk only with severe discomfort is likely to suffer from effects such as pain and breathlessness<sup>1</sup>. The test is one of severe discomfort rather than of severe pain or distress<sup>2</sup>. The term "severe discomfort" does not apply to the refusal to walk where this is by conscious choice<sup>3</sup>.

**Note:** See DMG 61290 et seq for guidance on refusal to walk.

1 R(M) 1/83; 2 Cassinelli v. Secretary of State for Social Services; R(M) 2/92; 3 R(M) 1/83

61302 "Pain" is medically defined as encompassing a wide range of intensities caused by stimulation of functionally specific peripheral nerve endings. "Discomfort" is not medically defined. Its ordinary meaning was the condition of being uncomfortable, uneasiness and thus might have different causes from pain. It described the sensation experienced from lesser levels of pain<sup>1</sup>.

**Note:** For uneasiness to apply there has to be physical discomfort.

1 R(DLA) 4/98

61303 The fact that people suffer pain as a result of walking, or walk "in pain", does not automatically mean that they are walking with severe discomfort or are unable to walk without severe discomfort. The pain may be mild, moderate or severe, shortlived or chronic<sup>1</sup>.

1 R(DLA) 4/98

61304 People who suffer severe pain are almost certainly suffering severe discomfort. However, it does not follow that, because people are not suffering severe pain, they are not suffering severe discomfort<sup>1</sup>. "Severe" is an evaluative term which might be contrasted with moderate or mild. Thus "mild pain" might not by itself cause a sufficient level of sensation to be "severe discomfort"<sup>2</sup>.

61305 The DM must decide whether there is severe discomfort considering all the evidence taking into account other factors causing discomfort in addition to the pain<sup>1</sup>.

1 R(DLA) 4/98

61306 The test in DMG 61276 is of the person's ability to walk out of doors **without** severe discomfort, not the capacity to walk **with** severe discomfort<sup>1</sup>. Any walking with severe discomfort is ignored.

1 R(M) 1/81

61307 - 61308

### **Relevance of stops and severe discomfort**

61309 If a stop is the absolute limit of the claimant's capacity to walk then no issue of taking the test only to the first onset of severe discomfort arises. But if a claimant recovers after a period of rest and continues walking without severe discomfort, then the statutory test does not preclude such continued walking from being assessed<sup>1</sup>.

1 R(DLA) 4/03

61310 The DM must judge from the evidence such relevant factors as how far the claimant can initially walk without experiencing severe discomfort, how long any severe discomfort lasts before it subsides or, if he has paused to prevent such discomfort then the necessary duration of that pause, how frequently these halts recur if at all, and what is the total distance and time he can walk in this manner without severe discomfort. Time, speed, manner and distance of walking, achieved without severe discomfort, are therefore balanced in order to reach an overall judgement on whether the claimant is virtually unable to walk<sup>1</sup>.

1 R(DLA) 4/03

61311 If a claimant has to rest an hour between each set of walking before severe discomfort subsides, he or she is more likely to be virtually unable to walk than a claimant who requires only five minutes. Conversely, if a claimant with morning stiffness through rheumatoid arthritis walks the first minute out of doors in severe discomfort, stops for four minutes in order to flex his limbs and thereafter is enabled to walk ten miles without severe discomfort at a reasonable pace and speed and without further halts, it is open to the DM to determine that the claimant is not virtually unable to walk<sup>1</sup>.

1 R(DLA) 4/03

### **Walking with support**

61312 Where people can only walk with support from another person, they may satisfy the conditions for

the higher rate DLA mobility component. The DM should consider whether

- 1.** the need for support arises from physical causes (rather than as a precaution or for reassurance) **and**
- 2.** the withdrawal of support means that

**2.1** the claimant is unable to walk **or**

**2.2** the claimant is virtually unable to walk **or**

**2.3** the effort required to walk is harmful (see DMG 61276) **and**

- 3.** the support could be replaced by a suitable prosthesis or aid<sup>1</sup>. If a claimant is unable to walk without support from another person and is unable to use a walking aid due to insufficient grip, the inability to walk without support of another person would render that person virtually unable to walk.

### **Artificial limbs and appliances**

61313 People cannot be treated as being unable or virtually unable to walk if they regularly use<sup>1</sup> or could use<sup>2</sup> an artificial limb or aid to help with walking unless they are without both legs (see DMG 61330 - 61331). A person who can only swing through on crutches is unable to walk and so may qualify for the higher rate of DLA mobility component<sup>3</sup>.

1 SS (DLA) Regs, reg 12(4)(a); 2 reg 12(4)(b); 3 R(M) 2/89

61314 When considering a person's ability to walk, using a prosthesis, the DM should consider whether any prosthesis or artificial aid is used habitually

- 1.** if yes, whether the person could walk using the prosthesis or artificial aid without severe discomfort;
- 2.** if no, and crutches are used the person has to be considered to be unable to walk<sup>1</sup>.

1 R(M) 2/89

### **Swinging through**

61315 The term 'swinging through' describes a method of propulsion leading to forward progression of the person, in which the upper body and arms, through the means of crutches, provide the main power of movement. This way of moving may be used by people in whom the function of either or both lower limbs is severely restricted. A report that an individual uses crutches does not mean by itself that they are swinging through. Many people who have had sprains, injuries, operative procedures to the leg may use elbow crutches as a support to walking on a temporary basis during recovery. Also some people with an arthritic or painful hip, knee or ankle joint may find a crutch easier to use than a walking stick on a long term basis e.g. an elbow crutch permits the use of the forearms and hands while the person remains supported.

61316 The typical example of a person who ‘swings through’ is someone who has had part of one lower limb amputated and who is not using prosthesis, or someone who has one lower limb in plaster. They propel themselves forwards using two crutches. Whilst bearing weight on both crutches the person swings their normal leg forward and puts it to the ground. Then bearing weight on this leg and the crutches, the impaired leg comes forward (follows through) usually without touching the ground. A further step is then taken forward with the normal leg and the cycle is repeated. In order to move forwards in this way the person uses the strength in the arms and upper body as the main means of propulsion.

61317 A person who

- 1.** can only make progress on foot with crutches **and**
- 2.** places both feet on the ground alternately **and**
- 3.** does not and cannot place any weight on one of his legs

cannot be said to be “walking” and so is “unable to walk”. The dictionary definition of walking is “progress by alternate movement of the legs” and it is for that reason a person who can only “swing through” cannot “walk”, and not simply because one of his feet is never placed on the ground.

### **Example 1**

Derrick has had part of his right lower limb amputated and cannot use a prosthesis as his wound has not healed properly and is sore. He propels himself forward using two crutches. He swings both his legs forward whilst putting all his weight on his crutches, and is therefore swinging through. In this case he cannot be said to be “walking”. The DM decides Derrick is entitled to the higher rate mobility component.

### **Example 2**

Susan had her right leg amputated below the knee after an accident. She wears a prosthesis and can normally walk without discomfort, at a normal speed, with a slight limp. She uses a walking stick to steady herself if needed. The DM decides Susan is not entitled to the DLA mobility component at any rate.

### **Example 3**

Malcolm had an accident which resulted in his left leg being broken in several places. The breaks have not healed well and he still experiences pain. Although he can stand with both feet on the ground the DM decides that he cannot place any weight on his left leg. Malcolm uses crutches and when moving forward, although he places his left leg forward, all his weight is placed on his crutches. He then swings his right leg through as his left leg is not weight bearing. The DM decides that Malcolm is entitled to the higher rate mobility component.

61318 The DM may ask Medical Services whether a person could walk with suitable artificial limbs or

aids, and whether or not these are available. This does not apply to people without both legs (see DMG 61332 - 61333).

### **Virtually unable to walk**

61319 Virtually unable to walk means unable to walk to any appreciable extent or practically unable to walk<sup>1</sup>. The base point is a total inability to walk. It is extended to take in people who can technically walk but only to an insignificant extent<sup>2</sup>.

1 R(M) 1/78; 2 R(M) 1/91

61320 Whether a person is unable or virtually unable to walk depends on the person's ability to negotiate the types of pavement or road one would normally expect to find in the course of walking outdoors. No pavement or road is absolutely flat therefore a degree of "incline" and "decline" must be considered. The test is not whether the claimant can walk on unploughed land or over un-made roads or over pavements under repair. No account should be taken of exceptional hazards such as steep hills or rough terrain. The question of whether the person is able to lead a normal life is inappropriate<sup>1</sup>.

1 R(M) 1/91

61321 All aspects of a claimant's walking ability must be considered, which result from physical disablement, and an evaluation of its quality then made. This is on the basis that firstly, walking achieved only with severe discomfort is discounted and secondly, that appropriate attention is paid to manner, speed, distance and time<sup>1</sup>. All factors must be viewed before the onset of severe discomfort.

1 R(DLA) 4/03

61322 Distance is the total distance walked before the onset of severe discomfort (see also DMG 61309 et seq).

61323 In the absence of any significant indications as to the other three factors, manner, speed and time, (DMG 61276 refers), if a claimant is unable to cover more than 25 to 30 metres without suffering severe discomfort, his walking ability is not 'appreciable' or 'significant'; while if the distance is more than 80 or 100 metres, he is unlikely to count as 'virtually unable to walk'.

### **Example**

John has a walking ability of at least 125 metres (about 135 yards) with normal gait, little pain, without the use of a stick, one stop and some discomfort. John's physical condition as a whole is not such that his ability to walk out of doors is so limited, as regards the distance, speed, length of time or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk<sup>1</sup>.

1 R(DLA) 4/98

61324 It is as important to consider quality of walking, as it is to consider quantity (ie distance). The stated distance may be less significant if it is clear that some of the distance can be achieved only at the expense of severe discomfort. If a person shuffles along, barely putting one foot in front of the other, his progress may be so poor in terms of speed and manner, to amount to virtually unable to walk.

61325 Speed is the pace the claimant walks at. Time is the total time it takes the claimant to walk the relevant distance (see also DMG 61309 et seq). As a guide the average person can walk at

1. brisk pace - >90 metres per minute
2. normal pace - 61-90 metres per minute
3. slow pace - 40-60 metres per minute
4. very slow pace - <40 metres per minute

### **Example**

Peter can only cover 50 metres in five minutes (or 100 metres in ten minutes). Progress at such a rate is so painfully slow as to amount to little more than shuffling. Most people could, literally, crawl 50 metres in less than five minutes. Even if he can walk 100 metres in five minutes - which is still extremely slow pace - the DM should consider how significant is his ability to walk. Regard must also be had to the words "without severe discomfort".

61326 Manner is the way the claimant walks with particular regard to his gait and balance. In overturning a tribunal's decision, a Commissioner pointed out that there was evidence that the claimant would walk with a "stiff legged shuffling gait" and would make "a number of stops at varying distances". He indicated that the tribunal should have considered specifically the **manner** in which the claimant was able to make progress on foot, and that it was a relevant factor to take into account alongside distance and severe discomfort.

### **Danger to life or serious deterioration in health**

61327 The effort needed to walk is the only consideration when deciding whether a person satisfies the danger to life or serious deterioration in health test (see DMG 61276 **3.**). This could include a condition which was brought on or worsened by the effort needed to walk, for example certain heart conditions or haemophilia.

61328 The test does not include factors not connected with the effort needed to walk. Potentially dangerous places such as busy roads, or risky situations which have nothing to do with the effort needed to walk should not be taken into account<sup>1</sup>.

61329 To satisfy the test, someone who said that they fell when walking would need to show that the

falling was due to the effort needed to walk. Similarly, people with epilepsy would need to show that any fits they experienced were brought on by the effort needed to walk, unless the fits were so frequent that the person could satisfy the virtually unable to walk test at DMG 61319.

61330 Any serious deterioration in health would be where there was a worsening of the person's condition from which

**1.** they would never recover **or**

**2.** they would only recover after a significant period of time **or**

**3.** recovering could only be made after medical intervention.

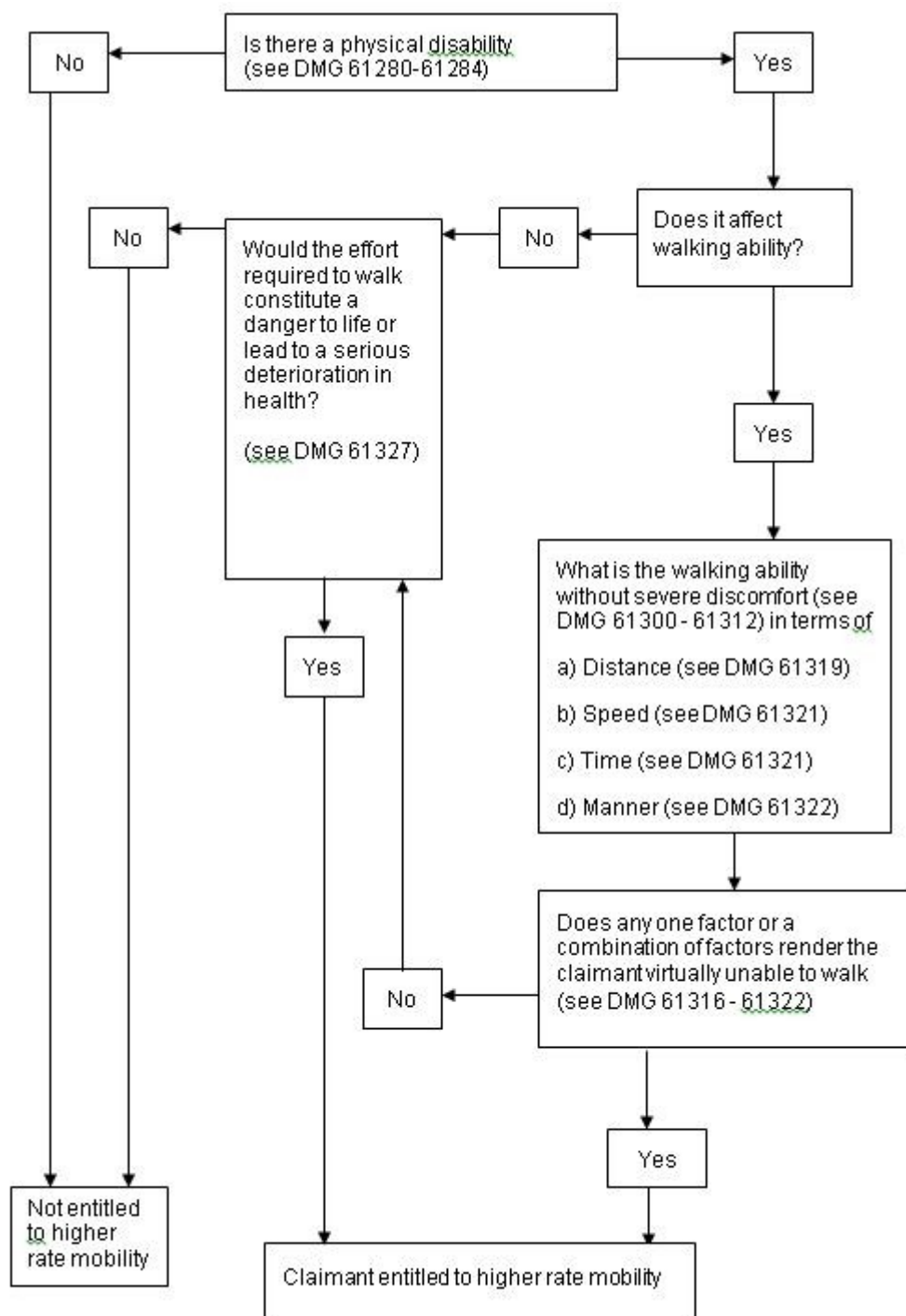
For example, a person would not be suffering any serious deterioration in their health if they recovered after a few days without the need for any medical intervention<sup>1</sup>.

1 R(M) 1/98

### **Virtually unable to walk flow chart**

61331 Virtually unable to walk<sup>1</sup> flow chart.

1 SS CB Act 92, s 73(1)(a); SS (DLA) Regs, reg 12(1)(a)(ii)(iii)



## DLA mobility component - people without both legs

61332 People satisfy the conditions in DMG 61255 **4.** for the higher rate DLA mobility component if they

- 1.** have both legs amputated either through or above the ankle **or**
- 2.** have one leg amputated either through or above the ankle and are without the other leg **or**
- 3.** are without both legs to the same extent as if they had been amputated through or above the ankle<sup>1</sup> for example children born without legs.



61333 People who satisfy the conditions in DMG 61332 **1.** and **2.** do so because they are without both legs<sup>1</sup>, regardless of whether they use artificial limbs or appliances.

1 SS (DLA) Regs, reg 12(4)

## **DLA mobility component - severely visually impaired**

61334 From 11.4.11 people satisfy the conditions for the higher rate DLA mobility component if they

**1.** have been certified by a consultant ophthalmologist as

**1.1** severely sight impaired **or**

**1.2** blind<sup>1</sup>**and**

**2.** are severely visually impaired<sup>2</sup>.

**Note:** If people do not satisfy these conditions they can only get the higher rate mobility component on the basis that they are both deaf and blind<sup>3</sup> (see DMG 61340 et seq).

1 SS CB Act 92, s 73(1AB)(b); SS (DLA) Regs, reg 12(1A)(b); 2 SS CB Act 92, s 73(1AB)(a); 3 s 73(1AB); s 73(1)(b)

61335 People are severely visually impaired if

**1.** they have visual acuity, with appropriate corrective lenses if necessary, of less than 3/60<sup>1</sup>**or**

**2.** they have

**2.1** visual acuity of 3/60 or more, but less than 6/60, with appropriate corrective lenses if necessary **and**

**2.2** a complete loss of peripheral visual field **and**

**2.3** a central visual field of no more than 10° in total<sup>2</sup>.

1 SS (DLA) Regs, reg 12(1A)(a)(i); 2 reg 12(1A)(a)(ii)

61336 For the purposes of DMG 61335 DMs should note that

**1.** it is the combined visual acuity of both eyes in cases where a person has both eyes<sup>1</sup>;

**2.** visual acuity is measured on the Snellen Scale<sup>2</sup>;

**3.** it is the combined visual field of both eyes in cases where a person has both eyes<sup>3</sup>.

## **Evidence of visual acuity/visual field**

61337 As well as satisfying the condition that a certificate has been issued as in DMG 61334 **1.**, evidence may also have to be obtained to allow DMs to decide if the person is severely visually impaired. If the DM has a certificate showing the claimant

**1.** is totally blind (cannot distinguish light and dark) **or**

**2.** satisfies DMG 61335 **1.** or **2.** **or**

**3.** does not satisfy DMG 61335 **1.** or **2.**

no further evidence is needed. The DM will decide that the claimant is severely visually impaired if **1.** or **2.** above apply and **not** severely visually impaired if **3.** above applies. If the certificate does not contain this information, then an HCP as specified in DMG 01084 and DMG 61338 will examine the person and provide the necessary evidence for the DM.

