



The Social Security
(Disability Living Allowance)
(Amendment) Regulations 2002
(S.I. 2002 No. 648)

Report by the Social Security Advisory Committee under
Section 174(1) of the Social Security Administration Act
1992 and the statement by the Secretary of State for Work
and Pensions in accordance with Section 174(2) of that Act.

*Presented to Parliament by the Secretary of State for Work and Pensions
by Command of Her Majesty
March 2002*



The Social Security
(Disability Living Allowance)
(Amendment) Regulations 2002
(S.I. 2002 No. 648)

Report by the Social Security Advisory Committee under
Section 174(1) of the Social Security Administration Act
1992 and the statement by the Secretary of State for Work
and Pensions in accordance with Section 174(2) of that Act.

*Presented to Parliament by the Secretary of State for Work and Pensions
by Command of Her Majesty
March 2002*

© Crown Copyright 2002

The text in this document may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material not being used in a derogatory manner or in a misleading context. The source of the material must be acknowledged as Crown copyright and the title of the document must be included when being reproduced as part of another publication or service.

Any enquiries relating to the copyright in this document should be addressed to HMSO, The Copyright Unit, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax: 01603-723000 or e-mail: copyright@hmso.gov.uk

Statement by the Secretary of State for Work and Pensions in accordance with Section 172 of the Social Security Administration Act 1992

Introduction

1. The Social Security (Disability Living Allowance) (Amendment) Regulations 2002 clarify the conditions of entitlement to the lower rate mobility component (LRMC) of Disability Living Allowance (DLA), as set out in section 73(1)(d) of the Social Security Contributions and Benefits Act 1992, in cases where “fear or anxiety” is claimed to prevent a person from walking out of doors on unfamiliar routes without guidance or supervision from another person most of the time.

2. Drafts of the regulations were referred to the Social Security Advisory Committee (“the Committee”) on 1 August 2001 in accordance with section 172 of the Social Security Administration Act 1992, and to the Disability Living Allowance Advisory Board (“the Board”) on 9 October 2001 for advice in accordance with regulation 2(1)(a) of the Disability Living Allowance Advisory Board Regulations 1991.

Purpose of the Regulations

3. The purpose of these regulations is:

- to ensure that, following a Tribunal of Social Security Commissioners’ decision, reported as R(D) 4/2001, LRMC remains within the general parameters intended by Parliament, that there is clarity for decision makers and the public in relation to claims made on the grounds of “fear or anxiety”; and
- to secure the management of expenditure on DLA.

4. The Tribunal of Commissioners was appointed by the Chief Commissioner to consider four appeals concerning LRMC, with a view to resolving how, if at all, considerations relevant to an award of the care component may affect entitlement to LRMC. Difficulties had arisen from the divergent approaches taken by various Social Security Commissioners towards the interpretation and application of conditions of entitlement to the component.

5. The Government is content that R(D)4/2001 has satisfactorily resolved the matters that, hitherto, had been the subject of divergent approaches by individual Commissioners. However, the Tribunal of Commissioners also decided that if “fear or anxiety” resulting from any disability is the cause of the disabled person’s inability to walk out of doors on unfamiliar routes without guidance or supervision from another person most of the time, then the necessary causal link between the disability and that inability is established, and entitlement to LRMC is made out.

6. The Government’s view is that this aspect of R(D)4/2001 has created confusion and uncertainty for decision makers about the circumstances in which a person may qualify for LRMC, and has the effect of widening the scope and coverage of the component beyond the parameters set out in Parliament when it was introduced. In reply to a question raised during the passage of the Disability Living Allowance and Disability Working Allowance Bill, the then Secretary of State said:

‘This will extend the mobility component - to some extent, this answers the question asked by the hon. Member for Caernarfon (Mr. Wigley)¹ - to people who are mentally handicapped or blind and to those who have a very limited physical ability to walk’.

¹‘Will the care component include visually impaired people, which is a matter of some concern?’

7. In so making its decision, it is the Government's considered opinion that the Tribunal of Commissioners adopted too broad an interpretation of the relevant part of the Social Security Contributions and Benefits Act 1992 by accepting that anybody who has a disability which results in "fear or anxiety" is potentially eligible to LRMC. The regulations are designed to end the confusion and keep the scope and coverage of the component within those parameters and to avoid any subverting of the purpose of the legislation. They do so by making clear that people who experience "fear or anxiety" when walking out of doors on unfamiliar routes without guidance or supervision from another person most of the time, cannot satisfy the conditions of entitlement to LRMC by reason of that "fear or anxiety" alone unless it is a symptom of a mental disability.

The Committee's Findings

8. The Committee accepts that it is the prerogative of Government to limit entitlement to benefit in whichever way it chooses. But the Committee is not persuaded of the Government's case in this matter and recommends that the regulations are not proceeded with.

9. The Committee recommends that the Government should investigate, and report on, the reasons for the differences in the numbers of awards of LRMC made on the basis of "fear or anxiety" made by disability benefit centres (DBC) across the country.

10. The Committee recommends that the Government should review the guidance and support it gives decision makers dealing with DLA about mental health in general and "fear or anxiety" in particular; and should consider what changes could be made to the claims process in order to maximise take-up of LRMC on the grounds of mental disability.

11. The Committee suggests that in the longer term, the Government should conduct a fundamental cross-departmental review of the role that DLA provides in the support of disabled people.

The Board's comments

12. Secretary of State also asked the Board to consider these regulations in view of their knowledge and experience of DLA. The Board has stressed that this is a difficult area and agreed that clarification is necessary. It agrees that serious difficulty can arise in the use of such terms and consider that supervisory needs arising from "fear or anxiety" should only be considered if they arise directly from an underlying recognised psychiatric condition. The Board stresses that in the case of psychiatric conditions it is more important to get sound evidence of a diagnosis than it might be for other conditions.

13. The Government is grateful to both the Committee and the Board for their views, which have been studied with care. The Government's detailed response to these views is set out at paragraphs 14 to 34 below.

The Government's Response to the Committee

14. The Government does not accept the Committee's recommendation that the regulations should not be proceeded with. The Government continues to regard them as a well-founded clarification measure which is necessary to prevent an unplanned and unintended extension of the scope and coverage of LRMC.

Inconsistent Awards

15. The Committee suggested that reasons for the variations between DBCs in the number of awards of LRMC made on the grounds of "fear or anxiety" could include varying levels of awareness amongst decision makers of the Tribunal of Commissioners' findings on "fear or anxiety", and that welfare rights groups may be more active in some areas than others. The Committee suggests that the Government should produce a report on the reasons for the variations in awards.

16. The Government is satisfied that the arrangements to draw the attention of decision makers to R(D)4/2001 have been consistent and comprehensive across the DBC network. Shortly after the decision was made a memorandum was issued to every DBC explaining the decision and its implications for decision makers. (This memorandum was subsequently incorporated into the Decision Maker's Guide - see paragraph 22).

