

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 8

Amendment 20 – February 2016

1. This letter provides details on Amendment 20; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the Internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints

3. Amendment 20 affects Abbs, SI's & Statutes the changes
 - incorporate DMG memo 19/15 concerning the SMI and DMG memo 24/15 concerning SDP and carer benefits in chapter 44.
4. The last two amendment packages amending Volume 8 were
Amendment 19 [October 2015]
Amendment 18 [June 2015]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Abbreviations

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Statutes

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Chapter 44

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Severe disability premium

General

44111 SDP is payable to a severely disabled person¹. There are two rates of SDP.

1 ESA Regs, Sch 4, para 6(1)

Combination of SDP with other premiums

44112 If the conditions for SDP are met, the appropriate SDP rate should be included in the claimant's applicable amount in addition to any other premium.

Lower rate

44113 [\[See Memo DMG 24/15\]](#) Single claimants, lone parents and claimants who are deemed to have no partner (see DMG 44116) are entitled to the lower rate SDP if

1. they are in receipt of
 - 1.1 the middle or highest rate of the care component of DLA **or**
 - 1.2 "AA" **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 44125) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**
3. CA or UC that includes the CE is not in payment to anyone for caring for them (see DMG 44156).

1 ESA Regs, Sch 4, para 6(2)(a)

44114 Members of a couple or polygamous marriage are entitled to the lower rate SDP if

1. each member of the couple or polygamous marriage is in receipt of
 - 1.1 "AA" **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. there are no non-dependants aged 18 or over
 - 2.1 normally residing (see DMG 44125) with the claimant **or**
 - 2.2 who the claimant normally resides with **and**
3. CA or UC that includes CE is in payment (see DMG 44156) to someone for caring for one
 - 3.1 of a couple **or**

3.2 or more, but not all, of the members of a polygamous marriage¹.

1 ESA Regs, Sch 4, para 6(2)(b)

Higher rate

44115 Members of a couple or polygamous marriage are entitled to the higher rate SDP if

1. the conditions in DMG 44114 **1.** and **2.** are satisfied **and**
2. CA or UC that includes CE is not in payment (see DMG 44156) to someone for caring for any member of a

2.1 couple **or**

2.2 polygamous marriage¹.

1 ESA Regs, Sch 4, para 6(2)(b)

Claimant who is deemed not to have a partner

44116 When deciding entitlement to SDP, a claimant is treated as not having a partner if the partner is

1. not in receipt of
 - 1.1 "AA" **or**
 - 1.2 the middle or highest rate of the care component of DLA **or**
 - 1.3 the daily living component of PIP **or**
 - 1.4 AFIP **and**
2. blind or severely sight impaired or treated as blind or severely sight impaired (see DMG 44086)¹.

1 ESA Regs, Sch 4, para 6(3)

44117 This means that if the claimant is a member of a

1. couple, the claimant must satisfy DMG 44113 to be entitled to SDP **or**
2. polygamous marriage, all remaining partners must satisfy DMG 44114 **1.** for the claimant to be entitled to SDP.

"AA", DLA and CA on admission to hospital

44118 Special rules apply to the treatment of "AA", DLA, CA and PIP when a disabled person is admitted to hospital (see DMG 44181).

Non-dependants

44119 Non-dependants are¹ people who are aged 18 or over who

1. normally reside with the claimant **or**
2. the claimant normally resides with (see DMG 44125).

44153 For the purposes of the calculation at DMG 44149 **2**.

1. while in temporary residential care the person is still treated as normally residing at home¹ **and**
2. neither partner is regarded as a non-dependant of the other².

1 ESA Regs, reg 156(2); 2 R(IS) 9/02

Example 1

Peter and Louise live in the same household. They are both named as owners of the property. There are no non-dependants. Both get DLA and someone gets CA for Peter. SDP at the lower rate is payable. Louise goes into temporary residential care.