**Note:** The DM may have or may request a report from the hospital. If the report is based on an examination more than 1 year ago and the case is for disallowance, a report from an HCP should be obtained in case there has been a deterioration.

61338 DMG 01084 gives guidance on the meaning of HCPs. For the purposes of the higher rate of DLA mobility component for the severely visually impaired<sup>1</sup>, professionals prescribed as HCPs are

**1.** an optometrist registered with the General Optical Council;

**2.** an orthoptist registered with the Health Professions Council<sup>2</sup>.

**Note:** Doctors on the General Medical Council's specialist register (consultant ophthalmologist) are already HCPs.

1 SS CB Act 92, s 73(1AB); 2 SS Act 98, s 39(1), SS (DLA) (Amend) Regs. 10, reg 3

## **Supersession of existing awards**

61339 For supersession of existing awards before 11.4.11 see DMG 04109.

**Note:** DMs should have regard to the three month qualifying period being satisfied.

## **DLA mobility component - deaf and blind**

61340 If a DM is considering a claim where the question of dual sensory impairment arises, then any such case should always be referred to Medical Services for advice on the degree of the disablement due to deafness and visual loss.

61341 People satisfy the conditions for the higher rate of DLA mobility component if

**1.** they are both deaf and blind **and**

**2.** as a result of the combined effects

they are unable to walk to their destination out of doors without the assistance of another person<sup>1</sup>. Further guidance is available in the Children and Adult Medical Guidance.

1 SS CB Act 92, s 73(2); SS (DLA) Regs, reg 12(3)

61342 For the purposes of DMG 61341 **1.** a person is blind if the degree of disablement resulting from loss of vision is 100%<sup>1</sup>. This is defined as “unable to do any work for which eyesight is essential”<sup>2</sup>. If your case involves this provision please contact [Warren.benton@dpw.gsi.gov.uk](mailto:Warren.benton@dpw.gsi.gov.uk) at DMA before making a decision.

1 SS (DLA) Regs, reg 12(2)(a); 2 SS (General Benefit) Regs 82, Sch 2

61343 Also for the purposes of DMG 61341 **1.** a person is deaf if the degree of disablement resulting from loss of hearing is not less than 80% where 100% is absolute deafness<sup>1</sup>. The assessment of the degree of deafness is the same as for occupational deafness in Industrial Injuries legislation<sup>2</sup>. Medical Services may help in assessing the degree of disablement.

1 SS (DLA) Regs, reg 12(2)(b); 2 SS(II)(PD) Regs 85, reg 34(2), Sch 3, Parts II and III

### **Assessment of the degree of deafness**

61344 The DM should refer cases to Medical Services for advice on the degree of the disabilities. When advising on the degree of deafness, Medical Services will arrange for an audiogram test to assess the person's average hearing loss in each ear, measured in decibels (dB)<sup>1</sup>. If the person does not satisfy the “blind” test (see DMG 61342 **1.**) there will be no need to carry out an audiogram to test their degree of deafness.

1 SS (II)(PD) Regs 85, reg 34(2)

61345 A person with severe or total hearing loss in one ear but normal hearing in the other ear will have no or minimal hearing impairment. They can compensate for the deaf ear by turning their head. Any test of hearing, including formal testing by audiometry, needs to ascertain the loss in each ear separately. The overall degree of hearing impairment is then determined by considering the effects of both deficits in combination.

61346 The chart below permits this to be carried out and arrive at the percentage disablement based on the occupational deafness scheme used in industrial injuries disablement benefit. In order to be 80% the person has to have a hearing loss of 87 dB or more in each ear. The hearing loss in the better ear is plotted along the vertical axis and the loss in the worse ear along the horizontal axis allowing the degree

of disablement to be read from the chart. For example someone with 55 dB loss in the better ear and 88 dB loss in the other (worse) ear would have a 40% degree of disablement. Those with 80% disablement are likely to have very severe hearing difficulties. They would be unlikely to hear normal conversation, hear the television without special aids or understand a shout at one metre in a busy street.

61347 The DM should decide the degree of disablement using the following table

1, 2, 3, kHz average	Pure tone HL	WORSE EAR								
Pure tone	dB	50-53	54-60	61-66	67-72	73-79	80-86	87-95	96-105 105	106+
B E T T E R E A R	50-53	20	22	24	26	28	30	32	34	36
	54-60	22	30	32	34	36	38	40	42	44
	61-66	24	32	40	42	44	46	48	50	52
	67-72	26	34	42	50	52	54	56	58	60
	73-79	28	36	44	52	60	62	64	66	68
	80-86	30	38	46	54	62	70	72	74	76
	87-95	32	40	48	56	64	72	80	82	84
	96-105	34	42	50	58	66	74	82	90	92
	106	36	44	52	60	68	76	84	92	100

61348 If a person normally wears or could wear a hearing aid, the test to assess the degree of deafness is carried out with the hearing aid being used<sup>1</sup>.

1 SS (DLA) Regs, reg 12(2)(b)

61349

## Severely mentally impaired with severe behavioural problems

61350 To satisfy this test for the higher rate of the DLA mobility component a person must be entitled to the highest rate of the DLA care component<sup>1</sup>, be severely mentally impaired<sup>2</sup> (see DMG 61351 - 61370)

and have severe behavioural problems<sup>3</sup> (see DMG 61376 - 61379). The test is cumulative and if any part of the test is not satisfied a person cannot satisfy the test.

1 SS CB Act 92, s 73(3)(c); 2 s 73(3)(a); 3 s 73(3)(b)

## **Severely mentally impaired**

### **Arrested development or incomplete physical development of the brain**

61351 The first test towards treating a person as being severely mentally impaired is whether they have a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning<sup>1</sup>. Further guidance is available in the Children and Adult Medical Guidance.

1 SS (DLA) Regs, reg 12(5)

61352 The disabilities counting towards severely mentally impaired are defined as

**1. incomplete physical development of the brain** - where a person's brain has failed to grow properly and this can be seen and assessed

**2. arrested development of the brain** - where a person's brain is not functioning properly but no physical deficiency is apparent.

61353 There is no precise age at which an individual's brain stops developing. The DM is entitled to apply the balance of probabilities and consider the age at which brain development ceases as a broad age range, at least into the fourth decade of life and in some cases perhaps into the fifties.

61354 A person cannot satisfy the severely mentally impaired condition unless it can be established that the cause of the mental impairment (for example accident, disease, injury) happened before the person's brain was fully developed. Degenerative diseases such as Alzheimer's Disease that begin after the brain is fully developed do not satisfy the severely mentally impaired condition. Difficult cases should be referred to Medical Services for advice.

61355 If a person has arrested development or incomplete physical development of the brain, the DM must then consider whether this results in severe impairment of intelligence and social functioning<sup>1</sup>.

1 R(DLA) 1/00; SS (DLA) Regs, reg 12(5)

### **Arrested development or incomplete physical development of the brain and schizophrenia**

61356 The severity of schizophrenic disorders can vary from severe chronic deteriorating illnesses to a group of psychoses which are shorter in duration, easier to treat and leave little after effects. Most schizophrenics will not have arrested development or incomplete physical development of the brain. But

for those suffering from the most severe type of schizophrenia (in about 30% of all cases), there is neuro-development damage which is arrested development of the brain.

61357 Where it can be established that there is arrested development of the brain, the person still has to show that this results in **severe** impairment of intelligence and social functioning to satisfy the severely mentally impaired test for the higher rate of DLA mobility component (see DMG 61366 - 61369). Medical advice is that below average intelligence or IQ is not a normal feature of schizophrenia. Schizophrenics may respond or react to others in an unusual or different way but this has no bearing on their intelligence. Therefore, someone whose only disability is schizophrenia will not normally be able to satisfy this part of the severely mentally impaired test<sup>1</sup>.

1 SS (DLA) Regs, reg 12(5)

61358 In cases involving schizophrenia, the DM should make sure that the person has no other disability which could satisfy the severely mentally impaired test<sup>1</sup>. Difficult cases should be referred to Medical Services for advice.

1 SS (DLA) Regs, reg 12(5)

### **Arrested development or incomplete physical development of the brain and attention deficit hyperactivity disorder**

61359 It is not possible with the current state of medical knowledge to attribute the condition attention deficit hyperactivity disorder (commonly known as ADHD) to a state of arrested development or incomplete physical development of the brain within the meaning of the regulation<sup>1</sup>.

1 SS (DLA) Regs, reg 12(5)

61360 In cases involving attention deficit hyperactivity disorder, the DM should make sure that the person has no other disability which could satisfy the severely mentally impaired test. Difficult cases should be referred to Medical Services for advice.

61361 - 61365

### **Severe impairment of intelligence**

61366 Medically someone with **severe** impairment of intelligence can generally be described as intellectually three standard deviations below the average IQ of 100. A standard deviation is 15%, so a person with **severe** impairment of intelligence will have an IQ of 55 or less. It is likely that a person with such a low IQ will have undergone tests to assess their intelligence. However, although the IQ is likely to be

the essential starting point for considering impairment of intelligence, it is not necessarily decisive.

61367 As well as an IQ of 55 or less, the DM should consider other factors which may also indicate that a

person has severe impairment of intelligence and should be considered even when the IQ is over 55<sup>1</sup>. The DM should consider whether there

**1.** is difficulty with communication so that

**1.1** speech may be severely impaired, often only monosyllabic or grunting noises **or**

**1.2** reading or writing skills may be absent or very poor **or**

**2.** are severe learning difficulties **or**

**3.** is a lack of understanding of everyday living.

People with severe impairment of intelligence are likely to need specialized schooling, and supervision of all activities. In cases of doubt and where the IQ is over 55 the DM should refer the case to Medical Services for expert advice.

1 M (a child) v CAO; R(DLA) 1/00

61368 The DM should consider whether they accept that

**1.** the assessment of IQ, having had regard to all available evidence, is an adequate reflection of intelligence **or**

**2.** having regard to all the available evidence, despite an IQ of above 55, or in the absence of any objective IQ measurement, the claimant's behaviour is consistent with 'severe impairment of intelligence'.

The same evidence may be considered when deciding both the question of “severe impairment of intelligence” and also “severe impairment of social functioning”. Nevertheless the two questions themselves are separate and should be considered accordingly.

### **Severe impairment of social functioning**

61369 People with severe impairment of social functioning will usually have severe learning difficulties. They will only be able to acquire a few basic social skills after being shown how to perform them. They will have difficulties relating to other people and making friends, and would not be able to carry out basic social skills such as running a simple errand, using public transport and carrying on a conversation.

61370 The term “intelligence” refers to a person’s intellect or ability to understand. The term “social functioning” is what that person is able to do with the intelligence they have. For example, some people who have a low intelligence can relate to other people and perform basic social skills once they are shown how to do them. But

others who have a low intelligence are not able to perform basic tasks or relate to others. It is the latter

who would display severe impairment of intelligence **and** social functioning.

61371 - 61375

### **Severe behavioural problems**

61376 People are treated as having severe behavioural problems if they exhibit disruptive behaviour that

**1.** is extreme **and**

**2.** regularly requires another person to intervene and physically restrain them

**2.1** to prevent them injuring themselves or others **or**

**2.2** damaging property **and**

**3.** is so unpredictable that they require another person to be present watching over them whenever they are awake<sup>1</sup>.

It is essential that **all** three conditions are satisfied. The disruptive behaviour does not need to be displayed at all times but it must be extreme. The word “extreme” is an ordinary English word which here refers to behaviour which is wholly out of the ordinary.

1 SS (DLA) Regs, reg 12(6)

61377 People who have severe behavioural problems may

**1.** be destructive

**2.** be reckless with dangerous things

**3.** be aggressive and attention seeking

**4.** self-mutilate or abuse themselves

**5.** be hyperactive

**6.** display persistent body movements

**7.** disrupt the household during the night.

**Note:** This list is not exhaustive.

61378 The conditions at DMG 61376 can only be satisfied if the disruptive behaviour is

**1.** a regular occurrence **and**



2. a constant risk.

**Aggression, destructiveness, hyperactivity and self injury may require physical restraint.**

61379 The claimant's behaviour must be so destructive and unpredictable that they require the presence of another person to watch over them whenever they are awake. This is in all aspects of the claimant's life both indoors and out. If a claimant displays behavioural problems at home but elsewhere, for example at school, is well behaved then the test will not be satisfied.

**Example**

Jane, although displaying some behavioural problems, is capable of playing alone in her room with the door closed. The claim to the higher rate of the DLA mobility component failed as the carer is not required to be present and watching over Jane whenever she is awake as the bedroom door was closed with the carer on one side and Jane on the other<sup>1</sup>.

1 R(DLA) 09/02

61380 The claimant's condition must be such that the constant presence of another person is required to intervene, and restrain the claimant, to deal with unpredictable behaviour. The restraint must be a regular occurrence.

61381 Recent case law has qualified the above statements as follows. Even if the person (or child) behaves when in a structured environment then the DM must still consider what the consequences would be without that structure, and is there still a likelihood that the claimant could display disruptive behaviour for which intervention would be required.

61382 The DM should consider the following steps when making a decision.

1. What are the constituent parts of the assistance relied on and who gives it.
2. Which parts of the assistance are of a sufficiently intimate and personal nature to qualify as "attention".
3. Why is it reasonably required, and so what is it directed to and what is it a consequence of.
4. How often and when is it given.
5. If the claimant is under 16, how do the claimant's requirements, and thus the attention, compare with the normal requirements of persons of that age.

61383 The DM must also consider

1. what are the bodily functions that are affected by the functional disability of the claimant
2. **if but** for the existence of the functional disability would the relevant attention be reasonably required.

61384 From the above assessment the DM should be able to determine

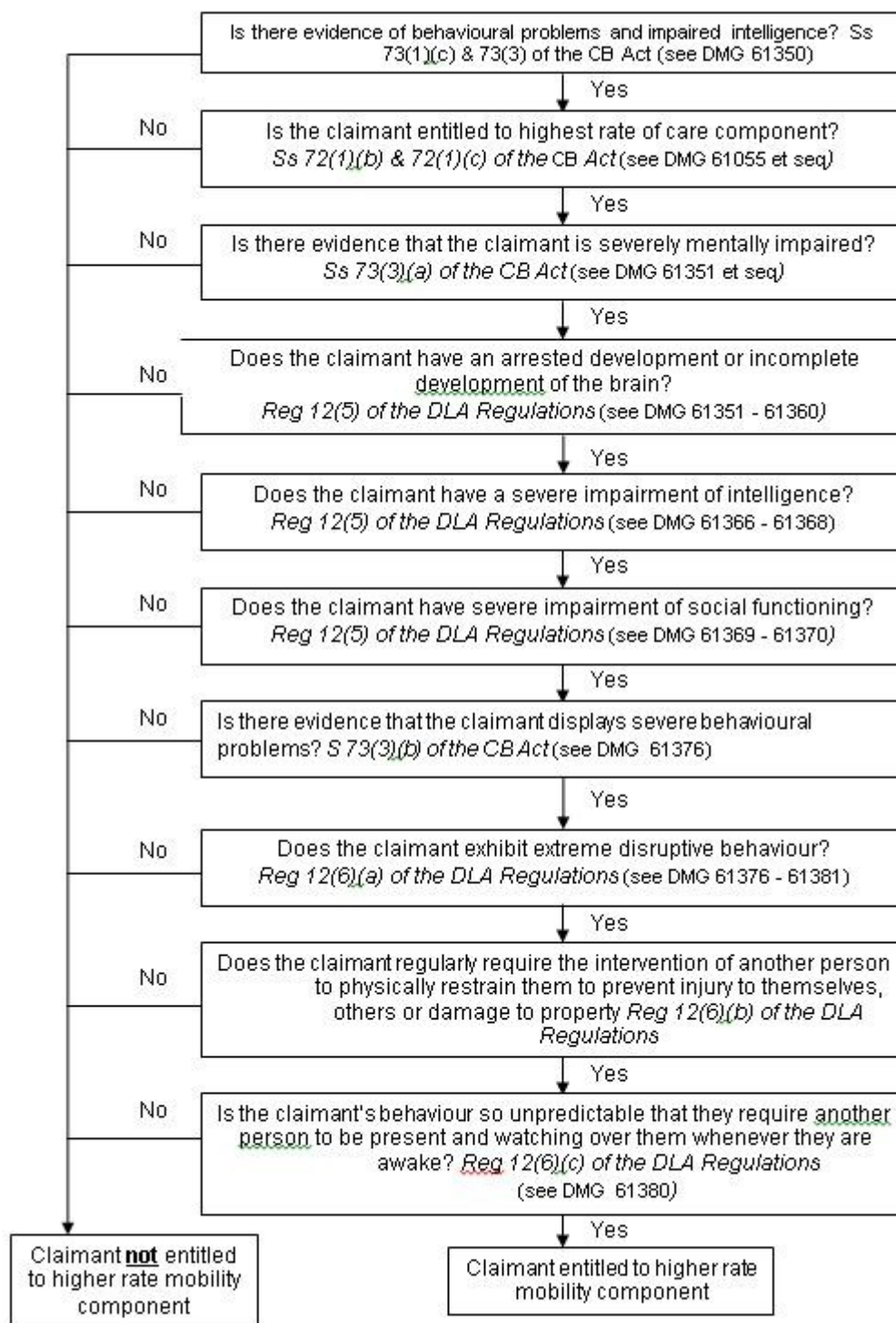
- 1.** the bodily functions to which the attention relates can be identified
- 2.** the link between them (and thus the relevant attention) and the relevant functional disability can be identified
- 3.** the intimate quality of each aspect of the assistance can be assessed
- 4.** the period or periods for which the attention is reasonably required can be assessed **and**
- 5.** in the case of a claimant under 16 the relevant comparisons can be made.