17. The Government is not persuaded by the argument that the differences in the numbers of awards of LRMC made on the grounds of “fear or anxiety” by decision makers across the country may be as a result of the uneven spread of active welfare rights organisations. Individual DBCs cover wide geographical areas. Each one has dealings with a range of active welfare rights groups, many of which take a keen interest in DLA matters and have made their views on the regulations known to the Committee.

18. The Government is not persuaded that an investigation into the causes of the variations in the numbers of awards would be practicable given the difficulty of extracting data on such complex conditions. However, on the basis of the statistics provided to the Committee and discussion with decision makers, the Government remain of the view that the most likely reason for the differences is confusion and uncertainty amongst decision makers as to how, in practice, they should interpret and apply R(D)4/2001 in relation to “fear or anxiety”. The Government remain firmly of the opinion that it is necessary to act as effectively as possible to avoid confusion and uncertainty for decision makers and the public alike arising from the wording of the Tribunal of Commissioners’ decision.

19. The Government is not persuaded by the Committee’s argument that because Social Security law does not always readily lend itself to easy interpretation, the addition of elastic terms such as “fear or anxiety” to the factors to be considered when determining entitlement to LRMC should pose no particular problems for decision makers. The Government’s view is that it is in the interests of benefit claimants and their advisers, as well as decision makers, for steps to be taken to reduce the scope for uncertainty in the interpretation and application of Social Security legislation wherever it is sensible to do so and in line with the intended scope of the particular provision.

20. In order to improve the quality and consistency of decision making across all components of DLA, it is the Government’s clear view that it should move towards both clearer guidance and legislation, and that such an approach applies to these proposed regulations. To this end, last year, the Government introduced a new, improved system of monitoring and feedback for decision makers which will give them and their managers better information about the standard of work. The Government has also agreed to begin the testing of new factual report forms that are intended to capture more useful information from General Practitioners and others who can provide decision makers with information concerning the disabled person’s needs.

21. The Committee has expressed concern that the Government, while finding fault with the introduction by R(D)4/2001 of the phrase “fear or anxiety” into the factors to be considered when determining entitlement to LRMC, is yet, at the same time, proposing that regulations should enshrine the phrase in statute law. The Government is, however, clear that the best way to avoid confusion and uncertainty for both decision makers and the public in this area, is to prescribe in regulations the precise circumstances in which “fear or anxiety” may be taken into account.

Guidance and Support to Decision Makers

22. Guidance to decision makers is provided, in the first instance, by the Decision Maker’s Guide. This is the Department’s interpretation of all Social Security law, including the law relating to DLA. Memoranda, such as the Decision Makers Exchange, supplement the Guide and provide decision makers with rapid advice and guidance following decisions on the law by the Social Security Commissioners and the Courts. All guidance is provided consistently across the DBC network.

23. Decision makers also have access to The Disability Handbook. This is a source of reliable information on the care and mobility needs likely to arise from a range of medical conditions. Decision makers can also obtain information and advice from the claimant’s medical advisers and from independent medical experts who are contracted to provide medical services to the Department.

24. The Government accepts the Board's offer to help draw up guidance for decision makers to coincide with the introduction of the regulations. Arrangements will be made to ensure the Board's guidance is delivered to and understood by decision makers, including training events at the disability benefit unit and DBCs. Events such as these will complement a rolling programme of training, already being undertaken, which is designed to give decision makers a better insight into the needs of disabled people with certain disabilities.

Policy Intent

25. The Committee's view is that the then Secretary of State did not define fully or finally the circumstances that would give rise to entitlement to LRMC when presenting the Act in Parliament which introduced DLA. The Government accepts that it would not have been possible for the then Secretary of State to have made clear every possible circumstance in which DLA might be awarded. However, the then Secretary of State's statements to Parliament, supported by statements from other Ministers, laid out the general principles by which LRMC extended the objectives of Mobility Allowance (the benefit replaced by DLA). The Government is content that these regulations remain true to those general principles.

26. It is not correct to suggest that these regulations mark a significant shift in DLA policy from a benefit based on needs for personal care and mobility to one that is purely diagnostically based. Current legislation already allows, in certain prescribed circumstances, entitlement to be based purely on diagnosis, for example the higher rate mobility component can be automatically awarded to people who are both deaf and blind. Nevertheless, the Government has been careful not to list in these regulations those disabilities which would count for LRMC in cases of "fear or anxiety" and those which would not. Decisions will continue to be made on the basis of each individual claimant's circumstances.

27. The Government is aware that disputes exist within the medical profession as to whether certain disabilities have a mental or a physical basis, or a combination of both. Decision makers are experienced in making decisions in these circumstances. People who have severe mental or physical disabilities will, as now, qualify on the basis of those disabilities alone, so long as they continue to satisfy the disability and other qualifying conditions; but "fear or anxiety" will not count unless it is a symptom of a severe mental disability. However, a person can still qualify for LRMC under the proposed regulations if their physical disability gives rise to fear or anxiety of such a magnitude that it can be considered to be a symptom of a mental disability and it stops them walking out of doors on unfamiliar routes without guidance or supervision most of the time.

28. As to whether a person has a choice in walking out of doors unaccompanied or not, the Committee's view is that the proposed regulations merely replicate what is already in legislation. The Committee stated that the statutory words at section 73(1)(d) of the Social Security Contributions and Benefits Act, namely that a person 'cannot take advantage of the faculty (of walking out of doors) without guidance or supervision', are adequate for that purpose. Deciding whether a disabled person cannot or chooses not to walk out of doors unaccompanied, however, is not a simple matter. As the legislation stands a decision maker must make a judgement on the evidence available whether the disabled person has proved on the balance of probabilities that, as a result of their physical or mental disablement, they are not able to take advantage of the faculty of walking out of doors without guidance or supervision. The Government believes that these regulations will make that decision much more comprehensible.

The Claim Form

29. The Committee expressed concern that the DLA claim form offers neither the clarity nor the guidance to enable claimants to properly describe their disabilities. The Government recognises that it will always be difficult for a form to capture all the information it needs to decide entitlement to DLA. This is why, in a large proportion of

cases, decision makers would be expected to gather other information from the claimant, their carers, or from doctors and others involved in their care or treatment.

30. The current form is the result of an extensive consultation exercise, involving a very large range of organisations of and for disabled people. This resulted in a redesigned form with more space for people to give a more detailed explanation of their care and mobility needs. Research showed that this was a popular move with people who had to complete the form.

31. Nonetheless, the Government recognises that there are still improvements that can be made to the claiming process, that is why it is planning to test new ways of administering claims that should result in significant changes to the information decision makers receive. The Government is revising forms used to get information from General Practitioners and other healthcare professionals, and looking at whether people with experience of mental health problems, such as Community Psychiatric Nurses, can help decision makers in those cases where their knowledge and training would be relevant.