If they are assessed as a couple, SDP at the lower rate is payable because Louise normally resides at home and CA is in payment for Peter.

If they are assessed as if they are single, SDP is not payable for Peter because CA is in payment. SDP is payable to Louise as she gets DLA, CA is not in payment and there are no non-dependants.

Example 2

Malcolm and Wendy are married and live together in the same household. Malcolm is the tenant of the property. Both Malcolm and Wendy get DLA and CA or UC that includes CE is not in payment. There are no non-dependants. Higher rate SDP is in payment. Malcolm goes into temporary residential care.

If they are assessed as a couple, the higher rate SDP is payable. Malcolm normally resides at home and Wendy continues to reside at home.

If they are assessed as if they are single, lower rate SDP is payable for Malcolm who normally resides at home and satisfies the SDP conditions for a single claimant. Wendy is not a non-dependant of Malcolm as she is in receipt of DLA. Lower rate SDP is payable to Wendy who continues to normally reside at home and satisfies the SDP conditions for a single claimant.

Example 3

Alan and Geraldine are married and live together in the same household with a non-dependant daughter. Alan gets DLA and CA is not in payment. SDP is not in payment because there is a non-dependant daughter and Geraldine is not in receipt of DLA. Alan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Alan normally resides at home and there are non-dependants.

If they are assessed as if they are single, SDP is not payable to Alan because he normally resides at home and there are non-dependants. SDP is not payable to

Geraldine because she continues to reside at home and does not satisfy the SDP conditions.

Example 4

Kenneth and Susan live together in the same household with a non-dependant son. Both get DLA and CA is not in payment. SDP is not in payment because there is a non-dependant son. Susan goes into temporary residential care.

If they are assessed as a couple, SDP is not payable because Susan normally resides at home and there are non-dependants at home.

If they are assessed as if they are single. SDP is not payable to Susan because she normally resides at home and there are non-dependants at home. SDP is not payable to Kenneth because he continues to normally reside at home and there are non-dependants.

- 44154 A member of a couple admitted to permanent residential care is no longer a member of the same household as the partner¹. Each person may claim benefit as a single claimant or lone parent.

1 ESA Regs, reg 156(1) & (4)(d)

- 44155 If a claimant is admitted to permanent residential care the other residents of the home are not non-dependants. This is because they do not normally reside with the claimant, as they are separately liable to make payments to a landlord (see DMG 44127 2.)¹. SDP is payable to a claimant in permanent residential care if all of the conditions are satisfied.

Note: DLA may cease when the person has been in permanent residential care for four weeks.

1 ESA Regs, reg 71(6)

Example

Irene and Michael are married and live together in the same household. Irene is in receipt of DLA and no one is in receipt of CA or UC that includes CE for caring for her. SDP is not payable because Michael does not get "AA" or DLA. Irene is admitted to permanent residential care.

Irene claims benefit for herself as she is no longer a member of Michael's household. The DM decides that Irene is entitled to SDP at the lower rate because

1. she is in receipt of DLA **and**
2. the other residents of the home are not non-dependants because they do not normally reside with her **and**
3. no one is in receipt of CA or UC that includes CE for caring for her.

Entitlement to SDP continues as long as all of the above are satisfied.

SDP and Carer benefits

44156 There are two carer related benefits

1. Carer's Allowance (CA)
2. The Carer Element (CE) in Universal Credit (UC)

and SDP is not payable if someone is receiving CA or CE for caring for the claimant or partner¹. CA or CE has to actually be in payment before it affects entitlement to SDP. Underlying entitlement to CA does not affect SDP. So both SDP and CP can be paid at the same time if CP is awarded because of underlying entitlement to CA (see DMG 44166 et seq).

1 ESA Regs, Sch 4, para 6(2)(a)(iii) & (2)(b)

44157 DMs should normally treat an award of CA as a proper award until the CA decision is revised, superseded or otherwise changed on appeal. If the claimant says that

1. they are not being cared for by the person getting CA **or**
2. the award of CA is in error **or**
3. they know nothing about the CA award **or**
4. the CA claim is fraudulent

the DM should ask the CA unit to investigate whether the CA award is correctly made.