### **Evidence of severe mental impairment or severe behavioural problems**

61385 The information given on the claim form alone is unlikely to be enough for the DM to determine a case under DMG 61351 or DMG 61376. But there should be enough information to identify potential cases. Further evidence may be needed from specialists via Medical Services before the DM can decide the question.

### **Severely mentally impaired with severe behavioural problems flow chart**

61386 Severely mentally impaired with severe behavioural problems flow chart



61387 - 61390

## Lower rate DLA mobility component

### The need for guidance or supervision

61391 The need for guidance or supervision must be linked to the person's ability to take advantage of walking out of doors. The severity of the disability is tested by its effect on the person's ability to take advantage of walking. Therefore, if a person is disabled and as a result needs guidance or supervision when walking out of doors the disability is severe. Ignore any walking they can do on familiar routes without guidance or supervision.

61392 To satisfy the “guidance or supervision” test, a person must be able to show that the guidance or supervision they get from another person will overcome their inability to take advantage of walking out of doors<sup>1</sup>. It is the actual effect of the guidance or supervision on that person rather than looking at their disability in general. For example, someone with agoraphobia who refuses to leave the house because of the severity of their phobic condition cannot satisfy the “guidance or supervision” test because no amount of guidance or supervision will help them overcome their disability.

1 R(DLA) 6/05

61393 There is no automatic passporting between the DLA care and mobility components. Guidance or supervision, or elements of guidance or supervision may also constitute attention or supervision which qualifies, or could go towards qualifying a person for entitlement to the DLA care component. However, whether or not a person has an award of the DLA care component for attention or supervision is not a relevant issue when deciding the lower rate of the DLA mobility component. Supervision for the DLA care component, and attention, may be relevant to the lower rate of the DLA mobility component<sup>1</sup>. However when considering the lower rate of the DLA mobility component this should be determined with reference to the legislative criteria<sup>2</sup> and no other criteria.

1 R(DLA) 4/01; 2 SS CB Act 92, s 73(1)(d)

## Guidance

61394 Guidance may be

1. physically leading or directing the person **or**
2. by oral suggestion or persuasion.

61395 Guidance may include guiding a person to a destination by avoiding obstacles or places, which may upset the person. A person who, as a result of their disability, has little or no ability to communicate or to understand written material such as a road map may need guidance from another person most of the time.

61396 A person with impaired hearing is **not** expected to use written notes to obtain directions. Therefore, a person with impaired hearing may need guidance from another person most of the time.

## Supervision

61397 Supervision is not just limited to avoiding substantial danger as it is with the DLA care component. For the lower rate DLA mobility component, supervision may include

1. monitoring the disabled person’s physical, mental or emotional state for signs that some intervention may be needed to encourage the person to continue walking **or**
2. checking the route ahead for obstacles, dangers or places and situations which might upset the

person.

Coaxing, encouraging, persuading or providing distraction by way of conversation may come within the meaning of “supervision”, although actual intervention may never be needed.

61398 A disabled person may get reassurance from the guidance or supervision. They may even call such guidance or supervision “reassurance”. This in itself will not mean that the person does not satisfy the “guidance or supervision” test for lower rate DLA mobility component. However, in itself, mere reassurance can never constitute guidance or supervision. There must be a level of monitoring or readiness to intervene on the part of the other person.

61399 Any guidance or supervision must be as a result of the person’s disability. It must be needed so that the person could take advantage of walking out of doors.

### **Fear or anxiety**

61400 From 8.4.02 a person cannot meet the conditions of entitlement to lower rate DLA mobility component if the reason they do not take advantage of the faculty of walking out of doors unaccompanied is fear or anxiety<sup>1</sup>.

1 SS (DLA) Regs, reg 12(7)

61401 The restriction of DMG 61400 does not apply where the fear and anxiety is a symptom of a mental disability and is so severe as to prevent the person from taking advantage of the faculty of walking out of doors unaccompanied<sup>1</sup>.

1 SS (DLA) Regs, reg 12(8)

61402 Where a person suffers from fear or anxiety that is not a symptom of a mental disability so severe as to prevent him from taking advantage of the faculty of walking out of doors unaccompanied, there may be effects of the person’s physical disability to consider. If the person does not go out alone because the effects of his physical disability may render him incapacitated and he demonstrates that the level of difficulty thus arising means the person cannot take advantage of the faculty of walking out of doors without guidance or supervision from another person most of the time, that supervision may constitute appropriate supervision<sup>1</sup>.

1 R(DLA) 6/05

61403 The need for assistance must arise from the degree of severity and frequency of the debilitating effects of a person’s disability and may constitute appropriate supervision such as providing an element of monitoring or readiness to intervene in order to prevent the person’s ability to take advantage of the faculty of walking from being compromised. The guidance and supervision does not have to relate directly to the act of walking but it must be instrumental in allowing the person to go out of doors and exercise that faculty<sup>1</sup>.

**Example 1**

Taliesin suffers from severe epilepsy. He is subject to frequent unpredictable seizures requiring intervention from another person when outside. He cannot reasonably be expected to go out alone most of the time because he is unable to cope with the effects of a seizure that leaves him completely disorientated and confused. His partner always accompanies him when he is out walking because without the guarantee that he has someone with him who would provide assistance during a seizure, Taliesin would be unable to use the faculty of walking.

**Example 2**

Arun has asthma that is mildly debilitating and attacks are rare, nevertheless, he will not go out alone because he is afraid he will suffer an attack when out walking. Arun's fear and anxiety does not arise from a mental disablement and the effects of his physical disability are not severe or frequent enough for him to satisfy the test for the lower rate DLA mobility component.

**Guidance or supervision**

61404 When considering guidance and supervision, the DM should have regard to what the person accompanying the disabled person does or would do. The DM should also note that

- 1.** the person must be able to walk
- 2.** the severity of the disability is tested by whether the person needs guidance or supervision
- 3.** the person's ability to use familiar routes is disregarded
- 4.** people cannot satisfy the "guidance or supervision" test if they cannot take advantage of the ability to walk even with guidance or supervision
- 5.** the person does not have to need the guidance or supervision all the time when walking out of doors; the test is satisfied if the guidance or supervision is needed most of the time when walking out of doors
- 6.** taking advantage of the ability to walk is a question of fact for the DM or FtT to determine
- 7.** no account can be taken of any guidance or supervision that the person chooses to have, which is not actually needed
- 8.** the guidance or supervision must be required

**8.1** as a result of the effects of the person's disability **and**

**8.2** to enable that person to take advantage of walking out of doors.

## **Special hospitals**

61411 People in special hospitals may qualify for the DLA mobility component, provided they are not excluded from benefit because they are detained in legal custody<sup>1</sup> (see DMG 61891 et seq).

1 SS CB Act 92, s 113(1); SS (General Benefit) Regs 82, reg 2

61412 If the only reason a person needs supervision is to prevent them from absconding, they cannot satisfy the “guidance or supervision” test<sup>1</sup>.

1 SS CB Act 92, s 73(1)(d)

## **Benefiting from enhanced facilities for locomotion**

61413 A condition of entitlement to the DLA mobility component is that during most of the period of any award the person can, from time to time, benefit from enhanced facilities for locomotion<sup>1</sup>. The word “benefit” should be given a wide interpretation. It can also include mental stimulation from being able to get out and about without the person necessarily appreciating that such benefit is being derived.

Locomotion is not limited to walking<sup>2</sup>. However, for the purposes of the lower rate DLA mobility component, people have to be able to walk out of doors (see DMG 61256 et seq and DMG 61392).

1 SS CB Act 92, s 73(8); 2 R(M) 2/83

61414 It would be rare to disallow a claim solely for the reason in DMG 61413. Those excluded may include those in a vegetative state, claimants whose condition renders them unsafe to be moved and claimants so severely mentally deranged that a high degree of supervision and restraint would be required to prevent them injuring themselves or others<sup>1</sup>. If in doubt the DM should seek medical advice.

1 R(M) 2/83

61415 - 61420

## **DLA mobility component - invalid carriage users**

61421 A person certified by the Secretary of State to be an Invalid Vehicle Scheme beneficiary is treated as having satisfied the conditions for the higher rate DLA mobility component in DMG 61255 **1**<sup>1</sup>.

1 DLA Regs, Sch 1(4); SS CB Act 92, s 74

61422 The DLA mobility component is not payable to a person treated as having satisfied the conditions for higher rate of that component as in DMG 61255 if that person has the use of

**1.** an invalid carriage **or**

**2.** other vehicle or appliance primarily designed to provide a means of personal and independent locomotion out of doors

**3.** which is provided by

**3.1** Welsh Ministers **or**

**3.2** Scottish Ministers **or**

**3.3** the Secretary of State

under specified legislation<sup>1</sup>.

1 SS CB Act 92, s 73(13); National Health Service (Wales) Act 2006, Sch 1, para 9; NHS Act 06, Sch 1, para 9; NHS (Wales) Act 06, Sch 1, para 9; NHS (Scot) Act 78, s 46; Health and Personal Social Services (Northern Ireland) Order 1972, art 30(1)

## **Invalid Vehicle Scheme beneficiary over 65**

61423 People may be entitled to the higher rate of the DLA mobility component or the highest or middle rate of the DLA care component after they have reached the age of 65<sup>1</sup> if they

**1.** are an Invalid Vehicle Scheme beneficiary and the appropriate certificate has been issued<sup>2</sup>**and**

**2.** are provided with an invalid carriage or other vehicle by the Secretary of State<sup>3</sup> which is

**2.1** propelled by a petrol engine or electric motor **and**

**2.2** provided for use on a public road **and**

**2.3** controlled by the occupant.

1 DLA Regs, Sch 1(4); 2 SS CB Act 92, s 74(1); DLA Regs, Sch 1(4)(a); 3 NHS Act 06, Sch1, para 9; NHS (Wales) Act 06, Sch 1, para 9; NHS (Scot) Act 78; DLA Regs, Sch 1(4)(b)

61424 Many Invalid Vehicle Scheme beneficiaries who are over 65 have already established entitlement to DLA as in DMG 61421 - 61423. Where they subsequently give up the invalid carriage, they should report a change of circumstances which would require a supersession to restore payability.

61425 Invalid Vehicle Scheme beneficiaries aged 65 or over are entitled to the highest or middle rate of the care component if the conditions at DMG 61061 - 61062 are satisfied for a period of **six months** immediately before the date on which the award of that component begins. But the prospective test of being likely to satisfy those conditions for a period of six months from the date on which the award of that component begins does **not** have to be satisfied<sup>1</sup>.



61426 - 61450

## **Qualifying period 61451 - 61490**

### **Subpages**

- Attendance allowance 61451 - 61460
- Disability living allowance 61461 - 61490

## Attendance allowance 61451 - 61460

[Attendance allowance](#) 61451

[Extension to the qualifying period](#) 61452 - 61453

[Period for which AA is payable](#) 61454 - 61460

### Attendance allowance

61451 There is a 6 month qualifying period before AA is payable. Throughout this period a person must satisfy one or both of the disability conditions<sup>1</sup>. This qualifying period also applies when revising a lower rate to the higher rate because of increased attendance needs. See DMG 61491 if the person is terminally ill.

1 SS CB Act 92, s 65(1)(b)

### Extension to the qualifying period

61452 The 6 month qualifying period may end on any date which falls within a period of two years immediately before the date on which the award of AA would begin<sup>1</sup>.

1 SS (AA) Regs, reg 3

61453 The term “within a period” includes the first and last day of that period.

### Example

A person is awarded AA beginning on 1.2.96. The 6 month qualifying period could have ended on 1.2.94.

### Period for which AA is payable

61454 AA is payable for the period throughout which the disability conditions are satisfied or likely to be satisfied. This is for a fixed period or for an indefinite period.

61455 - 61460

# Disability living allowance 61461 - 61490

[DLA care component](#) 61461 - 61465

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[The qualifying period and prospective test on or around age 16](#) 61468

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## DLA care component

61461 For a person to be entitled to the DLA care component, the conditions at DMG 61061 - 61063<sup>1</sup>

**1.** must be satisfied for three months

**1.1** immediately before the date on which the award of the DLA care component would begin<sup>2</sup>**or**

**1.2** ending on the day the person was last entitled to AA or the DLA care component, and that day is not more than two years before the date on which the award of the DLA care component would begin<sup>3</sup>**and**

**2.** must be likely to continue to be satisfied for

**2.1** six months from the date on which the award of the DLA care component would begin<sup>4</sup>**or**

**2.2** a period

**2.2.a** starting with the date the award of the DLA care component would begin **and**

**2.2.b** ending with the person's death if that is expected within six months of the date on which the award would begin<sup>5</sup>.

**Note:** Where **1.2** applies, the previous award of AA or the DLA care component must be at least the same as or equivalent to the current award<sup>6</sup>.

1 SS CB Act 92, s 72(1); 2 s 72(2)(a)(i); 3 s 72(2)(a)(ii); SS (DLA) Regs, reg 6(1);  
SS (C&P) Regs, reg 16; 4 SS CB Act 92, s 72(2)(b)(i); 5 s 72(2)(b)(ii); 6 s 72(4)

61462 The conditions of entitlement satisfied during the retrospective qualifying period (see DMG 61461 **1.**) need not be the same conditions as those which must be satisfied during the prospective qualifying period (see DMG 61461 **2.**).

61463 A person may be awarded only one of the rates. If a person

- 1.** has satisfied the disability condition at a lower rate for three months **and**
- 2.** then begins to satisfy the conditions for a higher rate

only the lower rate is payable until the conditions for a higher rate component have been satisfied for three months<sup>1</sup>.

1 SS CB Act 92, s 72(4)

**Note:** Throughout this period a person must satisfy both of the disability conditions. This qualifying period also applies when revising a lower rate to one at a higher rate because of increased care needs.

### **Example**

A woman makes a claim on 6 February. She has satisfied the conditions at the lower rate in the previous three months. She is awarded the lower rate from 6 February. From 6 March her condition deteriorates and she satisfies the condition for a higher rate. She is then awarded the higher rate from 6 June.

61464 - 61465

## **DLA mobility component**

61466 For a person to be entitled to the DLA mobility component, one of the mobility conditions in DMG 61255 or 61256

- 1.** must have been satisfied for three months

**1.1** immediately before the date on which the award of the DLA mobility component would begin<sup>1</sup>**or**

**1.2** ending on a day

**1.2.a** when the person was last entitled to the DLA mobility component **and**

**1.2.b** which cannot be more than two years before the date on which the award of the DLA mobility component would begin<sup>2</sup>**and**

- 2.** must be likely to continue to be satisfied for

**2.1** six months from the date on which the award of the DLA mobility component would begin<sup>3</sup>**or**

**2.2** a period

**2.2.a** starting from the date on which the award of the DLA mobility component would begin  
**and**

**2.2.b** ending with the person's death if that is expected within six months of the date on which the award would begin.

**Note 1:** See DMG 61451 et seq for guidance on people with a terminal illness and DMG 61551 et seq for renewal claims and supersessions from people over 65 years old<sup>4</sup>.

**Note 2:** Where **1.2** applies, the previous award of the DLA mobility component must be at least the same as or equivalent to the current award<sup>5</sup> and the QP does not have to be served again.

1 SS CB Act 92, s 73(9)(a)(i); 2 s 73(9)(a)(ii); SS (DLA) Regs, reg 11;  
SS (C&P) Regs, reg 16; 3 SS CB Act 92, s 73(9)(b)(i); 4 s 73(9)(b)(ii); 5 s 73(11)

61467 If a person has satisfied the disability conditions at the lower rate for three months, and then begins to satisfy one of the conditions for the higher rate, only the lower rate is payable until one of the conditions for the higher rate have been satisfied for three months<sup>1</sup>.

1 SS CB Act 92, s 73(11)

### Example

A man makes a claim on 6 February. He has satisfied the conditions at the lower rate in the previous three months. He is awarded the lower rate from 6 February. From 6 March his condition deteriorates and he satisfies the condition for higher rate. He is then awarded the higher rate from 6 June.

## The qualifying period and prospective test on or around age 16

61468 From 1.10.07<sup>1</sup> legislation<sup>2</sup> was changed so that

**1.** a person age 16 or over who

**1.1** makes a new claim **or**

**1.2** requests a supersession of an existing award

will be awarded the benefit providing they satisfy the normal adult entitlement conditions, even if all or part of the QP falls before they reached age 16

**2.** where the adult conditions of entitlement have been met for at least three months on attaining age 16, the QP will be satisfied immediately.

The DM should look at the prospective test with the additional conditions for children in place up to their 16th birthday and with the adult conditions in place from their 16th birthday.

### **Example 1**

On his 16th birthday Alex submits a claim for the lowest rate of the DLA care component by virtue of the cooked main meal test. The evidence indicates this need has existed for several years but the age conditions previously prevented an award of the lowest rate of the DLA care component on that basis.

Because Alex claimed at age 16 and he satisfies the adult conditions of entitlement, the DM considers the entire 3 month QP under the adult rules and ignores the fact that the QP under consideration falls before Alex attained age 16. The DM awards the lowest rate of the DLA care component from the 16th birthday.

### **Example 2**

Nick suffers from a global learning disability. On 12th December, two months after attaining age 16, his mother submits a claim on his behalf for the lower rate of the DLA mobility component because he requires guidance and supervision. The DM considers the conditions of entitlement are met under the adult rules.

Because the claim is made two months after attaining age 16, the DM considers the three month QP under the adult conditions of entitlement and ignores the additional entitlement conditions for children for the one month part of the QP that falls before age 16. The DM awards lower rate of the DLA mobility component from 12th December.

### **Example 3**

Four months before attaining age 16, Phil makes a claim for the lower rate of the DLA mobility component because the claimant requires guidance and supervision that is substantially in excess of that required by children of the same age and in normal health.