Costs of Not Making Regulations

32. The Committee has expressed doubts about the projected eventual costs of not amending the legislation as proposed. The estimated increase in long-term expenditure of £35m per year is based on the Disability Survey 1996/7 follow up to the Family Resources Survey. The Government repeats the point made to SSAC in the explanatory memorandum that the figure is speculative because of the lack of data which specifically relates to “fear or anxiety”. At present, the Government estimates, on the basis of data from DBCs, that LRMC awards at the rate of 200 a year are being made as a result of R(D)4/2001. This broadly equates to additional DLA expenditure of £150,000 per annum (or £2.3 million cumulatively over the next 5 years if the current rate of awards remains unchanged). The Government believes that these figures (which do not include the “knock-on” additional expenditure on the Disability Premium in income-related benefits for people receiving any component of DLA) are likely to increase substantially as the effects of R(D)4/2001 become more widely known and become embedded in the body of caselaw relating to DLA. In any event the figure of £2.3 million is itself significant given the considerable pressures on Social Security expenditure.

Review of DLA

33. The Government notes the Committee’s recommendation that in the longer term a review of DLA should be carried out. As with other social security benefits, DLA is kept under review. The Government has recently made significant improvements to the DLA claim form, it is currently piloting revised arrangements for obtaining relevant information from claimants’ general practitioners, and in consultation with organisations representing disabled people, is testing an alternative system for extra-costs disability benefits based on activities for managing life.

Government’s Reaction to the Board’s Views

34. In considering our response to the Committee we have taken account of the views put to us by the Board, in particular its opinion that there is a need to clarify the conditions of entitlement with regard to claims made on the basis of “fear or anxiety”. The Board has gone a stage further than the present proposals, and recommends that an underlying recognised psychiatric condition should be diagnosed before entitlement to LRMC is made out in these cases. The Government considers the proposed regulations will clarify matters to the extent necessary, but take the point that decision makers will need to obtain sound medical evidence and advice about the psychiatric condition in such cases and the effect it has on the particular person. Guidance will make this clear.

Conclusions

35. The regulations will affect certain disabled people who claim LRMC on the grounds of “fear or anxiety” if their “fear or anxiety” does not directly result from a severe mental disability.

36. On balance, the Government still considers that the advantages of making the regulations outweigh the disadvantages.

37. The Government is grateful to the Committee, to those interested parties who responded to the Committee's consultation exercise, and to the Board, for their consideration of the draft regulations and their comments on them.

38. The regulations are now laid before Parliament.



SOCIAL SECURITY ADVISORY COMMITTEE

New Court, 48 Carey Street, London WC2A 2LS
Telephone 020 7412 1501 Fax: 020 7412 1570
Email: ssac@dwp.gsi.gov.uk
Website: <http://www.ssac.org.uk>

from the Chairman

The Rt. Hon. Alistair Darling MP
Secretary of State for Work and Pensions
Richmond House
79 Whitehall
London SW1A 2NS

11th December 2001

REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE¹ MADE UNDER SECTION 174 OF THE SOCIAL SECURITY ADMINISTRATION ACT ON THE SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE) (AMENDMENT) REGULATIONS 2001

The DLA Amendment Regulations

1. We attach our report on these amending regulations, which would prevent a person who experiences fear or anxiety when out of doors receiving the lower rate mobility component of Disability Living Allowance, unless that fear and anxiety arose from a severe mental disability.

2. The draft regulations were referred to the Committee on 1 August 2001. On 2 August we published a press release inviting comments on the effect of this proposal, to reach us by 14 September 2001. We were able to take into account representations from the 62 organisations and individuals listed at Appendix 1 to this report.

Acknowledgements

3. We would like to express our gratitude to those who took the trouble to write to us and to the officials of the Department for Work and Pensions for their assistance.

Northern Ireland

4. Similar, but separate, regulations are planned by Northern Ireland.

The Department's proposals

5. The Department provided for us an explanatory memorandum (reproduced at Appendix 2 of this report, which also includes the text of the relevant Tribunal of Commissioner's Decision) which gave the scope and purpose of the amending regulations. The proposals would limit the receipt of the lower rate mobility component (LRMC) of disability living allowance (DLA) on the grounds of fear or anxiety to people with a symptom of a severe mental disability that was so severe that it stopped them from going out without help. There would be no entitlement where such fear or anxiety arose from a physical disability, unless there was an accompanying mental disability.

Background

6. The grounds for entitlement to the LRMC are given in Section 73(1)(d) of the Social Security Contributions and Benefits Act 1992. This states that entitlement exists where a person:

'is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.'

¹See Annex to this Report

7. This Section has been considered on a number of occasions by various Social Security Commissioners who hear appeals on points of law from decisions made by Social Security Appeal Tribunals. Commissioners' Decisions become case law for Decision Makers, who are expected to follow their interpretation of the law. Given that there are a number of Commissioners, it is not surprising that, over time, Decisions have been issued which are not fully consistent with previous ones. A Tribunal of Commissioners was convened in June 2000, to hear four appeals involving the LRMC, with the intention of resolving some of the confusion that had arisen over divergent Decisions. (A decision of a Tribunal of Commissioners is followed in preference to that of a single Commissioner). It is with this Tribunal of Commissioners' Decision (the Tribunal Decision) that the proposed amendment is concerned.

8. One issue which came up at the Tribunal hearing was whether a person could qualify under Section 73(1)(d), where the basis of the claim was an assertion that the person did not go out alone because their physical disability led them to feel fearful or anxious when outside alone. (The example was of a pre-lingually deaf person with consequent impaired comprehension of English, who felt anxious going out by himself because of his impaired ability to read maps, understand directions or communicate with strangers.) The Tribunal of Commissioners decided that, if the fear or anxiety results from an underlying physical disability and that fear or anxiety was a cause why the person could not go out alone, then a causal nexus was established between the disability and the inability to go to unfamiliar places alone, and entitlement was proven.

9. The Department is now seeking to lay amending regulations to amend the effect of this Tribunal Decision and limit the award to cases where the fear or anxiety arises solely from a mental disability, or to people with a physical disability that gives rise to a symptom of a mental disability that is severe.

**The Department's
Position**

10. The Department puts forward two basic justifications for these proposals - that the Tribunal Decision has:

- produced confusion and uncertainty in decision makers, leading to inconsistent awards; and
- opened up the LRMC to people for whom it was never intended.

11. Although it is not explicit in the Department's explanatory memorandum we sense concerns about the scope for people exaggerating, or indeed feigning, such difficulties in order to obtain the LRMC. We fully understand these concerns, and the prevention of such abuse of the benefit system is a legitimate reason for amending legislation. However, the Committee believes that, in relation to the LRMC, the proposed amendment would not prevent such abuse.

Inconsistent awards

12. The Department believes that the use of the terms "fear or anxiety" in the Tribunal Decision has created some confusion amongst Decision Makers and thus the amendment is needed to clarify this issue for them. The Department says that these terms are elastic and vague, and that the Tribunal Decision offers no guidance on the level of fear or anxiety which must exist to give rise to an award of the LRMC. The Department has quoted figures in the explanatory memorandum (which indicate a wide variation across the Disability Benefit Centres (DBC's) in the number of people who have been awarded the LRMC on the basis of the Tribunal Decision) to support the contention that Decision Makers are having difficulties implementing the Tribunal Decision.