44158 Where the disabled person makes an allegation about the carer's integrity, as described at DMG 44157, the ESA DM can make a decision on the claim or application before the CA DM has decided whether the award of CA should be revised or superseded. However, the ESA decision should include a determination which

1. makes an assumption that the carer is properly in receipt of CA **and**
2. refuses to award SDP.

Arrears of CA

44159 An award of CA may be backdated for a period before the date on which the CA award is first paid. Arrears of CA due in such circumstances do not affect entitlement to SDP¹. SDP is only affected from the date the CA award is paid.

1 ESA Regs, Sch 4, para 6(6)

Example

Karim is a single claimant in receipt of SDP. On 20 November a relative claims CA. CA is awarded on 23 January. It is first paid on 6 March. Arrears are included in the first payment from the date of claim. SDP is affected from 6 March.

44160 If a person stops getting CA because a restriction is applied under the loss of benefit provisions¹ they continue to be treated as being in receipt of CA for the purposes of entitlement to SDP².

1 SS Fraud Act 01, s 7; 2 ESA Regs, Sch 4, para 6(2)(a)(iii), (2)(b) & (8)

44161 - 44162

Shared lives scheme

44163 A registered shared lives carer provides support and accommodation, in their own home, for a disabled claimant. The claimant is able to keep their disability benefits (DLA/PIP) and pays the carer a weekly contribution, the LA also pay the carer a fixed amount. The claimant will have a lodger/licence agreement and as such be eligible to obtain HB. In these circumstances the carers will ignored as non dependants (because they are a person who the claimant is liable to make payments on a commercial basis to) and the claimant will be entitled to the SDP.

Note: The claimant will not be entitled to the SDP if there are people other than the carer, carer's family or other shared lives residents in the dwelling who cannot be ignored, for example where the carer's 23 year old son still lives in the same dwelling.

Example

Shirley moves into Fiona and Jason's home under the shared lives scheme, she will live as part of their family having her own bedroom and sharing all the other household facilities. Shirley is disabled and receives DLA. A support agreement, in the form of a licence, confirms Shirley will pay £395/week and that this payment covers all her meals and all utility costs, she will also get HB. The DM decides that Fiona and Jason are not non-dependants because they are people to whom Shirley is commercially liable to make payments to in respect of her occupation of the dwelling. Shirley is entitled to the SDP.

44164 - 44165

The standard rate

44351 When ESA was introduced the calculation of the standard rate of interest applied per annum to loans which qualified for housing costs was based on

1. the Bank of England base rate **or**
 2. any rate determined by the Treasury under its reserved powers
- plus 1.58%.

44352 From 1.10.10 the calculation of the SIR applied to loans which qualify for housing costs is based on the average mortgage rate published monthly by the Bank of England. A change in the SIR is only triggered when the Bank of England's published average mortgage rate differs by 0.5 percentage points¹ or more from the SIR applicable on that day. Any change in the SIR is effective from a date determined by the Secretary of State².

1 ESA Regs, Sch 6, para 13; 2 SI 2014/591

44353 See Appendix 4 to this Chapter for details of the standard interest rates.

44354 - 44355

Appendix 4

Housing costs - changes in the standard interest rate

This appendix provides details of the changes in the SIR.

Changes take effect from the first day of the

1. benefit week that includes the “effective date” or
2. first BWC after the date that the SIR changed if the claim is for a period beginning after the “effective date”.

Date SIR changed	Rate of SIR	Effective from
10.4.08	6.58%	18.5.08
8.10.08	6.08%	16.11.08
14.12.08	4.58%	Not implemented
5.1.09	6.08%	Amount prescribed SI 3195/08
1.10.10	3.63%	1.10.10
June 15	3.12%	Determined by SoS