The DM considers the conditions of entitlement are satisfied and decides the three month QP prior to the date of claim is also satisfied. The DM then considers whether the six month prospective test is met. The DM decides the entitlement conditions for children are met from the date of claim for the four months leading up to the 16th birthday and from the 16th birthday the adult conditions are met for a further two months so that when combined the six month prospective test is satisfied.

## **Modifications**

61469 The periods in DMG 61461 and 61466 are modified for

- 1.** people who are terminally ill (see DMG 61500 - 61510)
- 2.** invalid vehicle scheme beneficiaries aged 65 or over (see DMG 61423)

**3.** renewal claims and supersessions from people over 65 (see DMG 61557 et seq).

61470 - 61490



## **Special cases 61491 - 61600**

### **Subpages**

- Terminally ill (special rules cases) 61491 - 61519
- Disability Living Allowance - under 16s 61520 - 61550
- Disability Living Allowance - people of pensionable age 61551 - 61600

# Terminally ill (special rules cases) 61491 - 61519

[Conditions of entitlement](#) 61491 - 61500

[Qualifying period](#) 61501 - 61510

[Claim on behalf of a terminally ill person made by a third party](#) 61511 - 61519

## Conditions of entitlement

61491 [\[See Memo DMG 06-22\]](#) People are considered to be terminally ill if they have a progressive disease from which death may reasonably be expected within six months<sup>1</sup>.

1 SS CB Act 92, s 66(2)(a)

61492 [\[See Memo DMG 06-22\]](#) If death is reasonably expected beyond six months, the person is not considered to be terminally ill in accordance with DMG 61491. The DM should consider the reasonable expectation at

1. the date of claim **or**
2. the date of application for revision or supersession.

It is irrelevant that, by the date of the DM's decision, the person has lived for six months since the diagnosis was made<sup>1</sup>.

1 R(A) 1/94

61493 The special rules apply if a person submits evidence that they have been diagnosed as terminally ill

1. after the date of claim **and**
2. before the DM's decision is made.

Such a claim may succeed from a date determined in accordance with the evidence.

61494 If, before the DM's decision is made, the claimant indicates in writing that it was intended to make a claim under the special rules, see DMG 61497.

61495 The form used by the person's doctor makes no specific reference to terminally ill. The form asks for details of the claimants condition and any treatment which is being given.

61496 The DM refers all claims made under the special rules direct to Medical Services for advice **before** a decision is made. Medical advice is **always** available for the DM to decide whether the person is terminally ill.

61497 A claim can only be considered under the special rules if it is made **expressly** because the person is terminally ill<sup>1</sup>.

1 SS CB Act 92, s 66(1) & 72(5)

61498 There must be evidence that the claim is being made **specifically** because the disabled person is terminally ill.

61499 Where a claim has **not** been made under the special rules, written or verbal (e.g. by telephone call) evidence of a terminal illness can be accepted from the claimant or from another person on their behalf. As long as the information is received before the claim has been determined<sup>1</sup> the claim can be amended into a claim made **expressly** because the person is terminally ill.

1 SS (C&P) Regs, reg 5(1)

61500 The fact that a person is terminally ill is not sufficient for accepting the claim under the special rules. The DM should decide cases under the special rules only when the person making the claim has

1. ticked the special rules box in section 1 of the claim pack **or**
2. included with the claim some other expression in writing that the claim is made under the special rules **or**
3. **provided oral evidence that the claim is made under the special rules.**

In cases of doubt the claim should be referred to medical services, who can advise if the information provided is sufficient to treat the claimant as being terminally ill in accordance with DMG 61494.

1 SS (C&P) Regs, reg 5(1)

## Qualifying period

### AA and DLA care component

61501 There is no qualifying period if AA or the DLA care component is claimed expressly because the person is terminally ill, and the illness is confirmed by Medical Services. The conditions of entitlement for

1. AA at the higher rate **or**
2. the DLA care component at the highest rate

are treated as satisfied from the date of claim or, the first date that the person is terminally ill, whichever

is later<sup>1</sup>.

1 SS CB Act 92, s 66(1)(a) & 72(5)(a)

## **DLA mobility component**

61502 There is no qualifying period if people

- 1.** claim DLA expressly because they are terminally ill **and**
- 2.** satisfy the conditions for entitlement to the DLA mobility component (see DMG 61255 - 61256).

The period for which they are likely to continue to satisfy the conditions may be reduced from six months if they are not expected to live that long (see DMG 61466 **2.2**)<sup>1</sup>. Benefit is payable immediately at the appropriate rate **provided** they are likely to continue to satisfy the conditions for the remainder of their life.

1 SS CB Act 92, s 73(12)

## **Period of award**

61503 From 12.1.00<sup>1</sup> DMs have not been required to make awards for life for terminally ill people under the special rules but have the option of making indefinite or fixed period awards<sup>2</sup>.

1 WRP Act 99 (Commencement No. 1) Order 1999, art 2(3); 2 SS CB Act 92, s 66(1)(b) & s 72(5)(b)

61504 Special Rules awards of AA and the DLA care component should normally be made for an appropriate fixed period. The DLA Advisory Board have recommended that three years would normally be an appropriate fixed period. This will enable entitlement to be considered afresh at the end of an award where a person's life expectancy is exceeded.

61505 Legislation provides that an award of a DLA care component and a DLA mobility component cannot be made for different fixed periods<sup>1</sup>. Where a DM finds that a person has claimed DLA under the special rules and also satisfies the entitlement conditions for a DLA mobility component the DM must consider whether it is appropriate

- 1.** for the DLA mobility component to be made for the same three year period as the special rules DLA care component award **or**
- 2.** to make the DLA mobility component award for an indefinite period.

**Note 1: 1.** is most likely where the walking difficulties which give rise to the mobility component entitlement are the result of a progressive disease which gives rise to the special rules DLA care component award.

**Note 2: 2.** is most likely where the walking difficulties which give rise to the mobility component are not connected to the progressive disease which gives rise to the special rules DLA care component of the award.

1 SS CB Act 92, s 71(3)

61506 A special rules DLA care component award will not disturb an existing DLA mobility component award because acquiring the status of a terminally ill person for the purposes of the special rules is not a relevant change of circumstances which gives grounds for reconsidering entitlement to the DLA mobility component. Entitlement to the DLA mobility component may only be reconsidered if there is evidence on the special rules claim form that the claimant's walking difficulties have changed.

61507 However where the existing DLA mobility component award is for a fixed period the prohibition of the DLA mobility component and DLA care component awards for different fixed periods means that there may be cases in which the period of special rules DLA care component award will need to be adjusted to more or less than three years to fit the period of the mobility award<sup>1</sup>.

1 SS CB Act 92, s 71(3)

### **Example 1**

A woman has been diagnosed with a terminal illness and submits a claim under the special rules. Her walking ability is unaffected so the DM awards the highest rate of the DLA care component for a fixed period of three years. This will enable the claimant's entitlement to be considered afresh at the end of an award where a person's life expectancy is exceeded.

### **Example 2**

A man suffering from a terminal illness submits a claim under the special rules. His walking ability is severely affected by the progressive disease and he is virtually unable to walk. The DM awards the highest rate of the DLA care component and the higher rate of the DLA mobility component for an aligned fixed period of three years. Again, this will allow entitlement to be considered afresh when the award expires.

### **Example 3**

A man suffering from a terminal illness submits a claim under the special rules. He is already in receipt of a fixed period award of the DLA mobility component that is unconnected to his progressive disease. The DLA mobility component still has two years to run before expiry. In order to align the two fixed period awards, the DM awards the highest rate of the DLA care component for two years only.

### **Example 4**

A man suffering from a terminal illness submits a claim under the special rules. He is already in receipt of a five year fixed period award of the DLA mobility component that is unconnected to the progressive

disease. The DLA mobility component has four years to run before expiry. In order to align two fixed period awards, the DM awards the highest rate of the DLA care component for four years.

### **Example 5**

A terminally ill woman submits a claim under the special rules. She is already entitled to an indefinite award of the DLA mobility component for reasons unconnected to her progressive disease. The DM awards the highest rate of the DLA care component for a fixed period of three years.

61508 - 615010

### **Claim on behalf of a terminally ill person made by a third party**

61511 If somebody makes a claim on behalf of a person who is terminally ill, the terminally ill person is treated as having made the claim. The claim can be made without the terminally ill person's knowledge or authority<sup>1</sup>.

1 SS A Act 92, s 1(3)(a)

61512 - 61519

# Disability Living Allowance - under 16s 61520 - 61550

[Claim received for a child under 16](#) 61520

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## Claim received for a child under 16

61520 Children under 16 qualify for DLA in their own right. If DLA is claimed for someone under 16 the Secretary of State appoints another person to receive and deal with the allowance on their behalf<sup>1</sup>.

1 SS (C&P) Regs, reg 43

## DLA care component

61521 Children under 16 qualify for the DLA care component if

**1.** they satisfy the adult conditions<sup>1</sup> (see DMG 61051) **and**

**2.** they require

**2.1** substantially more care from another person than children of their age would normally require<sup>2</sup>  
**or**

**2.2** care that children younger than them in normal physical and mental health may need but a

child their age in normal physical and mental health would not require<sup>3</sup>.

**Note 1:** The main meal test (see DMG 61081) does not apply to a child under 16 years of age<sup>4</sup>.

**Note 2:** See DMG 61468 for guidance on the QP and prospective test on or around age 16.

1 SS CB Act 92, s 72(1); 2 s 72(1A)(b)(i); 3 s 72(1A)(b)(ii), [2015] AACR 29; 4 s 72(1A)(a)

## Renal dialysis

61522 Where a child under 16 satisfies the conditions of entitlement for the middle rate DLA care component because they are undergoing renal dialysis (see DMG 61220 et seq), the conditions in DMG 61521 do not have to be satisfied<sup>1</sup>.

1 R(A) 1/93

## DLA mobility component

61523 A child under 16 satisfies the guidance or supervision condition for the lower rate mobility component if they satisfy the adult conditions<sup>1</sup> (see DMG 61256) and they

**1.** require substantially more guidance or supervision from another person than children of their age in normal physical and mental health would require<sup>2</sup>**or**

**2.** need guidance or supervision that children of their age in normal physical and mental health would not require<sup>3</sup>.

**Note 1:** Children under three years of age (five years of age before 9.4.01) can never be entitled to the higher rate of the DLA mobility component<sup>4</sup>.

**Note 2:** Children under 5 can never be entitled to the lower rate of the DLA mobility component<sup>5</sup>.

**Note 3:** See DMG 61468 for guidance on the qualifying period and prospective test on or around age 16.

1 SS CB Act 92, s 73(1); 2 s 73(4A)(a); 3 s 73(4A)(b); 4 s 73(1A); 5 s 73(1A)(b)

## Points for consideration

61524 The care and mobility needs of healthy children are substantial, and must be taken into account when considering the care and mobility needs of a disabled child. Further guidance is available in the Children Medical Guidance.

61525 To qualify for DLA the attention, guidance, and supervision required by a disabled child must be substantially in excess of that usually required by a child of the same age or the child must need extra



such care requirements that would be common to younger children, but are different from children of their age or would normally have grown out of. The DM should consider the need for attention, guidance and supervision in relation to what is required by the child and not to what is, or is not, actually given. Any attention or guidance that is required, may be constituted by virtue of the time over which it is required, or by virtue of the quality or degree of attention or guidance and supervision that is required.

61526 Guidance and supervision needed by children are influenced by the fact that, as they develop physically and mentally, their needs may decrease or increase. Physical development may increase the disabled child's needs. For example children with learning difficulties may require more rather than less supervision as they get older and become more mobile (particularly if they develop dangerous habits which they may have difficulty in controlling).

61527 Physical development may also reduce a disabled child's needs. For example physical development of the upper limbs in children with defective lower limbs may enable them to move independently with mechanical aids.

61528 Increasing maturity should lead children with diabetes to assume responsibility for the care of their condition and so require less supervision. Education may also have an effect, notably with children who are blind or deaf.

## **Assessment of care needs**

61529 The attention given, particularly to infants and very young children who are disabled, may differ from that given to healthy children of the same age. This does not necessarily mean that the amount of attention given is substantially in excess. The

needs and functions of healthy children must be taken into account when assessing the needs of a child with a disability.

### **Example**

Healthy children, especially very young children, may wake up during the night from a variety of reasons and require attention. Likewise young children who are not disabled require attention in relation to bodily functions such as eating, dressing, undressing, washing and using the toilet.

## **Care substantially in excess**

61530 There are some children with a disability

- 1.** whose care includes the use of technical procedures **or**
- 2.** whose clinical condition poses very substantial needs

so that the attention or supervision/watching-over they require from birth may be **substantially in**

**excess** of that required by a healthy child.

61531 These include children

- 1.** requiring regular mechanical suction because they have a tracheostomy or other upper airway problem **or**
- 2.** being fed by tube into the stomach or a vein **or**
- 3.** who need oxygen regularly to survive **or**
- 4.** undergoing surgical procedures in which a segment of the stomach or bowel is opened up onto the abdominal wall for feeding or for the elimination of waste (see DMG 61532) **or**
- 5.** with frequent loss of consciousness usually associated with severe fits secondary to birth asphyxia or rare forms of congenital metabolic disease
- 6.** with severe impairment of vision and/or hearing.

61532 The surgical procedures at DMG 61531 **4.** are

- 1.** gastrostomy where the stomach has an opening onto the abdominal wall to assist in feeding by tube **and**
- 2.** ileostomy; jejunostomy; colostomy which are

**2.1** connections between a particular part of the bowel and the abdominal wall **and**

**2.2** usually constructed to form an exit from the intestine when part of it is blocked or has been destroyed by disease.

61533 The question of what is meant by “substantially in excess” is for the DM to determine. This has to be measured against the normal attention or supervision needs of a child of the same age who is not disabled, and **not** what would be needed by the child who is claiming DLA if that child was not physically or mentally disabled.

61534 Children’s attention and supervision needs vary considerably. At any age there is a wide range of requirements for attention or supervision. The attention or supervision needed should not be regarded as “substantially in excess” unless it is outside the whole range of attention or supervision that would normally be required by a child of the same age who is not disabled.

## **Attention or supervision at school**

61535 Supervision or guidance received at school can count as attention in connection with a bodily function provided that attention is of a close and personal nature<sup>1</sup>. (See DMG 61381 et seq) A special

needs helper in the classroom may provide a child with attention in the classroom that helps the child to focus on the tasks that have been set by the teacher and may therefore amount to attention of a close and personal nature.

1 [2014] AACR 2

### Example

Emma has a learning disability and regularly receives attention in the course of her lessons from a special needs helper. She monitors Emma during the course of the lessons and helps her to concentrate on the tasks she has been set by the teacher.

61536 In many instances evidence from the home and the school will be contradictory. This may be due to the child taking medication that only wears off after school. However, it is unlikely that any attention thus arising could amount to attention frequently throughout the day.

### Example

Lucy aged ten is suffering from attention deficit hyperactivity disorder and is destructive around the home, reckless in dangerous situations such as running out into busy roads and cannot be left alone with her young brother as she frequently loses her temper and punches and scratches him. The mother indicates that Lucy is on prescribed medication that is effective for up to eight hours and takes the medication before going to school. The evidence from the school indicates that Lucy is well behaved and her educational progress is normal for her age and she does not require any special attention whilst at school. Any attention required after the effects of the medication has worn off could not amount to attention frequently **throughout the day**, but may amount to attention required for a significant portion of the day.

## Nocturnal Encopresis and Enuresis

61537 The DM must be satisfied that the claimant has a functional deficiency that is either physical or mental in origin, which the claimant is unable to control, that gives rise to the appropriate care needs. Encopresis or Enuresis are not in themselves a disablement but they may be a symptom of a disablement. A young child's inability to perform functions due to immaturity is however not a disablement. Nonetheless, if the symptoms persist as a child gets older it could indicate the presence of a disablement.

61538 Provided the use of pads or nappies precludes attention needs sufficient to qualify, then the claim fails because qualifying attention must be in consequence of the disablement<sup>1</sup>.

1 R(DLA) 1/05

### Example 1

Phillip is seven and has eczema and nocturnal enuresis. He cannot wear incontinence pads due to the eczema and his mother has to get up once a night for 30 minutes to bathe him, re-apply eczema cream, and to change his nightclothes and sheets. This can amount to attention for a prolonged period due to his eczema.

### **Example 2**

Ryan is a five year old who has a urinary disease and wets the bed. He refuses to wear nappies/incontinence pads because he considers this as “babyish” and his mother has to get up twice a night for 30 minutes each time to bathe him and to change his nightclothes and sheets. In this case the need for attention at night could be avoided by wearing nappies/pads and any claim based upon the child’s refusal to wear nappies/pads will fail.

### **Example 3**

Padma is three years old and soils the bed during the night due solely to immaturity and would not amount to a disablement.

61539 - 61540

## **Assessment of mobility needs**

61541 Guidance and supervision given to children with a disability may differ from that given to healthy children of the same age. This does not necessarily mean that the amount of guidance and supervision is substantially in excess.

61542 DMG 61523 should be referred to when considering whether a child with a disability satisfies the condition for the lower rate of the DLA mobility component. Many children may need some guidance and supervision whilst walking out of doors. The test is whether the child needs substantially more supervision than a child of the same age or whether they need guidance or supervision that children of their age in normal physical and mental health would not require.

## **Quality and quantity of supervision and guidance**

61543 Supervision or guidance will vary according to the needs of the child. Some children may be relatively safe and need only light control. Others may be more likely to have problems and require tighter control to keep them safe. There is a considerable difference between a five year old who has developed road sense and one who is liable to run into traffic at a whim. Holding hands will be sufficient to keep the former child safe. But to keep the latter safe requires greater physical restraint and more mental alertness.

61544 A young child in normal health can be warned and directed by voice from a distance without the need for a supervisor to stay within touching distance or to maintain eye contact with him. He can be allowed to make short journeys on foot on traffic free routes that are familiar to him and overlooked from

a distance by adults for example to a neighbours house.

### **Example 1**

Alec is five years old and is profoundly deaf. He needs someone to be in very close proximity to ensure he does not step into the path of dangers from behind, such as an approaching cyclist, other running children or a child on a skateboard who will all be unaware that he cannot hear them. Alec requires close and constant supervision, the nature and quality of which, may constitute supervision substantially in excess of that required by a normal child.