Extending entitlement

13. The Department believes that the Tribunal Decision will enable people to establish entitlement to the LRMC by simply asserting that they feel fear or anxiety when going out alone (even if this feeling was not very strong). It believes that this was never the intention when the policy on LRMC was devised and in support of this quotes part of a speech made by the then Secretary of State during a debate on the introduction of DLA.

14. In making this amendment the Department believes it is reinstating what was the original intention, namely that entitlement to DLA should arise only from unavoidable costs of a disability. It is the Department's position that, where fear arises from a physical disability, people decide not to go outside and therefore have a choice as to whether they incur the costs of being accompanied or not. The Department distinguishes this group from those with a mental disability who cannot leave their home unaccompanied.

Responses to the consultation

15. The Committee received a significant number of responses to its consultation, which were uniformly critical of the proposals. Many expressed the belief that DLA should respond to any difficulties that disabled people face and, as a matter of principle, object to any limitation on entitlement. However, many also challenged the correctness of the justifications put forward by the Department.

Inconsistent awards

16. A number of respondents have pointed out that the variation of awards displayed by the DBCs quoted by the Department could be caused by a number of reasons, apart from confusion among decision makers as to the effect of the Tribunal Decision: how widely the Tribunal Decision was disseminated, for instance, or the fact that certain DBCs cover areas with active welfare rights organisations, who promote the claiming of DLA. Even where respondents accepted that Decision Makers may be having problems, their attitude was that the Department should first consider the adequacy of the guidance, support and training being offered to their staff rather than, as a first option, change the legislation.

17. Respondents have generally agreed with the Department that "fear" and "anxiety" are elastic terms, but have pointed out that they are no less precise than other terms in social security law, such as "pain" or "severe discomfort" which appear elsewhere in the DLA legislation. Their view is that, if the Department believes that decision makers can cope with having to interpret such terms, "fear" and "anxiety" should pose no greater difficulties.

Extending entitlement

18. A number of respondents have challenged the Department's interpretation of the speech made by the then Secretary of State, put forward by the Department as setting the limits to the coverage of DLA. They argue that the Secretary of State was on that occasion merely giving examples of the types of situations where entitlement to the LRMC may exist. One respondent also points to the fourth report of the Social Security Select Committee in the 1997/98 parliamentary session, which quotes evidence given by the Policy Director, saying that DLA was designed to "get at people who had a variety of problems and a variety of needs."

19. Many respondents disagree with the Department's position that mental and physical disability are distinct and that their effects should be assessed separately:

"The distinction between mental and physical health problems is an artificial historical one rather than a medical one...the distinctions between mental and physical problems are constantly changing."

Respondents have also said that, where fear or anxiety is extreme (whatever the reason for it arising) regarding the person concerned as having a choice on whether they go out, in any meaningful sense of that term, is misleading.

20. In addition, respondents have generally disagreed with the Department's interpretation of the impact of the Tribunal Decision. Those who expressed a view said that they were of the opinion that a disabled person who experiences fear or anxiety when going out alone and therefore *chooses* not to do so, would not necessarily qualify for the LRMC as the law currently stands, following the Tribunal Decision. To them, this Tribunal Decision is directed at those whose fear and anxiety is such that they *cannot* bring themselves to go out unaccompanied. A number of respondents have said they believe this to be the critical point. As one put it, the Tribunal Decision permits the award of the LRMC:

“where reluctance to take advantage of the faculty of walking turns into actual inability to do so”.

21. It has been suggested, very strongly by a number of respondents, that the proposal marks a significant shift in the underlying DLA policy, moving from what is seen as a strength of DLA — namely, that it is based on needs for care and mobility, not diagnostic categories — to a position in which the disability itself becomes an entitlement condition.

The Committee's position

22. The Committee accepts that it is open to the Government to limit entitlement to benefit in ways it sees fit, by person or by circumstance. However, for the reasons given below, it does not find the arguments in the Department's explanatory memorandum supporting this particular amendment especially persuasive.

Inconsistent decision-making

23. The Committee is not persuaded that the inference drawn by the Department from the figures quoted (that decision makers are confused by the Tribunal Decision) is necessarily the correct one. All the figures tell us is that there has been a variation — but we understand that the number of awards of other components varies as well (which cannot be attributed to this Tribunal Decision). Indeed, the numbers of claimants in receipt of DLA varies widely around the country. We believe the evidence is not sufficiently clear-cut to draw any inferences either way.

24. Decision-making on DLA is never going to be easy, given the way the conditions of entitlement were formulated from the outset. The Committee believes that, with the right guidance and support (including that from the appropriate medical services), there should be no reason why the interpretation of this Tribunal Decision should create any more difficulties than other case law.

“Fear or Anxiety”

25. The Committee agrees that “fear” and “anxiety” are terms that can cover a wide spectrum of psychological and emotional conditions, but disagrees with the Department that this is a reason, *of itself*, for changing the legislation. If vagueness and elasticity alone justifies amendment, then much of the current legislation, particularly on DLA, would also need changing.

26. However, the major difficulty the Committee has with this argument is that the proposed amendment does not eliminate or clarify these terms — in fact, it enshrines them in the legislation.

Extending entitlement

The original policy

27. The Committee appreciates that, on occasion, the Courts can interpret social security legislation in a way that cuts across a widely understood and accepted original policy intention. Where this clearly undermines that policy, we would expect the Government to ask Parliament to amend legislation, so that it properly reflects the Government's intentions.

28. However, we are not persuaded that the original policy was as straightforward as the Department has suggested. The statement by the then Secretary of State (and subsequent statements by both Ministers and officials) does not appear, explicitly or implicitly, to define fully and finally all the circumstances that might give rise to entitlement. Indeed, we believe this would have been a nearly impossible task.

29. Even if the Tribunal Decision does, to some extent, cut across the original policy intent, this does not, in our opinion, automatically justify amendment. We believe it would be more appropriate for the Department to address the issue of whether policies that reflect the knowledge and understanding of disability issues in 1993 (and, since some of the Commissioners' decisions in use are from the time of Mobility Allowance, even further back) are still valid. Much more is now known about the way in which physical and mental health interacts than was the case when DLA was introduced. We are aware of disputes within the medical profession itself as to whether, in some cases, certain symptoms are caused by a mental or a physical problem (and, indeed some, such as chronic fatigue syndrome, can consist of both physical and psychological factors).

The application of the Tribunal Decision

30. If the Department's interpretation of the impact of the Tribunal Decision is correct, then its reaction is understandable: DLA was never intended to pay where claimants have a choice over whether or not to incur costs. The Committee would however question the Department's interpretation of the Tribunal Decision. It is our view that, even without the proposed amendment, the test still requires claimants to demonstrate that:

- (i) they experience fear or anxiety about going out alone; and
- (ii) this is a consequence of some form of disability; and
- (iii) this fear or anxiety *prevents* them from going out most of the time; and
- (iv) guidance or supervision is *reasonably required* to enable them to go out.

If this interpretation is correct, then awards should not, at present, be made to those who can exercise a choice in this area — an outcome the Department is expecting the amendment to the legislation to achieve.