### **Example 2**

Ellen is ten years old, autistic and has no sense of danger and displays behavioural problems. She frequently runs off without warning. Her mother needs to be extremely vigilant and keep a tight hold of her hand when they are walking near busy roads. Ellen may therefore require a greater physical restraint and more mental alertness from the person accompanying her in order to keep her safe.

61545 People who claim DLA after age 16 need only satisfy the ordinary disability conditions (DMG 61061 - 61065) for the three month qualifying period at DMG 61461.

61546 - 61550

# Disability Living Allowance - people of pensionable age 61551 - 61600

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[Renewal claims](#) 61557 - 61564

[Revisions or Supersessions](#) 61565 - 61567

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## New claims

61551 To be entitled to DLA a person must be under pensionable age, except in certain circumstances set out below.

**Note:** From 6.12.18<sup>1</sup> the age condition changed from being under age 65 to being under pensionable age<sup>2</sup>. See DMG Chapter 75 for guidance on pensionable age.

1 Pensions Act 07, s 13(3); 2 SS CB Act 92, s 75(1)

[61552 Spare]

61553 People who claim DLA before reaching pensionable age<sup>1</sup> but

**1.** the claim was not determined until after they reached pensionable age<sup>2</sup> **and**

**2.** at the time of their claim they did not have an award of DLA for a period ending on or after the day they reached pensionable age<sup>3</sup>

may be entitled to DLA.

1 SS (DLA) Regs, reg 3(2)(a); 2 reg 3(2)(b); 3 reg 3(2)(b)

61554 Provided that the person has satisfied all the conditions for DLA except the qualifying period before they reached pensionable age, the claim is determined without regard to the fact that they are actually aged over pensionable age at the time the claim is determined<sup>1</sup>.

1 SS (DLA) Regs, reg 3(3)

61555 The three month qualifying period need not have been completed on the day before they reach pensionable age. That day could be the first day of the qualifying period.

61556 There is no upper age limit for receiving DLA. A person may continue to receive an award beyond pensionable age where the normal conditions of entitlement are satisfied.

## Renewal claims

61557 People who are pensionable age or over are not prevented from making a renewal claim for DLA solely on the grounds of their age<sup>1</sup>, even if it has been disallowed previously.

1 SS (DLA) Regs, reg 3 & Sch 1

61558 A renewal claim from such a person can only succeed if

1. it is made within twelve months of the end of the previous award **and**
2. the person was pensionable age before their previous award ended<sup>1</sup>, or it was terminated.

1 SS (DLA) Regs, reg 3 & Sch 1

61559 If a claim for DLA is made after a break of more than twelve months by a person whose award ended after they reached pensionable age, AA is available to them. The claim for DLA can be treated as a claim for AA (see DMG 61611).

61560 - 61564

## Revisions or Supersessions

61565 The DM should note that the guidance on revision or supersession in 61568 et seq **only** applies to revisions or supersessions of decisions made

1. before the date the person reached pensionable age **and**
2. where the decision, made after the person reached pensionable age<sup>1</sup>, is superseded because of a change of circumstances which occurred on or after the person reached pensionable age<sup>1</sup>.

1 SS (DLA) Regs, Sch 1, para 2

61566 People of pensionable age are not excluded from entitlement to either component of DLA solely because they are of pensionable age when the changed award is made<sup>1</sup> where they

1. have an award of DLA made before pensionable age **and**
2. apply for a revision or supersession **and**
3. the award is changed.

61567 Where the decision is superseded as in 61565 **2.** on relevant change of circumstances, the change must have taken place before the person reached pensionable age<sup>1</sup>.

1 SS (DLA) Regs, Sch 1, para 1(3)

## **DLA care component**

### **Highest and middle rate**

61568 On revision or supersession or a renewal claim, if the highest or middle rate DLA care component had been payable, a person may receive either the highest or the middle rate provided that the appropriate disability conditions at DMG 61462 and DMG 61468 are satisfied. The lowest rate DLA care component is not available even if the conditions for that rate are satisfied. The person must complete a six month qualifying period before becoming entitled to the DLA care component<sup>1</sup> if moving from the middle to the highest rate.

1 SS (DLA) Regs, reg 3 & Sch 1, para 3(2)(b)

### **Lowest rate**

61569 If the lowest rate had been payable on a renewal claim or revision or supersession, a person may still receive

**1.** that rate **or**

**2.** one of the higher rates.

The rate depends on which of the disability conditions they now satisfy<sup>1</sup> after a six month qualifying period.

1 SS (DLA) Regs, reg 3 & Sch 1, para (3)(2)(a)

### **Effect of these conditions**

61570 These conditions allow movement between the rates. But note that a person cannot move on to the lowest rate from the highest or middle rates if their condition improves. In these circumstances they lose entitlement to the DLA care component altogether.

61571 - 61580



## DLA mobility component

### Higher rate

61581 People entitled to the DLA mobility component at the higher rate on their previous claim or before the revision or supersession can still be awarded the higher rate providing that they satisfy one of the conditions at DMG 61255. The condition must be expected to last six months from the effective date of claim or from the date of the revised or superseded decision<sup>1</sup>.

1 SS (DLA) Regs, reg 3 & Sch 1(5)(1) & (2)

61582 A person entitled to the DLA mobility component at the higher rate and whose condition improves so that they no longer satisfy the conditions for the higher rate, loses entitlement to the DLA mobility component altogether, even though they otherwise satisfy the conditions for the lower rate<sup>1</sup>.

1 SS (DLA) Regs, reg 3 & Sch 1(5)(1)

### Lower rate

61583 The lower rate can be awarded on a renewal claim or where a decision is revised or superseded only where people were entitled to the DLA mobility component at the lower rate

**1.** on their previous claim **or**

**2.** before the revision or supersession.

Even if their condition worsens, they do not qualify for the higher rate but may be awarded the lower rate<sup>1</sup>.

1 SS (DLA) Regs, reg 3; Sch 1, para 6(1)

### DLA mobility component - award of DLA care component

61584 People entitled to a DLA mobility component on their previous claim or before the revision or supersession can be entitled to the DLA care component at the highest or middle rate if they develop care needs and satisfy the care conditions at DMG 61462 and DMG 61055. But, they must complete a six month qualifying period before becoming entitled to the DLA care component<sup>1</sup>.

1 SS (DLA) Regs, reg 3 & Sch 1, para (5)(1) & (2)

61585 Subject to the provisions of DMG 61551 et seq, a person cannot be awarded a DLA mobility component on a renewal claim or revision or supersession after they reach pensionable age, even if they are already in receipt of a DLA care component.

61586 - 61600



# Determination of claims and awards 61601 - 61650

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## Claims and awards

61601 Where the guidance on claims and on deciding claims and questions differs from AA to DLA, this will be made evident. Otherwise, the guidance applies to both benefits.

61602

## DLA claims with evidence of one component only

61603 The DM should determine from the evidence on the claim form, or from other sources, whether entitlement exists to one or both components. The claimant may complete Section 2 of the claim pack for one component only. However, the DM should determine the claim on the basis of both components.

61604 - 61606

## Advance claims and awards

61607 A claim for or an award of AA may be made during the six month QP if

1. throughout that period the person is disabled **and**
2. they are expected to satisfy one or both of the disability conditions in DMG 61053 - 61054<sup>1</sup>.

1 SS CB Act 92, s 65(6)

61608 An award of DLA may be made during the QP of three months if throughout that period a person is expected to satisfy one or more of the care or mobility conditions in DMG 61051 et seq or DMG 61251 et seq. This includes claims for the DLA mobility component on behalf of children who are approaching five years of age, for the lower rate, and three years of age for the higher rate<sup>1</sup>, providing the child's third

birthday falls on or after 9.4.01.

1 SS CB Act 92, s 72(2)(a) & s 73(5)(a); SS (C&P) Regs, reg 13A

61609 - 61610

## **Interchange of claims**

61611 The DM may treat a claim for AA as a claim for DLA or CAA<sup>1</sup>. A claim for DLA or CAA can also be treated as a claim for AA.

1 SS CB Act 92, reg 9(1) & Sch 1

## **Movement between rates**

61612 People may move between rates as their condition changes. A QP has to be completed before a higher rate of benefit becomes payable, but a change to a lower rate takes effect immediately, because the QP has already been satisfied. The DM should

- 1.** be aware that the condition of people with disabilities can change from day to day **and**
- 2.** take account of the needs over the QP rather than on a particular day.

## **Period of award**

### **AA and DLA**

61613 The DM should fix the period of the award on the balance of probabilities, using all the available evidence and sources of advice. The DM should make every effort to obtain a prognosis, using the Adult Medical Guidance or Medical Services if necessary. Where this indicates that no change or improvement is likely in the person's needs, an indefinite period is appropriate.

61614 In all other cases, a fixed period award is appropriate. Evidence about treatment or likely surgical intervention may mean an award should be restricted, including such factors as local waiting lists and recovery time. An award may also be restricted for a reasonable period where the prognosis is uncertain, or in child cases as increasing age and maturity may change care or mobility needs. A fixed period award of three years is normally appropriate for a special rules award of AA or DLA care component (see DMG 61502 et seq).

61615 - 61617

### **DLA only**

61618 The DM can award either component for a fixed period or for an indefinite period. The minimum period is six months. A person may be awarded

1. both components for an indefinite period **or**
2. one component for an indefinite period and the other for a fixed period **or**
3. both components for the same fixed period **or**
4. only one component for a fixed period or for an indefinite period<sup>1</sup>.

1 SS CB Act 92, s 71(3)

61619 Where the DM decides that a person would be entitled to both components but for fixed periods of different duration, DLA **must** be awarded for the shorter of the fixed periods<sup>1</sup>. For example, if the DM decides that a person is entitled to one of the components for three years and the other for five years, DLA must be awarded for 3 years.

1 SS CB Act 92, s 71(3)

61620 - 61650

# Hospitals, Similar institutions and Care Homes 61651 - 61999

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## General 61651 - 61689

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[Exception to the general rule - first 28 days](#) 61653

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[The Motability Scheme – exceptions to the general rule](#) 61655 - 61689

### General rule on payability for hospitals and similar institutions

61651 AA or DLA is not payable for any period during which a person is maintained free of charge while undergoing treatment as an in-patient in

1. a hospital or similar institution under specified legislation<sup>1</sup> **or**
2. a hospital or similar institution maintained or administered by the Defence Council<sup>2</sup>.

1 SS (AA) Regs, reg 6(1)(a); SS (DLA) Regs, reg 8(1)(a) & 12A(1)(a); NHS Act 06; NHS (Wales) Act 06;  
NHS (Scot) Act 78; NHS & CC Act 90; 2 SS (AA) Regs, reg 6(1)(b);  
SS (DLA) Regs, reg 8(1)(b) & 12A(1)(b)

61652 Guidance is given in DMG Chapter 18 on the meaning of

1. any period
2. maintained free of charge
3. in-patient
4. hospital or similar institutions.

### Exception to the general rule - first 28 days

61653 Where a person is already entitled to AA or DLA on the day treated as the first day in a hospital or similar institution<sup>1</sup>, AA or DLA continues to be payable for

1. the first 28 days **or**
2. periods amounting in total to 28 days.

1 SS (AA) Regs, reg 8(1); SS (DLA) Regs, reg 10(1) & 12B(1)

## **Claimants who enter a hospital or similar institution under the age of 18**

61654 Any DLA claimant who has not attained the age of 18 on the day they enter a hospital or similar institution as an in-patient will not have their DLA payment stopped whilst they remain in hospital or similar institution as an in-patient<sup>1</sup>.

1 SS (DLA) Regs 8(2B), 12A(3)

### **Example 1**

Peter turned 13 years old on 30.6.16 and subsequently made a claim for DLA. The DM decided that Peter was entitled to the middle rate care component of DLA from 8.8.16 – 7.8.18. On 9.9.16 Peter enters hospital as an in-patient and remains there for 6 months. His DLA is not stopped during this period as he was under the age of 18 when he entered the hospital as an in-patient.

### **Example 2**

Catherine turned 15 years old on 29.7.16 and was in receipt of the higher rate care component of DLA. She entered hospital as an in-patient on 1.8.16 and remained there until she was discharged on 1.10.20. At the date of discharge she was 19 years old. Catherine is paid the DLA higher rate care component throughout her full stay in hospital as she was under the age of 18 when she was admitted as an in-patient.

## **The Motability Scheme – exceptions to the general rule**

61655 Before 8.4.13 the general rule on payability was modified<sup>1</sup> for people with a Motability agreement. See also Appendix 5 to this Chapter for people who have been in hospital since before 31.7.96 (including linked periods). For Motability agreements before 8.4.13 see Appendix 6 to this Chapter.

1 SS (DLA) Regs, reg 12B

61656 - 61664

61665 The Motability Scheme allows people to use their higher rate DLA mobility component to buy (through hire purchase) a car or an electric scooter or wheelchair. Cars can also be leased. Motability is a voluntary organisation which helps people buy or lease a vehicle under the scheme. The amount paid under the agreement may be less than the amount of the DLA mobility component, with the balance paid to the claimant.

61666 The DM will need evidence on Motability agreements, including details of the

- 1.** date the agreement began
- 2.** period of the agreement



**3.** weekly amount payable to Motability under the agreement

**4.** type of vehicle.

61667 **Before 8.4.13** people in hospital with a Motability agreement would generally be able to retain payment of the DLA mobility component despite the general rule in DMG 61651 - 61652. In practice the Secretary of State pays the amount of the agreement to Motability Finance Ltd.

61668 The rules about the effect of admission to hospital on DLA are set out at DMG 61651 to 61654. However, as explained in DMG 61655, the rules relating to DLA (Mobility Component) are modified for claimants with a Motability Agreement.

61669 Where on 8.4.13

**1.** the claimant is maintained free of charge while undergoing treatment as an in-patient<sup>1</sup> in

**1.1** a hospital or similar institution under specified legislation<sup>2</sup>**or**

**1.2** a hospital or similar institution maintained or administered by the Defence Council **and**

**2.** a Motability Agreement entered into by or on behalf of the claimant is in force DLA (Mobility Component) will continue to be payable until the date determined in accordance with paragraph 61670 below.

1 DLA Regs, reg 12B(7); 2 NHS (Scot) Act 78, NHS Act 06, NHS (Wales) Act 06

61670 Where the conditions in paragraph 61669 are satisfied DLA (Mobility Component) will continue to be payable until whichever is the earliest of the following dates<sup>1</sup>

**1.** the first day after 8.4.13 on which the person ceases to fall within paragraph 61669 **1.** above (i.e. ceases to be a hospital in-patient) for a period of more than 28 consecutive days **or**

**2.** the date determined in accordance with paragraph 61671 below **or**

**3.** 8.4.16.

1 DLA Regs, reg 12B(8)

61671 The date referred to in paragraph 61670 **2.** above is whichever of the following dates applies<sup>1</sup>

**1.** in the case of the **hire of a vehicle**, where the vehicle is

**1.1** returned to the owner before the expiry of the current term of hire, **the date the vehicle is returned to the owner**

**1.2** returned to the owner at the expiration of the current term of hire, **the date the current term**

## of hire expires

**1.3** retained by or on behalf of the claimant with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**

**1.4** retained by or on behalf of the claimant otherwise than with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**

**1.5** retained by or on behalf of the claimant otherwise than with the owner's consent after the date of an early termination of the current term of hire, **the date of that early termination**

## 2. in the case of a hire purchase agreement

**2.1** the date the vehicle is purchased

**2.2** where the vehicle is returned to the owner under the terms of the hire purchase agreement before the completion of the purchase, **the date the vehicle is returned to the owner**

**2.3** where the vehicle is repossessed by the owner under the terms of the hire purchase agreement, **the date of repossession.**

1 DLA Regs, reg 12B(8A)

## Meaning of "current term of hire"

61672 In paragraph 61671 **1.** above the phrase "current term of hire" means<sup>1</sup> the last term of hire that was agreed on or before 8.4.13 but it does not include any extension of that last term applying after 8.4.13.

1 DLA Regs, reg 12B(8B)

61673 - 61689

# Care homes other than hospitals and hospices from 6.10.03 61700 - 61819

[Definition of a care home](#) 61700 - 61714

[Rules on payability for care homes](#) 61715 - 61738

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**Note:** Appendix 5 to this Chapter includes guidance on care homes for periods before 6.10.03.

## Definition of a care home

61700 A care home is an establishment that provides accommodation together with nursing or personal care.<sup>1</sup>

1 SS CB Act 92, s 67(3) & s 72(9); R (on the application of Moore and others) v Care Standards Tribunal [2005] EWCA Civ 627

61701 The DM should consider a range of evidence to determine whether on the balance of probabilities whether the establishment is a care home. The following table has been devised to assist the DM with this:

More likely to be a care home	Less likely to be a care home
Registered under Health and Social Care Act 2008 to provide an activity in paragraph 2(1) schedule 1 to Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 – residential accommodation together with nursing or personal care. This may also be termed “accommodation for persons who require nursing or personal care” but check that both elements are being provided together. It may also be registered under paragraph 3	Registered under Health and Social Care Act 2008 to provide an activity set out in paragraph 1 schedule 1 of Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 other than paragraph 2 (accommodation for persons who require nursing or personal care) – e.g. paragraph 1: personal care, paragraph 4: treatment of disease, disorder or injury, paragraph 5: assessment or medical treatment

<p>as “accommodation for persons who require treatment for substance misuse” but check what care/treatment is being provided.</p> <p>(To find the registration status you can search for the establishment on the Care Quality Commission website and this information can be found under “registration info” tab)</p>	<p>for persons detained under the Mental Health Act 1983, paragraph 13: nursing care.</p> <p>Or not registered at all under HSCA 2008.</p> <p>(To find the registration status you can search for the establishment on the Care Quality Commission website and this information can be found under “registration info” tab)</p>
<p>Described as care home, establishment, or similar institution (check Care Quality Commission reports).</p>	<p>Described as supported living, adult placement, Communal dwelling where main provision is accommodation and anything extra is tailored support to enable independent living</p>
<p>Accommodation and care provided by same provider, same legal entity or as one service. Any tendering process did not allow different unconnected organisations to tender for the care and for the accommodation.</p> <p>[If two legal bodies, check whether they have registered as a partnership for the regulated activity of accommodation together with nursing or personal care.]</p>	<p>Separate bodies providing accommodation and care. Provision of accommodation separate from provision of care; e.g. care provided by domiciliary care agency.</p>
<p>Mutual reliance or coordination between two functions of accommodation and care.</p> <p>E.g. person receiving accommodation is dependent on receiving care from accommodation provider or associated company body and vice versa.</p>	<p>Lack of reliance and coordination between two functions of accommodation and care.</p>
<p>Not a private dwelling (although claimant may have own room within establishment).</p>	<p>Claimant living in own private dwelling or dwelling of carer.</p>
<p>No tenancy agreement (although claimant may have to sign behavioural or management agreement in order to receive accommodation and care). If there is a tenancy or management/framework agreement, rights of occupation should be linked to care so it is clear they are being provided as one service.</p>	<p>Claimant has tenancy agreement with landlord or provider of accommodation. Any agreement should show clear separation between accommodation and care.</p>

Claimant pays nothing towards accommodation or care costs	Claimant pays private rent or housing benefit towards accommodation costs.
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**Note:** None of these factors is absolutely decisive on their own. The DM needs to make a judgement based on the whole picture and the sum total of multiple factors.