31. We asked for a clarification from officials of the type of people they want to continue to obtain the LRMC. They define this group as those whose fear or anxiety is so extreme as to prevent them from going outside alone (ie. where the element of choice has effectively been taken from them). They define this group as people who have a symptom of a mental disability (even if the original "trigger" for these symptoms was a physical condition).

32. In effect, the Department is amending the questions at paragraph 30 above so that the Decision Maker (a lay person with no training in medical issues) must decide whether the claimants have demonstrated that:

- (i) they experience fear or anxiety about going out alone; and
- (ii) this fear or anxiety *prevents* them from going out most of the time; and
- (iii) that this fear or anxiety is a symptom of a mental disability; and
- (iv) guidance or supervision is *reasonably required* to enable them to go out.

The Department's approach to demonstrating the requirements of (iii) has at least the merit of simplicity — officials say that where the fear or anxiety is so extreme that the person cannot force themselves out of their front door, that person has a symptom of a mental disability.

33. The Committee is not able to comment on this rather interesting approach, as it does not have the knowledge or experience in the field of the diagnosis of mental

disability. However, we feel that it potentially presents a number of problems. To begin with, even if this interpretation of the meaning of having a symptom of a mental disability is adopted by all Decision Makers (and there is no guarantee of that) the amendment simply replicates what is already in the legislation. The requirement at Section 73(1)(d) of the Contributions and Benefits Act is that a person “cannot take advantage of the faculty (of walking)... without guidance.” (our underlining).

The claim form

34. The Department’s position is that there would be no need for any individual to declare a specific mental disability on their claim — where the claim form and any supporting information indicated that a person’s fear or anxiety were at such a level that they constituted a severe mental disability, and this appeared to be a likely consequence of their condition, the advice to the Decision Makers would be that the LRMC should be awarded. However, we do not believe that this argument stands up to testing. To convince a Decision Maker that their fear and anxiety is a likely outcome of their condition, a claimant would need to record a condition which makes such fear or anxiety likely — ie the name of a mental disability.

35. However, the Department’s position raises other concerns. Such an approach places a great deal of weight on the type of information offered by the claimant on the claim form. It is our experience that, unless clearly guided as to what is required, people tend to describe their difficulties loosely and in imprecise terms. Unfortunately the claim form, in our opinion, does not offer the level of clarity and guidance needed in this difficult area. We support the Department’s obvious wish not to constrain the claimant to a list of “yes and no” questions. However, this (and the need to keep the form as short as possible) has led to little assistance being given as to what the Decision Maker would take into account when reaching a decision, or the level of detail needed. This is not necessarily a criticism of the Department: we doubt if anyone could satisfactorily cover such a wide ranging subject effectively on a form.

Costs

36. The Committee also has doubts about the amounts quoted on the eventual costs of not amending the legislation. The Committee has asked the Department for a more complete explanation of how the estimated extra costs quoted of £35 million was arrived at. Apparently, the figure of £35 million quoted in the explanatory memorandum is the “top end” of possible expenditure. It is based on general evidence on the number of disabled people in the country, and on the assumption that all who said they needed help going outside actually claimed and were successful. An alternative figure has also been calculated. A total of 200 awards have been made on the basis of this Tribunal Decision over the period October 2000 and June 2001 which equates to around £150,000 a year. If it were assumed that the same number of awards could be expected each year the cumulative cost over five years would be £2.3 million.

The Disability Living Allowance Advisory Board (DLAAB)²

37. We are also aware that the DLAAB has considered the draft regulations and we are grateful to have been offered the opportunity to consider their conclusions.

38. We understand that their advice is that the award of DLA in respect of supervisory needs resulting from fear and anxiety should be restricted solely to those cases where the fear and anxiety arises directly from a recognised physical or psychiatric condition, as defined in the International Classification of Diseases, or from a combination of such conditions. The corroboration establishing this linkage could be made by one of the mental health professionals responsible for the care of the claimant. DLAAB acknowledge the difficulties that would still be faced by decision makers in assessing the extent of the claimant’s mobility needs arising from the mental illness that had been diagnosed, which would need to be covered by guidelines for decision makers.

²Established in 1991 to, in relation to DLA and AA, give advice to the Secretary of State on matters referred to them and advise Departmental medical practitioners on individual cases and questions.

39. Such an approach would be more closely aligned to the Department's proposals and would have the merit of seeking to reduce inconsistency of diagnosis by establishing a link with the International Classification of Diseases. However, it would represent a further step down the route of establishing a more *medicalised* model for DLA entitlement, rather than an approach based on a large element of self-reporting of the conditions and circumstances in which a benefit contribution to the extra costs of disability would be appropriate. For the reasons set out earlier in this report, we believe that this would represent an inappropriate change in policy. Moreover, we are concerned that the administration of such an approach might present certain new problems. Quite apart from the difficulty of developing guidelines for decision makers, the judgement by a mental health professional as to whether an individual's symptoms do or do not arise from a specific psychiatric condition is, as we understand it, one that may well be open to challenge on appeal. Therefore, while we freely acknowledge the expertise of DLAAB on clinical issues, on this particular occasion we do not share their conclusions.

A wider perspective on DLA

40. This issue, and the arguments advanced to us, both by the Department and respondents, have illustrated the complexity which now surrounds the administration of DLA. The principle of seeking to alleviate by state provision the extra costs encountered by many disabled people as a direct result of their disability is admirably simple. The difficulty arises from seeking to translate this into a rule-based system of benefits that is equitable and accessible, and yet not open to abuse, when the needs and circumstances of individuals are so diverse. The result is a system that is highly complex, hard to access initially, requiring an elaborate administrative structure, yet in the more severe cases fails fully to address the needs of individuals.

41. Since 1992, when DLA was introduced, there have been significant changes in the type, structure and delivery of services to disabled people. In particular, health and social care provision is increasingly considered and delivered as a complete package, in the form of services and, in some places, even cash.

42. The Committee therefore suggests that, in conjunction with the Departments with responsibility for health issues, the Department should undertake a fundamental re-consideration of the role DLA, as a whole, plays in supporting people who are disabled, and whether the continued maintenance of a separate benefits structure, focused on specific aspects of the costs of disability and delivered by the DWP, remains appropriate.

Conclusions

43. The Committee believes there are serious flaws in the proposals as they currently stand. We would question the necessity for the proposed changes, as we do not consider the impact of the Tribunal Decision to be as the Department has described. While we recognise what the Department is seeking to achieve (to limit the LRMC to those who cannot go out alone because of fear and anxiety) we do not think the amendment, as it stands, achieves this. In addition, the administrative process required by the proposal may cause significant difficulties for legitimate claimants in obtaining their entitlement.

Recommendations

44. We recommend that the draft regulations be withdrawn. Instead, the Department should:

- (i) investigate the differences in the numbers of awards of the LRMC across the different DBCs made on the basis of the Tribunal Decision and produce a report on the causes of the variations.
- (ii) review its guidance and support to decision makers in the area of mental health issues in general, and in particular on the issue of fear and anxiety as a mental disability.
- (iii) in consultation with expert bodies (including the DLAAB) consider what changes could be made to the claim process to ensure that possible entitlement to the LRMC on the grounds of mental disability is clearly identified.

45. In the longer term, the Committee recommends a fundamental review with other Departments of the role of DLA in providing support to people with disabilities.

THOMAS BOYD-CARPENTER

THE SOCIAL SECURITY ADVISORY COMMITTEE'S REMIT

The Social Security Advisory Committee is a body set up to advise the Secretary of State concerning the discharge of his duties. Specifically, where regulations are formally referred to the Committee, it is required to consider the subject matter of those regulations and make any recommendations it sees fit.

Thus the Committee does not provide a check on the legality of the Regulations (that is the role of other bodies). Neither does it operate as an authorising body — its permission is not required before regulations are laid before Parliament (although the Secretary of State is required to notify Parliament of the extent to which the Regulations formally referred to SSAC reflect the Committee's recommendations).

Rather we are expected to offer the Secretary of State a stream of advice from people with expertise in the arena of social benefits, but who are not Departmental officials and can, therefore, be expected to offer a different perspective. It is perhaps worth saying that no Secretary of State is required to accept the Committee's advice. The final responsibility for policy decisions rests with him.

SOCIAL SECURITY ADVISORY COMMITTEE

New Court, Carey Street, London WC2A 2LS (0207 412 1508)

Chairman:

Sir Thomas Boyd-Carpenter KBE

Members:

Neil Barlow
Andrew Dilnot CBE
Elisabeth Elias
Richard Exell OBE
Dr Christine Kenrick
Dr Pui Ling Li
Professor Eithne McLaughlin
Laurie Naumann
Professor Anthony Ogus CBE
Professor Olive Stevenson CBE
Dr Adrian Stokes OBE
Robin Wendt CBE DL

Secretariat:

Gill Saunders	Secretary
Pam Bryson	Assistant Secretary
John Critchfield	Assistant Secretary
Bob Elbert	Assistant Secretary

RESPONDENTS TO THE CONSULTATION EXERCISE

1. Jane Hunt
2. I. Carter
3. National Phobics Society
4. Oxfordshire Welfare Rights
5. British Polio Fellowship
6. Leicestershire County Council Social Services Department
7. Susan Foot
8. Mencap
9. Making Space
10. Humphrey Matthey
11. Sadie Furey, Worcestershire County Council
12. Child Poverty Action Group
13. National Schizophrenia Fellowship
14. Holiday Whitehead and Steve Donnison
15. West Dunbartonshire Access Panel
16. Northern Ireland Association of Citizens Advice Bureaux
17. Skill: National Bureau for Students with Disabilities
18. Welfare Rights, Lancashire County Council
19. Matthew Blakemore
20. Edward Hutchinson
21. Reading Community Welfare Rights Unit
22. Ann Williams
23. Mental Welfare Commission for Scotland
24. Welfare Benefits and Money Advice, London Borough of Hounslow
25. Welfare Benefits Unit, City of Wakefield Metropolitan District Council
26. Highland Advice and Information Network
27. National Autistic Society
28. Tuberous Sclerosis Association
29. Hillingdon Welfare Rights Alliance
30. Brian Kennedy
31. Lasa
32. Royal National Institute for Deaf People
33. Welfare Rights, Redcar-Cleveland
34. Mind in Croydon
35. Kingston upon Hull City Council
36. Miss Annette Blackman
37. Glasgow Council for Single Homeless
38. Disability Bournemouth Information Service
39. Scottish Borders Council's Welfare Benefits Service
40. Leicester City Council
41. Social Services, Essex County Council
42. Scope
43. Professor Nick Wikeley
44. Disability Rights Commission
45. Welfare Rights Unit, Middlesbrough Council
46. Mind
47. Incontact
48. British Epilepsy Association
49. Northwest Mental Health Welfare Rights Group
50. National Association for Colitis and Crohn's Disease
51. Disability Alliance

52. The City and County of Swansea Welfare Rights Unit
53. The County Council of the City and County of Cardiff
54. Wakefield Centre for the Unemployed
55. The Parkinson's Disease Society of the UK
56. Nottingham Community Resource Centre
57. City of Nottingham, Social Services Department
58. National Probation Service, West Yorkshire
59. The Royal National Institute for the Blind
60. The Royal College of Psychiatrists
61. Headway – the brain injury association
62. Barnardo's

Explanatory Memorandum to the Social Security Advisory Committee

The Social Security (Disability Living Allowance) (Amendment) Regulations 2001

Introduction

1. The Government propose to clarify the conditions of entitlement to the lower-rate mobility component (LRMC) of Disability Living Allowance following a Tribunal of Commissioners' decision (CDLA 714/1998 — copy attached at Annex C). The proposal is:

To make regulations to ensure that people who experience fear or anxiety when out of doors are entitled to LRMC only if their ability to walk independently is directly affected by a severe mental disability.

A copy of the draft regulations is attached at Annex A; and a copy of the current DLA regulations and the Act to which they refer is at Annex B.

2. The purpose of these regulations is:

- to ensure that the scope of LRMC remains within the parameters set out in statements made to Parliament by Ministers during the passage of the Disability Living Allowance and Disability Working Allowance Act 1991 ("the 1991 Act")³ which first introduced LRMC (see paragraph 5 below); and
- to remove confusion and uncertainty for decision makers. Data collected from Disability Benefit Centres and the Disability Benefit Unit over the past 12 months, following CDLA 714/1998, indicates that decision makers are no more clear now as to the circumstances in which cases involving "fear or anxiety" satisfy the LRMC entitlement conditions than they were before the Tribunal of Commissioners' decision (see paragraph 12 below).

3. The effect of the regulations will be that people who have a severe physical or mental disability which prevents them from walking out of doors on unfamiliar routes without guidance or supervision from another person most of the time will continue to qualify for LRMC; but "fear or anxiety" will not count for LRMC purposes unless it results from a severe mental disability, such as agoraphobia.

Background

4. The conditions of entitlement to LRMC, set out in section 73(1)(d) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"), are that a person:

"is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time."

Section 73(5) of the 1992 Act makes provision for circumstances to be prescribed by regulations in which a person may be taken or not to satisfy those conditions of entitlement. As has been affirmed on a number of occasions, the Department does not use this power to change those conditions. The power is used, as in this case, to clarify areas of ambiguity and restore any unplanned extensions of the scope of LRMC resulting from judicial decisions.

³Later subsumed into the Social Security Contributions and Benefits Act 1992.

5. The intended scope of the LRMC was set out by the then Secretary of State at the Commons' Second Reading debate on the 1991 Act in the following terms -

“the new (lower) rate will be payable to people who... require the guidance or supervision of another person for most of the time. This will extend the mobility component... to people who are mentally handicapped or blind and to those who have a very limited capacity to walk.I cannot say that every person who suffers from agoraphobia would qualify for the mobility component, but that is certainly one of the groups we had in mind when we designed the extension of mobility allowance within the new benefit.”