61702 - 61714

## Rules on payability for care homes

61715 AA or the DLA care component is **not** payable where a person is resident in a care home in circumstances where any of the costs of any qualifying services provided for him are met out of public or local funds<sup>1</sup> under

1. specified legislation<sup>2</sup>**or**
2. any other enactment relating to people with a disability<sup>3</sup>**or**
3. any other enactment relating to
  - 3.1 people with a disability **or**
  - 3.2 young people **or**
  - 3.3 education or training<sup>4</sup>.

**Note 1:** See Appendix 1 for a list of enactments relating to people with a disability, young people and education and training.

**Note 2:** See DMG 61822 for a care home payability flowchart

1 SS CB Act 92, s 67(2) & s 72(8); 2 SS (AA) Regs, reg 7(2)(a);  
 SS (DLA) Regs, reg 9(2)(a); NA Act 48, Part III; SW (Scot) Act 68; MH (C & T) (Scot) Act 03;  
 Community Care and Health (Scotland) Act 02; MH Act 83; Health and Social Care Act 01, s 57;  
 Care Act 14, Part 1; 3 SS (AA) Regs, reg 7(2)(b); SS (DLA) Regs, reg 9(2)(b); 4 SS (DLA) Regs, reg 9(2)(b);

61716 If it was determined that a claimant was in a care home where any of the costs of any qualifying service provided for him are met out of public or local funds in accordance with DMG 61715 then any DLA care component or AA would not be payable following the first 28 days of their stay<sup>1</sup>.

1 SS (DLA) Regs, reg 10(1) & (2) & SS (AA) Regs, reg 8(1)

## Qualifying Services

61717 Qualifying services<sup>1</sup> for the purposes of 61715 are

**1. accommodation or**

**2. board or**

**3. personal care.**

1 SS CB Act 92, s 67(4) & s 72(10)

61718 Costs of any qualifying services in DMG 61717 do not include

**1. domiciliary services, including personal care, provided in a private dwelling<sup>1</sup>or**

**2. improvements to, or furniture and equipment for**

**2.1 a private dwelling to meet the needs of a disabled person<sup>2</sup>or**

**2.2 a care home for which a grant or payment has been made out of public or local funds, unless the grant is regular or repeated<sup>3</sup>or**

**3. social and recreational activities provided outside the care home for which grants or payments have been made out of public or local funds<sup>4</sup>or**

**4. the purchase or running of a motor vehicle used in connection with any qualifying service provided in a care home for which grants or payments are made out of public or local funds<sup>5</sup>**

**5. before 8.4.13 services provided under specified legislation<sup>6</sup>**

**6. after 7.4.13 services under specified legislation where amended<sup>7</sup>.**

1 SS (AA) Regs, reg 7(3)(a); SS (DLA) Regs, reg 9(6)(a); 2 SS (AA) Regs, reg 7(3)(b);

SS (DLA) Regs, reg 9(6)(b); 3 SS (AA) Regs, reg 7(3)(c); SS (DLA) Regs, reg 9(6)(c);

4 SS (AA) Regs, reg 7(3)(d); SS (DLA) Regs, reg 9(6)(d); 5 SS (AA) Regs, reg 7(3)(e);

SS (DLA) Regs, reg 9(6)(e); 6 SS (AA) Regs, reg 7(3)(f) & (g); SS (DLA) Regs, reg 9(6)(f);

NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78;

7 Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance)

(Amendment) Regs, Regs 2013, reg 3 (7)(b) & reg 4(7)(c)

61719 - 61734

## **Direct payments**

61735 The LA may make payments for care needs, including residential care, directly to the disabled person<sup>1</sup>. The person uses the payments to make their own arrangements for care services. Direct payment may not be made

1. to people aged 65 or over (unless a payment was made in the twelve months before reaching age 65<sup>2</sup>)
2. where care services are provided by any of the person's family living in the same household<sup>3</sup>
3. for periods in residential care exceeding four weeks in twelve months<sup>4</sup> unless DMG 61738 applies.

1 Community Care (Direct Payments) Act 96, s 1; SW (Scot) Act 68, s 12B;

2 Community Care (Direct Payments) Regs & Community Care (Direct Payments) (Scotland) Regs, reg 2(2)(a);  
3 reg 3; 4 reg 4

61736 The four week period in DMG 61735 **3.** may be made up of shorter periods separated by less than four weeks.

61737 Where a person has made their own arrangements to stay in a care home using direct payments, the general rule in DMG 61715 applies. Periods paid for by direct payments should be added to other periods in a care home provided by the LA when calculating the period as in DMG 61853.

61738 From 1.11.13 payments are made for an indefinite period where they are made for the cost of residential accommodation, together with nursing or personal care, under specified legislation<sup>1</sup> by a LA listed<sup>2</sup> at Appendix 7 to this Chapter. Claimants

affected by this are treated as receiving direct payments<sup>3</sup> under specified legislation<sup>4</sup>. Therefore, AA or DLA care component will not be payable.

1 Health and Social Care Act 2008, Part 1; 2 Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009, Sch 2A; 3 reg 13(2B); 4 NA Act 48, Part III

## Exceptions to the general rule

61739 Where accommodation is funded under legislation relating to education, training or young people the accommodation will usually be a school, college or children's home. However the DLA care component remains payable

1. for any period during which the LA places a person in a private dwelling with a family, relatives, or suitable person<sup>1</sup>, provided that the person is

**1.1** under 16 and being looked after by the LA<sup>2</sup>**or**

**1.2** under 18, and specific legislation<sup>3</sup> (impairment of health and development) applies because the person's health is likely to be significantly impaired, or further impaired without the provision of service<sup>4</sup>**or**

**1.3** under 18, and specific legislation (disability) applies<sup>5</sup>**or**

**2.** where the accommodation is provided outside the UK and the cost is met wholly or partly by the LA under certain legislation<sup>6</sup>.

1 SS (DLA) Regs, reg 9(5); 2 reg 9(4)(a); 3 Children Act 89, s 17(10)(b);

Children (Scotland) Act 95, s 93(4)(a)(ii); 4 reg 9(4)(b)(i);

5 reg 9(4)(b)(ii); Children Act 89, s 17(10)(c); Children (Scotland) Act 95, s 93(4)(a)(iii);

6 reg 9(4)(c); Education Act 96, s 320, Education (Additional Support for Learning) (Scotland) Act 04, s  
25

61740 The DLA care component is payable if the cost of any qualifying service is met out of public or local funds under specified legislation for

**1.** grants in aid of educational services<sup>1</sup>**or**

**2.** assisting persons to take advantage of educational facilities or grants to education authorities in Scotland<sup>2</sup>**or**

**3.** support for funding of further education and administration of funds<sup>3</sup>**or**

**4.** new arrangements for giving financial support to students<sup>4</sup>.

**Note:** See DMG 61717 for the meaning of qualifying services.

1 SS (DLA) Regs, reg 9(3)(a); Education Act 96, s 485; Education Act 02, s 14;

Education (Scotland) Act 80, s 73; 2 reg 9(3)(b); Education (Scotland) Act 80 s 49 & s 73;

3 reg 9(3)(c); Further and Higher Education Act 92, s 65;

Further and Higher Education (Scotland) Act 05, s 4 & s 11;

4 reg 9(3)(e); Teaching and Higher Education Act 98, s 22.

61741 - 61748

## **Self funders**

61749 DLA care component and mobility component and AA will be payable for any period where the claimant is a resident in a care home during which the whole costs of all the qualifying services are met

**1.** out of the resources of the person for whom the qualifying services are provided **or**

**2.** partly out of that person's own resources and partly with the assistance from another person or charity **or**

**3.** on that behalf by another person or a charity<sup>1</sup>.



## People with homes to sell or who await other release of funds

61750 People who enter a care home for the first time may have a home to sell, or other capital assets. The available assets or value of a property are taken into account by the LA when assessing payment of care home fees.

61751 When a person first enters a care home the DM is required to establish who is funding their stay and will this change. This information should be obtained from the LA.

**Note:** Payment should be suspended until all **reasonable** enquiries are made. Every effort should be made to resolve the issue as soon as possible and the benefit put into payment or a payability decision made.

### Example 1

Jim was receiving the highest rate of the care component and the higher rate of the mobility component of DLA. His representative informed the DM that he had entered a care home and would not be coming home. The DM ascertained that the LA were at present funding Jim, and there was no indication that there would be any change to this arrangement. Jim's DLA was paid for the first 28 days in the care home, and then suspended until these reasonable enquiries had been made. The suspension was then lifted and a payability decision was given ceasing payment of the care component, but payment of the mobility component continued.

### Example 2

Hannah was in a care home but her daughter still lived in the family home. When the DM made enquiries to the LA, although there was a property involved, there was some dispute over ownership. As such the LA had not yet decided if Hannah had any assets to fund her own stay and they continued to fund in the meantime. The DM decided that as the LA were funding, Hannah was entitled to the highest rate of the care component and lower rate of the mobility component of DLA. The care

component was not payable however, whilst she is in the care home. At the same time they put a 12 month case control in place to assess the situation at a later stage. On activation of the case control the DM made enquires to the LA who informed him that it had been decided that Hannah did have property and that they had placed a charge on it from the date of her arrival at the home. The DM decided that as Hannah has been self-funding the original decision should be revised, as it had been made with incomplete evidence, and made payment of arrears of the care component from the date she had been charged for. As the DM is aware that Hannah's funding is not indefinite a further case control is set for 24 months to check on the funding status at that time.

### Example 3

Damien was placed in a care home and the DM made enquiries as to the nature of the funding of his care home fees. Whilst these enquiries were being made the payment of his highest rate of the care component and higher rate of mobility component of DLA were paid for the first 28 days, and then his care component of DLA was suspended. On enquiries being made it was established that the LA were paying for Damien's stay and were not considering self-funding. On these findings the DM decided that the claimant could not be a self-funder and therefore the payment of his care component was ceased from the date of the suspension, but his mobility component continued to be paid. Two years later Damien received an inheritance of a property from his great aunt. The DM was not informed immediately and it was only on a review of the benefit that it was established that Damien was now paying his own care home fees, as the property had been sold and the LA had entered into an agreement with Damien's representative. On this information the date the care home fees were being paid to the LA from was established and regulation provisions were used to supersede. As there had been a change of circumstances with the inheritance it could not be said that the original decision was made with incomplete evidence.

## Background information

61752 If there is a property involved the full market value of the property is taken into account in the assessment, less 10% for selling costs and any mortgage or loan secured on it<sup>1</sup> where the claimant is the sole owner of a property.

**Note:** The LA will make this calculation and advise of the amount of repayment required.

1 NA (AR) Regs, reg 23(1)

61753 Until the property is sold the person will probably not be able to meet all the assessed liability to pay for the accommodation. The LA may put a charge on the property<sup>1</sup>. Once it is sold, the debt owing to the LA is repaid. Where

**1.** a claimant is in a care home being funded by the LA pending the sale of a property or other release of funds **and**

**2.** the fees will be repaid to the LA out of the proceeds of the sale of the property or release of funds

benefits should be paid unless and until the point is reached where there is a real risk that the proceeds are inadequate to make full repayment.

1 HASSASSA Act 83, s 22(1)

61754 The value of the property is disregarded by the LA for the first twelve weeks from when permanent admission commences.

61755 For the first twelve weeks of such arrangements the condition in DMG 61753 **2.** will not be satisfied as the LA will disregard the value of the property as in DMG 61754 and the person will not have

to repay the LA. If the LA is funding during this period payment of AA or the DLA care component should be removed from the appropriate date in accordance with DMG 61851 - 61862<sup>1</sup>.

1 SS (AA) Regs, reg 7; SS (DLA) Regs, reg 9

61756 For the purposes of DMG 61751, conditions for payment of benefit will be satisfied if evidence exists of an agreement to repay the LA from the sale proceeds or release of funds. However, for the purposes of community care law there is no need for a prior agreement to repay fees to the LA.

**Note:** In cases of uncertainty as to the entitlement to benefit, the benefit should be suspended.

61757 In cases where sales arrangements become prolonged a risk may arise that the sale proceeds will not cover the accrued debt to LA. Once such a point is reached DMG 61753 **2.** is no longer satisfied. In such circumstances the benefit award may be superseded to remove payability.

61758 The effective date of the decision to remove payment of benefit is the date of change (see DMG Chapter 04). That date will be the point at which the accrued debt to the LA becomes greater than the value of the property as calculated in DMG 61753. AA or the DLA care component may however remain payable for the first 28 days of LA funding in accordance with DMG 61851.

61759 - 61800

## **War pensioners and civilians in relevant accommodation**

61801 AA or the DLA care component may

**1.** not be payable **or**

**2.** be payable at a reduced rate

to war pensioners, civil defence volunteers and other civilians who are living in relevant accommodation.

61802 Relevant accommodation is accommodation

**1.** in hospitals or private nursing homes **and**

**2.** with nursing care paid for by the Secretary of State **and**

**3.** for people who are

**3.1** very severely disabled war pensioners<sup>1</sup>**or**

**3.2** civil defence volunteers or other civilians injured during the second world war<sup>2</sup>.

<sup>1</sup> Naval, Military & Air Forces etc (Disablement & Death) Service Pensions Order 1983, Article 26;

61803 Where the weekly cost of the relevant accommodation

1. exceeds the weekly rate of AA or the DLA care component - neither is payable,
2. is less than the weekly rate of AA or the DLA care component - the weekly cost should be deducted from AA<sup>1</sup> or DLA<sup>2</sup>.

1 SS (AA) Regs, reg 8A; 2 SS (DLA) Regs, reg 10

61804 Where a person is in relevant accommodation, AA or the DLA care component continues to be payable for

1. the first 28 days **or**
2. periods amounting to 28 days.

61805 Periods in hospital or in care homes which occur **before** admission to relevant accommodation link with periods in relevant accommodation if they are separated by 28 days or less<sup>1</sup>.

1 SS (AA) Regs, reg 8B; SS (DLA) Regs, reg 10B

61806 People who become entitled to AA or the DLA care component during a period in relevant accommodation can benefit from the 28 day rule in DMG 61851 et seq.

61807 - 61819

## Whether the claimant is in a similar institution to a hospital or a care home 61820 - 61821

### [Care homes funded by NHS](#) 61821

61820 When considering whether a claimant is in a care home or in 'a similar institution to a hospital', it is necessary for the DM to consider whether the claimant is undergoing medical or other treatment (DMG 61700), and whether the costs of treatment, accommodation or any related services are funded by the Health Authority under the relevant health service enactments for England, Scotland and Wales. Prior to the Tribunal of Commissioners decision<sup>1</sup>, where funding was made available to a LA from a Health Authority, the LA would pass on that funding<sup>2</sup> and the claimant would be treated as being in a care home. The Tribunal of Commissioners determined, however, that the LA were merely acting as a go-between for the funds and the Health Authority continued to be responsible for those claimants. The DM will need to consider all the information on the arrangements and funding of the claimant's stay, including whether there has been an assessment of the claimant's care needs. If it is determined that the claimant is in a similar institution to a hospital then any amount of DLA would not be payable if the claimant was residing in that accommodation at date of entitlement or following the first 28 days of their stay.

1 R(DLA) 2/06; 2 NA Act 48, Part III

### Example

John is a 35-year-old man with severe learning difficulties, requiring 24-hour support. He has been in a long stay hospital since 2006 and has been assessed as requiring NHS continuing health care. Arrangements are made to move him to a care home. John requires regular medical or other treatment on the premises of the care home which is provided by medically qualified staff, and the NHS will continue to be responsible for fully funding his care and accommodation. The DM obtains all the facts and determines the claimant is in a similar institution to a hospital. The claimant remains entitled to DLA but it is not payable.

### Care homes funded by NHS

61821 Where any of the costs of the treatment, accommodation and any related services are paid by the NHS under the relevant National Health Service legislation, DMs should establish if

1. the care home employs doctors, qualified nurses or other health professionals, **and**
2. the claimant receives medical or other treatment by or under the direct supervision of a qualified doctor, nurse or nurses at the care home<sup>1</sup>.

Where both **1.** and **2.** apply DMs should treat the care home as a similar institution to a hospital and follow the guidance at DMG 61651.

Where both **1.** and **2.** do not apply the DM should continue to treat the establishment as a care home and the care component or AA would not be payable<sup>2</sup> in accordance with DMG 61715.