6. Since that time, however, various Social Security Commissioners have taken divergent approaches to the conditions of entitlement to LRMC. For example, in CDLA/240/94 a Commissioner decided that in the case of a profoundly deaf person, ‘...an inability to ask for directions does not, by itself, demonstrate a need for supervision within the terms of section 73(1)(d) of the 1992 Act’. It had earlier been ‘accepted that it could not be said that a deaf person required guidance most of the time in order to take advantage of his ability to walk’. However, in CDLA/14307/96, also in a case of a profoundly deaf person, the Commissioner decided, ‘If a fear of being attacked, or attacks of panic on getting lost, are a consequence which a person of reasonable firmness would suffer from profound deafness ..., then the fear and panic are legitimately to be taken into account in deciding whether or not a person needs guidance or supervision in order to take advantage of the faculty of walking’.

Decision CDLA 714/1998

7. To help resolve a variety of issues concerning LRMC that had attracted divergent approaches from Commissioners and consequent confusion and uncertainty for decision makers, a Tribunal of Commissioners was appointed by the Chief Commissioner His Honour Judge Machin QC and asked, in June 2000, to consider four appeals involving entitlement to LRMC. The principal issue to be decided was:

- whether supervision or attention requirements which qualify or contribute to qualifying a claimant for an award of the care component under section 72 of the 1992 Act should, or should not, be taken into account when assessing the need for supervision or guidance under section 73(1)(d).

In the course of their decision, however, the Tribunal of Commissioners commented upon three further issues, which were:

- whether any attention with the bodily function of hearing which counted towards potential qualification for entitlement to the care component should be disregarded;
- whether guidance included assistance with communication in order to ask for directions;
- whether in the case of a pre-lingually deaf person with consequent severely impaired comprehension of English, who was too frightened or nervous to walk on unfamiliar routes and who never did so unless accompanied, there could ever be entitlement to lower rate mobility component.

8. Only the Tribunal of Commissioners' decision on the last of these issues is relevant to these proposed amendment regulations.

9. In their decision, the Tribunal of Commissioners confirmed that entitlement to LRMC must be decided only by reference to the conditions set out in section 73(1)(d) of the 1992 Act and not by any other test. On the issue of whether those conditions can be satisfied by severely disabled people who experience fear or anxiety as a result of their disability when outdoors, the Tribunal of Commissioners decided — at paragraph 18 of CDLA 714/1998 — that:

“if it is established, first, that fear or anxiety results from the underlying disability, and secondly, that such fear or anxiety is a cause of the inability to take advantage of the faculty of walking on unfamiliar routes, the necessary causal nexus is established between the disability and the inability to take advantage of the faculty and entitlement to LRMC is made out.”

Issue

10. The decision at paragraph 18 of CDLA 714/1998 contrasts with the position long held by Social Security Commissioners⁴ — most recently reiterated in CSDLA/531/00 — that for both the DLA care and mobility components under sections 72-73 of the 1992 Act, not only must the required degree of need for care, supervision and so on be shown, but also the need must arise from a condition identifiable as physical or mental disablement. That there are these two separate and cumulative conditions to be met is well-established and not open to legitimate doubt. Otherwise, the insistently repeated phrase in each of the statutory conditions that ‘the claimant is so severely disabled physically or mentally’ as to have the various needs would serve no purpose, and the needs alone would determine the entitlement. For LRMC, this means that the conditions of entitlement set out in s.73(1)(d) of the 1992 Act requires a claimant’s need for guidance or supervision to arise from a condition identified as a physical or a mental disability, and for the disability to be so severe as to prevent the claimant from taking advantage of the faculty of walking out of doors on unfamiliar routes without guidance or supervision.

11. CDLA/714/1998, however, allows the conditions of entitlement to be satisfied by matters at one remove from the disabling condition itself. It proceeds on the basis that a person may be considered to be incapable of doing something if he chooses not to do so because of fear or anxiety, even though he is physically and mentally capable of doing it. The result is that a person may become entitled to LRMC even though their disabling conditions are not in themselves severe enough to satisfy the conditions of entitlement, thus widening the gateway to LRMC beyond the parameters set out by Parliament when this element of DLA was introduced.

12. Furthermore, statistics received from disability benefit centres (DBC) and the Disability Benefit Unit (DBU) strongly indicate that CDLA/714/1998 has done little to dispel uncertainty about the circumstances in which disabled people who experience fear or anxiety when out of doors can qualify for LRMC. The figures show wide variations in the numbers of DLA claimants who have gained entitlement to LRMC as a result of the decision. For example, for the period October 2000 to June 2001, Edinburgh DBC and the DBU both identified 2 gainers; whereas, for the same period Newcastle and Sutton DBCs identified 19 gainers and 50 gainers respectively. This suggests that decision makers are unsure about how to interpret and apply paragraph 18 of CDLA/714/1998.

13. Such a situation is not helpful to either decision makers or claimants, or to the proper administration of the benefit; but it is not altogether a surprising one. ‘Fear or anxiety’ are vague and elastic terms which can cover a spectrum of emotions ranging from pathological terror at one extreme to mild anxiousness at the other. CDLA/714/1998 gives no clues as to whether the experience of mild anxiousness outdoors by a disabled person is sufficient to qualify for LRMC or, if not, at what point along the scale towards pathological terror does ‘fear or anxiety’ become sufficiently strong to qualify.

Proposed Change

14. The proposed regulations will:

- insert a new regulation 12(7) in the Social Security (Disability Living Allowance) Regulations 1991, to specify that a person is not to be taken to satisfy the conditions set out in section 73(1)(d) of the 1992 Act if he does not take advantage of the faculty of walking out of doors because of fear or anxiety; and

⁴See R(A)2/92 and R(A)1/98.

- insert a new regulation 12(8) in the Social Security (Disability Living Allowance) Regulations 1991, which disapplies the provisions of regulation 12(7) where fear or anxiety is a symptom of a mental disability which is so severe as to prevent a person from taking advantage of the faculty of walking out of doors in the circumstances described in section 73(1)(d) of the 1992 Act.

15. The effect of these changes will be:

- to ensure that the scope of LRMC remains within the parameters made clear to Parliament when LRMC was first introduced, so that the qualifying conditions for LRMC are satisfied only if a disabled person's ability to walk independently when out of doors is directly and seriously affected by severe physical or mental disablement; and
- to provide certainty for decision makers and claimants alike about the criteria to be satisfied in order to qualify for LRMC. Annex D contains examples of how the regulations would operate.

Costs

16. As the proposed regulations are to ensure there is no widening of the gateways to LRMC beyond those set out when the component was introduced there is no extra cost involved. The numbers of disabled people who are known to have gained entitlement to LRMC as a result of the Tribunal of Commissioners' decision have not yet been as high as initially anticipated. However, it is estimated that failure to introduce these regulations could increase expenditure in the long term by up to as much as £35 million⁵ a year. Of necessity, this figure is highly speculative because of the uncertainties posed for decision makers by the terms "fear or anxiety" used in CDLA 714/1998 and the likelihood that a change in claim patterns is likely to be slow. There are no costs to businesses, charities or voluntary organisations.

Conclusion

17. The proposed regulations ensure that the scope of LRMC remains within its intended parameters and is only awarded if ability to walk independently when out of doors is directly and seriously affected by severe physical or mental disability. The Department is convinced that the proposed regulations, rather than an appeal against the Tribunal of Commissioners' decision in CDLA 714/1998, provides the most satisfactory and clear way of dealing with this matter because they:

- are the best way of achieving consistency in decision making when the effects of "fear or anxiety" need to be considered; and
- do not affect other important aspects of the Tribunal of Commissioners' decision with which the Department is content.

⁵Estimate based on information from the Disability Survey (1996-97) concerning people who needed help when outdoors.

2001 No.

SOCIAL SECURITY

**The Social Security (Disability Living Allowance)
(Amendment) Regulations 2001**

<i>Made</i>	- - - - -	2001
<i>Laid before Parliament</i>	- - - - -	2001
<i>Coming into force</i>	- - - - -	2001

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 73(5) and 175(3) of the Social Security Contributions and Benefits Act 1992⁽⁶⁾ and of all other powers enabling him in that behalf [, and after agreement by the Social Security Advisory Committee that the proposals to make these Regulations should not be referred to it⁽⁷⁾,] hereby makes the following Regulations:

Citation and commencement

10. These Regulations may be cited as the Social Security (Disability Living Allowance) (Amendment) Regulations 2001 and shall come into force on [] 2001.

Amendment of regulation 12 of the Social Security (Disability Living Allowance) Regulations 1991

11. In regulation 12 of the Social Security (Disability Living Allowance) Regulations 1991⁽⁸⁾ (entitlement to the mobility component), there shall be added after paragraph (6) the following paragraphs -

“(7) For the purposes of section 73(1)(d) of the Act, a person who is able to walk is to be taken not to satisfy the condition of being so severely disabled physically or mentally that he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time if he does not take advantage of the faculty in such circumstances because of fear or anxiety.

- (8) Paragraph (7) shall not apply where the fear or anxiety is—
- (a) a symptom of a mental disability; and
 - (b) so severe as to prevent the person from taking advantage of the faculty in such circumstances.”.

Signed by authority of the Secretary of State for Social Security

⁽⁶⁾ 1992 c.4.
⁽⁷⁾ See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).
⁽⁸⁾ S.I. 1991/2890. Relevant amending instruments are S.I. 1993/1939 and 1994/1779.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Disability Living Allowance) Regulations 1991 in relation to the conditions of entitlement to the mobility component of a disability living allowance. They provide that a person does not meet the conditions of section 73(1)(d) of the Social Security Contributions and Benefits Act 1992 if the reason he does not walk out of doors unaccompanied is fear or anxiety. This provision does not apply where the fear or anxiety is a symptom of a mental disability and so severe as to prevent the person from walking out of doors unaccompanied.

These Regulations do not impose any costs on business.

DISABILITY LIVING ALLOWANCE ADVISORY BOARD

The Adelphi 1-11 John Adam Street London WC2N 6HT
Telephone 020 7962 8056/8982/8053

Charles Ramsden
Disability and Carer Benefits
Department for Work and Pensions

13 December 2001

THE SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE) (AMENDMENT) REGULATIONS: LOWER RATE MOBILITY COMPONENT AND FEAR AND ANXIETY

The Board recently discussed the proposed regulations which, we understand, have been referred to the Social Security Advisory Committee and will be the subject of a report by the Committee to Secretary of State. The regulations are intended to ensure that fear or anxiety will not qualify a person for the Disability Living Allowance lower rate mobility component unless it arises from a severe mental disability, such as agoraphobia. We are grateful for the opportunity to comment on the draft regulations.

Firstly, we recognise that this is a difficult area for decision makers and that, following the decision of the Tribunal of Commissioners, there is a need to clarify the conditions of entitlement to the lower rate mobility component of Disability Living Allowance with regard to claims made on the basis of fear or anxiety.

When we examined the proposed regulations, we looked at two broad questions: entitlement and definition, and, secondly, evidence and corroboration.

Evidence and definition: We believe that it is fundamental to an award of DLA that there should be an underlying mental or physical condition directly causing the disability and subsequent care or supervision needs. Terms such as fear or anxiety, and even supervision, are vague and elastic and we accept that clarification is needed. There is a serious difficulty, in our opinion, with the use of terms such as fear and anxiety as they can be normal reactions to life events or may be a symptom of a mental illness as defined in the International Classification of Diseases. We therefore believe that the supervisory needs resulting from fear and anxiety should only be considered if they arise directly from an underlying recognised psychiatric condition. In all awards of lower rate mobility component based on symptoms of fear and anxiety we would expect that there would be sound evidence that the claimant is suffering from related psychiatric condition, for example, primary agoraphobia or agoraphobia as part of a depressive illness, or some cases of paranoia and schizophrenia. We realise that this would place a greater emphasis on diagnosis than is usually the case for DLA claims where the focus is more on the consequences of the impairment rather than the diagnosis. However, in this instance we believe that diagnosis is an important element in establishing eligibility.

One of the difficulties of the proposed regulations as currently drafted is that decision makers would still have the difficult task of deciding the extent of the mobility needs arising from mental illness. There will therefore be a need to draw up detailed guidelines to assist decision makers in their consideration of such claims.

Evidence and corroboration: DLA applications are completed on a self-assessment basis. The walking outdoors section does enquire whether the customer has to have someone with them when outdoors and provides the example of suffering “anxiety” or “panic attacks”. We believe that the necessary corroborative evidence from appropriate health professionals should be obtained to support the application and that this would go a long way to resolving the difficulty of diagnosis and severity. As terms such as ‘stress’ and ‘anxiety’ are in common usage and the degrees are so variable independent corroboration should be required for an award of the lower rate mobility component to be made.

Finally, in keeping with the Board’s statutory advice role on medical issues and DLA, we are happy to offer its expertise to the Department in framing the necessary guidelines for decision makers to help them in this undoubtedly difficult area.

Yours sincerely

Rodney Grahame

Published by The Stationery Office Limited

and available from

The Stationery Office

(Mail, telephone and fax orders only)

PO Box 29, Norwich NR3 1GN

General enquiries 0870 600 55 22

Order through the Parliamentary Hotline *Lo-Call* 0845 7 023474

Fax orders 0870 600 5533

Email book.orders@theso.co.uk

Internet <http://www.clicktso.com>

The Stationery Office Bookshops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68-69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

33 Wine Street, Bristol BS1 2BQ

0117 9264306 Fax 0117 9294515

9-21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

The Stationery Office Oriel Bookshop

18-19 High Street, Cardiff CF1 2BZ

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 55 66 Fax 0870 606 55 88

The Parliamentary Bookshop

12 Bridge Street, Parliament Square
London SW1A 2JX

Telephone orders 020 7219 3890

General enquiries 020 7219 3890

Fax orders 020 7219 3866

Accredited Agents

(see Yellow Pages)

and through good booksellers

ISBN 0-10-154692-0



9 780101 546928