1 SSWP v Slavin [2011] EWCA Civ 1515; SS (DLA) Regs, reg 8(1) & SS(AA) Regs, reg 6(1);

2 SS(DLA) Regs, reg 9(2)(b) & SS(AA) Regs, reg 7(2)(b)

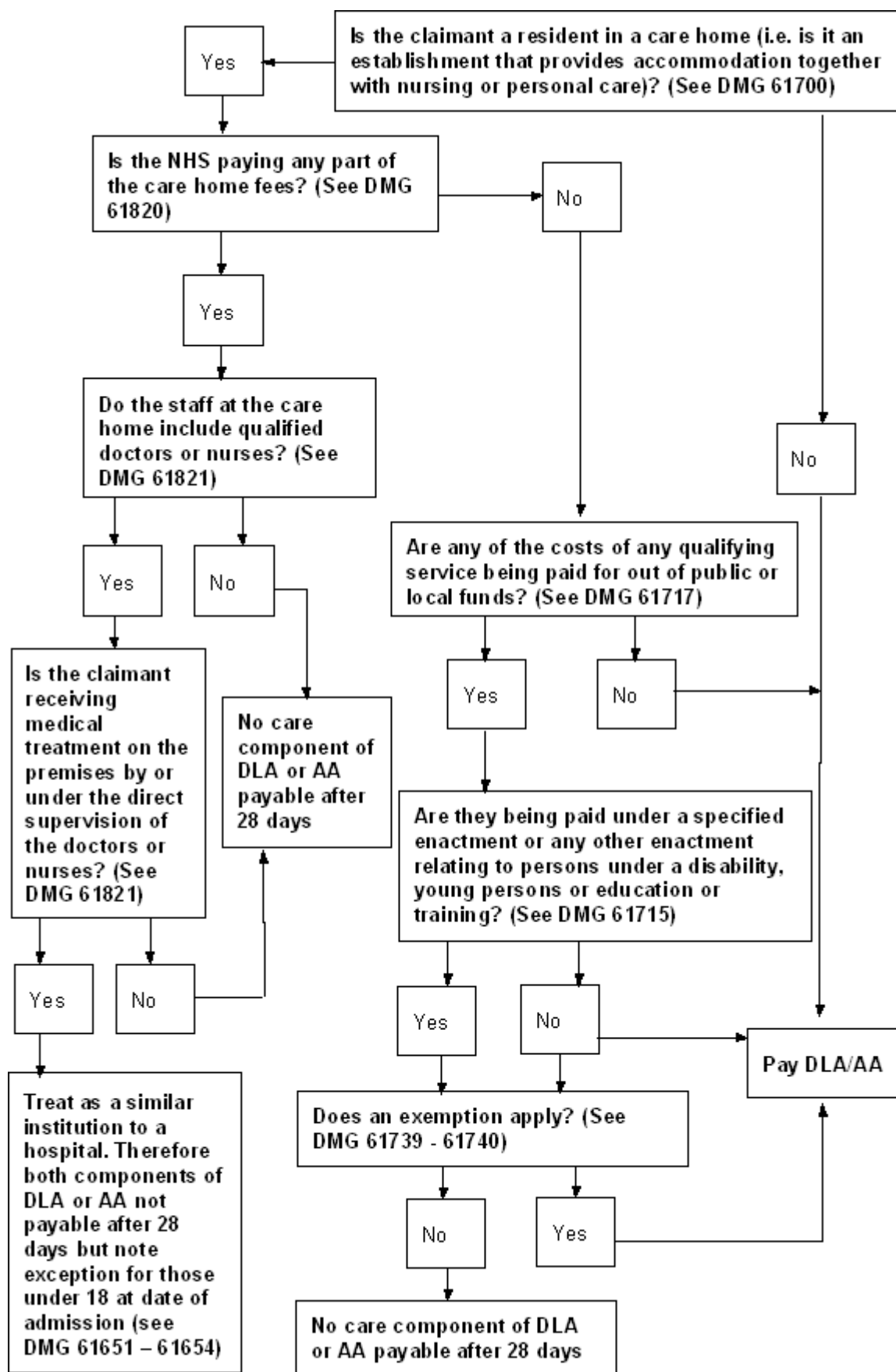
### **Example 1**

James is entitled to the highest rate of the care component and the higher rate mobility component of DLA. He informs the DM that he has moved into a care home for the next 6 months and his stay is funded by the NHS. The DM makes enquiries and determines that the care home employs 1 doctor and 2 nurses who administer medication to James on a daily basis on the premises of the care home. The DM therefore decides that the care home should be treated as a similar institution to a hospital and therefore both the care and mobility component of DLA are not payable after 28 days from the day he entered the care home.

### **Example 2**

Jasmine is entitled to the middle rate of the care component and the lower rate of the mobility component of DLA. She informs the DM that she entered a care home on 1.6.16. Jasmine's stay at the care home is funded by the NHS. After making further enquiries the DM establishes that there are no medical professionals employed by the care home and care workers provide daily care for Jasmine and her GP visits her once a fortnight on the premises. The DM decides that the care home should not be treated as a similar institution to a hospital and therefore the care component of DLA is not payable from 30.6.16. The mobility component of Jasmine's DLA award remains payable whilst she is a resident in the care home.

**Care home payability flow chart 61822 - 61850**



### Example 1

Simon is a resident at ABC House. He has his own room within the establishment and has access to communal areas including a living room, activity room and kitchen. Enquires indicate that ABC House employs on-site care assistants who help Simon with personal care tasks such as washing, dressing and feeding himself at meal times. According to the CQC, ABC House is registered to provide



“accommodation for persons who require nursing or personal care”. Simon does not pay anything towards the costs of his stay. The DM decides, taking into account all factors, that ABC House is an establishment that provides accommodation together with nursing or personal care and therefore Simon is a resident in a care home. Further enquiries undertaken by the DM indicate that Simon’s stay in the care home is funded by the local authority under Part 1 of the Care Act 2014. As this is a specified enactment for the purposes of DMG 61715 Simon’s care component of DLA is not payable after 28 days residence at ABC House. Simon continues to be paid the mobility component of DLA during his stay at ABC House.

## **Example 2**

Jade is in receipt of the care component of DLA. On 1.8.16 Jade informs the DM that she has moved out of her parent’s home and is now resident at XYZ Place. XYZ Place is a large semi detached house owned by the local authority which is converted into 3 separate flats occupied by Jade and 2 other people. Jade holds a tenancy agreement for her flat which details how much rent should be paid per month and what responsibilities she has for the property. Jade is in receipt of Housing Benefit which she uses to fund the monthly rent and the LA has also arranged for a domiciliary care agency to provide a carer for Jade on a morning and evening to help her get washed and dressed/undressed each day. The LA is responsible for the funding of the carer. Having looked at all of the available evidence the DM decides that XYZ Place should not be treated as an establishment that provides accommodation together with nursing or personal care in accordance with DMG 61700. Therefore Jade’s care component of DLA can continue to be paid.

## **Example 3**

Grant turned 17 years old on 16.6.16 and has been in hospital since 30.6.16. He is entitled to the highest rate care component and higher rate mobility component and this remains payable whilst in hospital as an in-patient due to Grant being under 18 years old at the date of admission. Grant notifies the DM on 1.9.16 that he will move to YYZZ House on 5.9.16 and enquiries indicate that this establishment is registered to provide “accommodation for persons who require nursing or personal care” and is described as a “care home” in CQC reports. The DM establishes that the NHS will fund Grant’s stay under the NHS Act 2006 and further enquiries indicate that there is a doctor and nurse employed on site who will administer a series of daily injections to Grant for the next 6 months. Although YYZZ House can be described as an establishment that provides accommodation together with nursing or personal care, in accordance with DMG 61700 the DM decides that the care home should be treated as a similar institution to a hospital. Grant’s DLA therefore remains payable as he is under 18 at the date of admission to YYZZ House.

# Payment during periods in hospital or a care home 61851 - 61889

[Calculation of the period](#) 61851

[Days of admission and discharge](#) 61852 - 61879

[Payment at daily rate](#) 61880 - 61889

## Calculation of the period

61851 In calculating the period when AA or DLA is payable<sup>1</sup> the DM should add together periods in hospital or, for AA and the DLA care component, periods in a care home

**1.** for which a person is prevented from receiving AA or DLA **and**

**2.** which are separated by 28 days or less.

**Note:** Periods before entitlement begins do not link with periods occurring after entitlement begins (see DMG 61860 - 61862)<sup>2</sup>.

1 SS (AA) Regs, reg 8(2); SS (DLA) Regs, reg 10(5) & 12B(3); 2 R(A) 4/83

## Days of admission and discharge

### Hospitals

61852 AA or DLA is not payable after the first 28 days for any day on which people receive medical or other treatment as an in-patient. A period of free in-patient treatment ends on the day before the day on which the claimant leaves the hospital or similar institution. Neither the day of admission nor the day of discharge are treated as days of free in-patient treatment<sup>1</sup>.

1 SS (AA) Regs, reg 6(2A); SS (DLA) Regs, reg 8(2A) & 12A(2A)

61853 Where entitlement begins on the day after the day of admission to hospital, benefit is not payable until the day of discharge.

### Care homes

61854 Days of admission and discharge and leaving and returning from leave or holiday are not days in a care home<sup>1</sup>. These days should not be treated as days in a care home when calculating the 28 day linking period (see DMG 61851).

1 SS (AA) Regs, reg 7(4)(a) & (b); SS (DLA) Regs, reg 9(7)(a) & (b)

61855 Where entitlement begins on the day of admission to a care home, benefit is payable for the first 28 days.

### Days of transfer

61856 If a person is transferred between hospitals, the day of transfer counts as a day in hospital, however, where a person is transferred between a hospital and a care home or vice versa or between care homes, the day of transfer counts as a day in a care home<sup>1</sup>.

1 SS (AA) Regs, reg 7(5); SS (DLA) Regs, reg 9(8)

### Entitlement begins during period in hospital or a care home

61857 The 28 day rule (see DMG 61851 - 61852) cannot benefit people who become entitled to AA or DLA whilst

1. undergoing medical or other treatment in hospital (see DMG 61651 et seq) **or**
2. living in a care home and none of the exceptions apply (see DMG 61700 et seq).

AA or DLA is only payable from the first pay day on or after the day of discharge, if the claimant is in a hospital or similar institution, or is in a care home. If they are readmitted, the 28 day rule applies. Benefit is payable for the first 28 days **even if** they are readmitted within 28 days of the day before the day of discharge<sup>1</sup>. This is because the periods do not link. Any subsequent discharge and readmission is dealt with in DMG 61860 - 61862.

1 SS (AA) Regs, reg 8(3); SS (DLA) Regs, reg 10(3) & 12B(2)

### Example

A man who is admitted to hospital on 2.8.01 claims and becomes entitled to AA on 15.8.01. But benefit does not become payable until 20.8.01 following his discharge on 17.8.01. On 27.8.01 he is readmitted to hospital. AA remains in payment for the first 28 days, and is not payable from 1.10.01.

### Entitlement begins before admission - payability on readmission

61860 AA or DLA is payable for the first 28 days of any readmission if there are **more** than 28 days between the two periods.

61861 If there are 28 days or less between discharge and readmission the person can only be paid any balance of days up to 28 days on readmission<sup>1</sup>. Periods in hospital that occur before entitlement begins do not link with any periods occurring after entitlement begins<sup>2</sup>.

1 SS (AA) Regs, reg 8(2); SS (DLA) Regs, reg 10(5), 12B(3); 2 R(A) 4/83

### Example

A woman is awarded DLA. She is later admitted to hospital and discharged after ten days. Benefit remains in payment. A week later she is readmitted. A balancing payment is due for a further 18 days.

61862 If, after receiving 28 days on admission, a person is readmitted after 28 days or less, no further benefit is payable.

61863 - 61879

## Payment at daily rate

61880 Although payable weekly there are circumstances in which AA or DLA can be paid at a daily rate (which is one-seventh of the weekly rate). These are where

**1.** there is a change of pay day, for example if AA or DLA is linked with another benefit and using its pay day<sup>1</sup> **or**

**2.** AA or DLA becomes payable for a period of absence from hospital or a care home<sup>2</sup>.

**Note:** Payability of the DLA mobility component is not affected by periods in a care home.

1 SS (C&P) Regs, reg 22(3) & Sch 6; 2 reg 25

## Conditions for payment at daily rate

61881 For intervals between two periods in hospital or a care home, AA or DLA is payable at the daily rate if

**1.** immediately before the period of absence the person was living in a hospital or care home **and**

**2. on the day of discharge** they are expected to return to hospital or care home within 28 days<sup>1</sup>.

1 SS (C&P) Regs; SS (AA) Regs, reg 6, 7 & 8; DLA Regs, regs 7, 8, 9 & 12A;

## Period payable at daily rate

61882 The period for which the AA or DLA is payable at the daily rate runs from the day of leaving hospital or care home and ends<sup>1</sup> where

**1.** the day of leaving is a pay-day - at midnight on the day before the fourth payday following discharge<sup>2</sup> **or**

**2.** the day of leaving is **not** a pay-day - at midnight on the day before the fifth payday following discharge<sup>3</sup> **or**

**3.** a person returns to hospital or care home on the day in **1.** or **2.** above - on the day they are next

admitted to hospital or care home<sup>4</sup>.

1 SS (C&P) Regs, reg 25; 2 reg 25 (2)(b)(i); 3 reg 25(2)(b)(ii); 4 reg 25(2)(b)(iii)

### **Absence more than 28 days**

61883 If the absence is expected to last more than 28 days from the outset, the normal rules of payment apply<sup>1</sup>.

1 SS (C&P) Regs, reg 25(2)

### **Application of daily rate provisions**

61884 The daily rate provisions cannot be considered in isolation from the provisions for pay days and those for hospital and care homes.

61885 The daily rate is only payable if

- 1.** the person was living in hospital or a care home immediately before the period of absence<sup>1</sup>**and**
- 2.** they are expected to return to hospital, or a care home within a period of 28 days from the day immediately following their day of discharge<sup>2</sup>.

1 SS (C&P) Regs, reg 25(2)(a); 2 reg 25(2)

### **Discharge before 28 day period ends**

61886 AA or DLA cannot be paid at the daily rate if a person leaves hospital or a care home **before** the end of the 28 day period for which benefit is payable. This is because they have already been paid up to their next pay-day<sup>1</sup>.

1 SS (C&P) Regs, reg 16(2)

### **Discharge after 28 day period ends**

61887 AA or DLA cannot be paid at the daily rate if a person leaves hospital or a care home after the end of the 28 day period but **before** their next payday. This is because they have already been paid up to that pay-day<sup>1</sup>.

1 SS (C&P) Regs, reg 16(2)

61888 AA or DLA can be paid at the daily rate as in DMG 61882 **1.** or **2.** if a person is discharged after the pay-day following the end of the 28 day period<sup>1</sup>.

1 SS (C&P) Regs, reg 25

61889 Payment at the daily rate is not appropriate if on the day of discharge

- 1.** there is no history of admissions or discharges during the previous 28 days **and**
- 2.** the DM is not aware of any expectations of future admission within 28 days.

## Other restrictions on payability and exclusions 61890 - 61999

[Imprisonment](#) 61891

[Overlapping benefits](#) 61892 - 61999

61890 AA or DLA is not payable to a person who is

1. in prison or detained in legal custody<sup>1</sup>**or**
2. receiving an overlapping benefit<sup>2</sup>.

1 SS CB Act 92, s 113(1)(b); 2 s 104; SS (OB) Regs, Sch 1

### Imprisonment

61891 Guidance on imprisonment and detention in legal custody is given in DMG Chapter 12 and special hospitals is given in DMG Chapter 12. People who are

1. in special hospitals, **and**
2. not subject to a custodial sentence

are not disqualified from receiving AA or DLA under the general imprisonment disqualification. In such cases, although there may be **entitlement** to AA or DLA, the benefit may not be **payable** because the person is in hospital (see DMG 61651).

**Note:** When a claimant moves from a care home or hospital to prison and back again a further 28 days is not applicable.

### Overlapping benefits

#### AA or DLA (care)

61892 AA or DLA (care) is not payable or is payable at a reduced rate, for any period a person receives AA<sup>1</sup> or a benefit, based on the need for attendance payable under

1. PB and MDB Scheme
2. Personal Injuries Scheme
3. Service Pensions Instrument

#### 4. 1914 - 1918 War Injuries Scheme<sup>2</sup>.

1 SS CB Act 92, s 104; 2 SS (OB) Regs, Sch 1

### DLA mobility component

61893 The DLA mobility component is not payable for any period

**1.** during which the person has the use of a vehicle provided by the Secretary of State<sup>1</sup> **unless**

**1.1** the Secretary of State is notified that the person no longer wishes to use it **or**

**1.2** the person signs an undertaking that it will not be used whilst awaiting its removal<sup>2</sup> **or**

**1.3** the Secretary of State has issued an overlap certificate so that the DLA mobility component can continue to be paid for up to six months whilst the person learns to drive<sup>3</sup> **or**

**2.** for which the person has received, or is receiving

**2.1** a grant towards the costs of running a private car<sup>4</sup> **or**

**2.2** a mobility supplement under a Service Pensions Instrument or a Personal Injuries (Civilians) Scheme<sup>5</sup> **or**

**2.3** any similar payment out of public funds as the Secretary of State may decide.

1 NHS Act 06, s 5 & Sch 1 para 9; NHS (Wales) Act 06, s 5 & Sch 1, para 9; NHS (Scot) Act 78, s 46;

2 SS (C&P) Regs, reg 42(1)(a) & (2); 3 reg 42(4); 4 reg 42(1)(b)(i); NHS Act 77, s 5(2) & Sch 2;

NHS (Scot) Act 78, s 46; 5 SS (C&P) Regs, reg 42(1)(b)(ii)

### Adjustment of benefit

61894 AA or DLA is not payable if the benefit in DMG 61892 - 61893 is equal to or greater than the rate of AA or DLA. If the other benefit is lower than AA or DLA, then AA or DLA is payable for the difference<sup>1</sup>.

1 SS (OB) Regs, reg 6(1)

61895 Further guidance on overlapping benefits is in DMG Chapter 17, including definitions of Service Pensions Instrument and 1914 - 1918 War Injuries Scheme.

### Split payments of DLA

61896 Split payments of DLA should only be considered in **exceptional circumstances**. Where a request for split payments is received, the DM should refer the request to a senior manager who will consider whether split payments are necessary in order to protect the interests of the DLA beneficiary<sup>1</sup>.



61897 - 61999

# **Appendix 1 - Acts relating to people with disabilities, young people, education or training**

## **Acts relating to people with disabilities**

<b>Act</b>	<b>Sections</b>
National Assistance Act 1948	s 21, 24 & 26
Health Services and Public Health Act 1968	s 44
Social Work (Scotland) Act 1968	s 12, 12A, 12B, 12C, 13A, 13B, 59 & 59A
Health and Personal Services (Northern Ireland) Order 1972	Article 5, 7, 15 & 36
National Health Service (Scotland) Act 1978	s 36 & 37
Mental Health Act 1983	s 117
Mental Health (Scotland) Act 1984	s 7 & 8
National Health Service and Community Care Act 1990	Sch 9 para 10(7)
Community Care (Direct Payments) Act 1996	s 1
Social Security Act 1998	
Community Care and Health (Scotland) Act 2002	
Mental Health (Care and Treatment)(Scotland) Act 2003	s 25 & Sch 4 para 1(6)
National Health Service Act 2006	
National Health Service (Wales) Act 2006	
Public Services Reform (Scotland) Act 2010	
Health and Social Care Act 2001	s 57

This list is not exhaustive<sup>1</sup>

## Acts relating to young people, education or training

Act	Sections
Disabled Persons Employment Act 1944	s 15
Children and Young Persons Act 1969	s 23
Employment and Training Act 1973	s 2 s 14(1), 24(1),
Criminal Procedure (Scotland) Act 1975	206(1), 296(3), 297(1), 323(1) & 413
Education (Scotland) Act 1980	s 1 & 2, s 73 s 20, 21, 22A,
Children Act 1989	24 & Sch 2(5)
Enterprise and New Towns (Scotland) Act 1990	s 2(3)
Further and Higher Education Act 1992	s 65
Education Act 1996	s 320 & s 485
Teaching and Higher Education Act 1998	s 22
Education Act 2002	s 14
Education (Additional Support for Learning) (Scotland) Act 2004	s 25
Further and Higher Education (Scotland) Act 2005	s 4 or 11
The Apprenticeships, Skills, Children and Learning Act 2009	Parts 2 & 3

This list is not exhaustive<sup>1</sup>

## Appendix 2 - Assessment of the % degree of disablement

(SS (II)(PD) Regs 1985 Schedule 3 Part II)

Average of hearing losses (dB) due to all causes at 1, 2 and 3 kHz frequencies	Degree of disablement per cent
50-53 dB	20
54-60 dB	30
61-66 dB	40
67-72 dB	50
73-79 dB	60
80-86 dB	70
87-95 dB	80
96-105 dB	90
106 dB or more	100

## Appendix 3 - Rates of benefit (AA)

	Higher	Lower
	£	£
<b>6.4.92</b>	43.35	28.95
<b>12.4.93</b>	44.90	30.00
<b>11.4.94</b>	45.70	30.55
<b>10.4.95</b>	46.70	31.20
<b>8.4.96</b>	48.50	32.40
<b>7.4.97</b>	49.50	33.10
<b>6.4.98</b>	51.30	34.30
<b>12.4.99</b>	52.95	35.40
<b>10.4.00</b>	53.55	35.80
<b>11.4.01</b>	55.30	37.00
<b>09.4.02</b>	56.25	37.65
<b>07.4.03</b>	57.20	38.30
<b>05.4.04</b>	58.80	39.35
<b>11.4.05</b>	60.60	40.55
<b>10.4.06</b>	62.25	41.65
<b>9.4.07</b>	64.50	43.15
<b>7.4.08</b>	67.00	44.85
<b>6.4.09</b>	70.35	47.10
<b>12.4.10</b>	71.40	47.80
<b>11.4.11</b>	73.60	49.30
<b>9.4.12</b>	77.45	51.85
<b>8.4.13</b>	79.15	53.00

**7.4.14** 81.30 54.45

**6.4.15** 82.30 55.10

**11.4.16** 82.30 55.10

**10.4.17** 83.10 55.65

**9.4.18** 85.60 57.30

**8.4.19** 87.65 58.70

**6.4.20** 89.15 59.70

**12.4.21** 89.60 60

## Appendix 4 - Rates of benefit (DLA)

	Care component		Mobility component		
	Highest	Middle	Lowest	Higher	Lower
	£	£	£	£	£
<b>6.4.92</b>	43.35	28.95	11.55	30.30	11.55
<b>12.4.93</b>	44.90	30.00	11.95	31.40	11.95
<b>11.4.94</b>	45.70	30.55	12.15	31.95	12.15
<b>10.4.95</b>	46.70	31.20	12.40	32.65	12.40
<b>8.4.96</b>	48.50	32.40	12.90	33.90	12.90
<b>7.4.97</b>	49.50	33.10	13.15	34.60	13.15
<b>6.4.98</b>	51.30	34.30	13.60	35.85	13.60
<b>12.4.99</b>	52.95	35.40	14.05	37.00	14.05
<b>10.4.00</b>	53.55	35.80	14.20	37.40	14.20
<b>11.4.01</b>	55.30	37.00	14.65	38.65	14.65
<b>9.4.02</b>	56.25	37.65	14.90	39.30	14.90
<b>7.4.03</b>	57.20	38.30	15.15	39.95	15.15
<b>5.4.04</b>	58.80	39.35	15.55	41.05	15.55
<b>11.4.05</b>	60.60	40.55	16.05	42.30	16.05
<b>10.4.06</b>	62.25	41.65	16.50	43.45	16.50
<b>9.4.07</b>	64.50	43.15	17.10	45.00	17.10
<b>7.4.08</b>	67.00	44.85	17.75	46.75	17.75
<b>6.4.09</b>	70.35	47.10	18.65	49.10	18.65
<b>12.4.10</b>	71.40	47.80	18.95	49.85	18.95
<b>11.4.11</b>	73.60	49.30	19.55	51.40	19.55
<b>9.4.12</b>	77.45	51.85	20.55	54.05	20.55

<b>8.4.13</b>	79.15	53.00	21.00	55.25	21.00
<b>7.4.14</b>	81.3081.3081.30	54.45	21.55	56.75	21.55
<b>6.4.15</b>	82.30	55.10	21.80	57.45	21.80
<b>11.4.16</b>	82.30	55.10	21.80	57.45	21.80
<b>10.4.17</b>	83.10	55.65	22	58	22
<b>9.4.18</b>	85.60	57.30	22.65	59.75	22.65
<b>8.4.19</b>	87.65	58.70	23.20	61.20	23.20
<b>6.4.20</b>	89.15	59.70	23.60	62.25	23.60
<b>12.4.21</b>	89.60	60	23.70	62.55	23.70



## Appendix 5 - Application of the general rule for people in hospital on or before 31.7.96

[People in hospital for 365 days](#)

[Discharge and readmission](#)

[Rate of benefit payable](#)

[The “may be” provision](#)

[Exceptions to the “may be” provision](#)

**1** Periods in hospital on or before 31.7.96, including any linked periods, count towards the 28(84) day exemption period in DMG 61653 - 61654. People who had been in hospital for more than 28 days on 31.7.96 lost payability from that date, unless they had been in hospital for 365 days on or before 31.7.96<sup>1</sup>.

1 SS (DLA) Regs, reg 12B(1)

### Example 1

A person who was awarded the DLA mobility component from 01.06.96 for life went into hospital on 09.06.96. The DLA mobility component was not payable from 07.08.96.

### Example 2

A person was awarded the DLA mobility component for the period 6.4.92 to 5.4.97. He was admitted to hospital on 10.7.96 and discharged on 24.7.96. On 12.8.96 he was readmitted to hospital. The DLA mobility component was not payable from 28.8.96.

**2** Where a person was in hospital on the day entitlement to the DLA mobility component began, and was still in hospital on 31.7.96, payment of the DLA mobility component stopped from 31.7.96<sup>1</sup>.

1 SS (DLA) Regs, reg 12B(2)

### Example

A person went into hospital on 1.7.96 and claimed DLA on 15.7.96. Care and mobility were awarded from the date of claim, but the care component was not payable. On 31.7.96 the claimant was still in hospital, and the DLA mobility component was not payable from that date.

## People in hospital for 365 days

### 3 Where a person

**1.** on 30.7.96 had been for a continuous period of not less than 365 days

**1.1** in receipt of the DLA mobility component **and**

**1.2** an in-patient in a hospital or similar institution **and**

**2.** is such an in-patient other than under specified legislation<sup>1</sup> on 31.7.96

the general payability rule does not apply until the person is first discharged from hospital<sup>2</sup>. See paragraph 6 for guidance on discharge.

1 MH Act 83, Parts II or III; MH (Scotland) Act 84, Parts V or VI;

2 SS (DLA) Regs, reg 12B (4)(a) & (5)

**4** There will be people who were temporarily absent from hospital on 31.7.96, and return within 28 days of a previous discharge, but would otherwise satisfy the conditions in 61653. If the person is not an in-patient on 31.7.96 and

**1.** on a day not more than 28 days before 31.7.96 had been for a continuous period of not less than 365 days

**1.1** in receipt of the DLA mobility component **and**

**1.2** an in-patient in a hospital or similar institution **and**

**2.** becomes such an in-patient other than under specified legislation<sup>1</sup> within 28 days of the previous discharge from hospital

the general payability rule does not apply until the person is first discharged from hospital<sup>2</sup>.

1 MH Act 83, Parts II or III; MH (Scotland) Act 84, Parts V or VI; 2 SS (DLA) Regs, reg 12B(4)(b) & 5

**5** Where any of the 365 day period falls before 6.4.92, receipt of mobility allowance is treated as receipt of the DLA mobility component<sup>1</sup>.

1 SS (DLA) Regs, reg 12B(11)

## Discharge and readmission

**6** Where paragraphs 3 or 4 applies to allow payability of the DLA mobility component to continue, and the person is discharged from hospital and readmitted within 28 days, payability is not affected. The general payability rule applies to any readmission more than 28 days after discharge<sup>1</sup>.

**7** Periods in hospital with a break of 28 days or less can count towards the 365 day period in paragraphs 3 or 4. The breaks do **not** count towards the 365 day period<sup>1</sup>. For guidance on calculating periods in hospital, see DMG.

**8** Periods in hospital under specified legislation can only count towards the 365 day period provided that the person is no longer an in-patient under specified legislation on or after 31.7.96<sup>1</sup>. Many people will be in special or state hospitals (Rampton, Broadmoor, Park Lane, Ashworth and Carstairs), but there will also be others in NHS secure units.

1 SS (DLA) Regs, reg 12B(5); MH Act 83, Parts II or III; MH (Scotland) Act 84, Parts V or VI

**9** People who have retained payability as set out in paragraphs 3 or 4 cannot benefit from any of the exemptions from the general payability rule while in hospital or on readmission if they

**1.** become in-patients under specified legislation after 31.7.96<sup>1</sup>**or**

**2.** lose entitlement to the DLA mobility component<sup>2</sup>.

1 SS (DLA) Regs, reg 12B(6)(a); MH Act 83, Parts II or III; MH (Scotland) Act 84, Parts V or VI;

2 SS (DLA) Regs, reg 12B(6)(b)

## **Rate of benefit payable**

Where

**1.** paragraph 3 or 4 applies **and**

**2.** the person is in receipt of the higher rate of the DLA mobility component.

The DLA mobility component is payable at an amount equivalent to the lower rate on or after 31.7.96<sup>1</sup>.

Where paragraph 3 or 4 **and** DMG 61668 or 61672 apply, benefit is payable at

**1.** an amount equivalent to the lower rate **or**

**2.** the amount of the agreement

which is greater. The amount payable cannot be less than the lower rate. Where the amount of the agreement is less than the lower rate of the DLA mobility component, the balance will still be payable to the claimant<sup>1</sup>.

## The “may be” provision

### England and Wales

**10** The “**may be**” provision dealt with situations where LAs had, but did not use existing powers to provide or meet the cost of accommodation. This provision was repealed on 06.10.03.

**11** The “may be” provision was dealt with in case law<sup>1</sup> which held that LAs had wide-ranging legal powers to provide residential care for people suffering from mental illness<sup>2</sup>. The LAs could provide accommodation for anyone having a mental disability who satisfied the disability conditions of entitlement to AA or the DLA care component. However, the case law is no longer relevant in England and Wales as the legislation giving those powers is no longer to have effect from 1.4.93<sup>3</sup>.

1 R(A) 3/83, Appendix; 2 NHS Act 77, s 21 & Sch 8, para 2; 3 NHS Act 90, Sch 9

**12** The “may be” provision had no effect, in England and Wales, from 1.4.93. Where the person had arranged admission to the accommodation without the assistance of the LA, the LA had no power to provide the cost of the accommodation<sup>1</sup>. This was because the LA's power is now one of last resort.

1 NA Act 48, s 21(1)(a)

**13** Between 01.04.93 and 05.10.03 AA or the DLA care component was payable in most cases where

**1.** the claimant went into certain accommodation for the first time after 31.3.93 **and**

**2.** the LA was not financially involved in the placement.

This applied even if IS, JSA(IB) or HB was in payment (see DMG 61735).

### Scotland

**14** In Scotland, prior to 06.10.03, LAs had the power to provide or make financial provision for the accommodation of any person who

**1.** needed accommodation **and**

**2.** satisfied the conditions of entitlement for AA or the DLA care component<sup>1</sup>.

The ‘may be’ provision was removed with effect from 06.10.93. It can only be considered in Scotland for periods up to 05.10.93 where DLA (care) or AA would not be payable to someone in a care home if they were entitled to IS, HB or JSA (Income Based) even if the LA did not own or fund the accommodation.

1 SW (Scotland) Act 68, s 12 & 59(1); MH (Scotland) Act 84, s 7; R(A) 3/83, Appendix

**15** The “may be” provision applied in cases where the LA had powers as in DMG 61725 and

**1.** had not funded or refused to fund the accommodation **or**

**2.** withdrew funding.

### **Exceptions to the “may be” provision**

**16** The “may be” provision did apply if the person

**1.** was homeless and the LA has made accommodation available under specific legislation<sup>1</sup>**or**

**2.** lives in a private dwelling (see DMG 61760)<sup>2</sup>, unless

**2.1** the cost of the previous accommodation was met wholly or partly out of local or public funds and the body which met the cost prompted a move to a RCH<sup>3</sup>**or**

**2.2** it was a RCH<sup>4</sup>**or**

**3.** lived in accommodation as a privately fostered child (see DMG 61771<sup>5</sup>).

1 SS (DLA) Regs, reg 7(3)(a); Housing Act 85, s 65; Housing (Scotland) Act 87, s 31; 2 SS (AA) Regs, reg 7(3)(c);  
3 reg 7(4)(a); 4 reg 7(4)(b) & (4A); 5 SS (DLA) Regs, reg 9(4)(a)

## Appendix 6 - Motability agreements before 8.4.13

[The Motability Scheme](#)

[Exemption from general rule](#)

[Agreements under the Wheelchair Scheme](#)

[Rate of benefit payable](#)

### Motability agreements

#### The Motability Scheme

1 The Motability Scheme allows people to use their higher rate DLA mobility component to buy (through hire purchase) a car or an electric scooter or wheelchair. Cars can also be leased. Motability is a voluntary organisation which helps people buy or lease a vehicle under the scheme. The amount paid under the agreement may be less than the amount of the DLA mobility component, with the balance paid to the claimant.

2 The DM will need evidence on Motability agreements, including details of the

1. date the agreement began
2. period of the agreement
3. weekly amount payable to Motability under the agreement
4. type of vehicle.

#### Exemption from general rule

3 **Before 8.4.13** people in hospital with a Motability agreement would generally be able to retain payment of the DLA mobility component despite the general rule in DMG 61651 - 61652. In practice the Secretary of State pays the amount of the agreement to Motability Finance Ltd.

4 Where a person

1. is a party to a Motability agreement<sup>1</sup>**and**
2. is or becomes an in-patient in a hospital or similar institution

payment of the DLA mobility component may continue after the first 28 days (84 days for a child under 16)<sup>2</sup>.

1 SS (C&P) Regs, reg 44(1); 2 SS (DLA) Regs, reg 12B(7)

5 For payment to continue, the Motability agreement must have been signed before the person became an in-patient.

6 Benefit can remain in payment for the period of the agreement while a person is in hospital<sup>1</sup>. The period can be extended for agreements made under the Wheelchair Scheme.

1 SS(DLA) Regs, reg 12B(8)

7 Where the person enters into any further agreements for vehicles other than under the Wheelchair Scheme whilst in hospital, the DLA mobility component is not payable from the day after the first agreement ended. However, if the person is discharged from hospital, they may sign a new agreement for a Motability vehicle. Even if the person is then re-admitted to hospital after a short absence, benefit will remain in payment until the end of the agreement (See DMG 61670).

## **Agreements under the Wheelchair Scheme**

8 Where

- 1.** the Motability agreement was made under the Wheelchair Scheme **and**
- 2.** a new agreement starts on the day after it finishes **and**
- 3.** the person is an in-patient on that day

the DLA mobility component can remain in payment until the new agreement finishes<sup>1</sup>.

1 SS (DLA) Regs, reg 12(B)

9 If the person takes out an agreement for a vehicle other than under the Wheelchair Scheme whilst an in-patient, the DLA mobility component is not payable from the day after the last Wheelchair Scheme agreement ended.

10 Where there is a break of a day or more between wheelchair agreements under the Wheelchair Scheme, the DLA mobility component is not payable from the day after the first agreement finishes.

## **Rate of benefit payable**

11 Where

- 1.** DMG Appendix 6 para 00004 applies **and**

**2.** the amount payable under the agreement is less than the amount of the DLA mobility component awarded

benefit is reduced so that it is payable at the amount of the relevant agreement after 28(84) days<sup>1</sup>.

1 SS (DLA) Regs, reg 12C(2)



## **Appendix 7 - List of local authorities for the purpose of DMG 61738**

Bristol City Council

Cornwall Council

Dorset County Council

Gateshead Council

Hertfordshire County Council

Hull City Council

Lincolnshire County Council

London Borough of Enfield

London Borough of Havering

London Borough of Redbridge

Manchester City Council

Milton Keynes Council

Norfolk County Council

North Lincolnshire Council

Nottinghamshire County Council

Staffordshire County Council

Stockport Council

Surrey County Council