

## PIP – AMENDMENT TO THE HOSPITALISATION RULE FOR CLAIMANTS WHO ENTER HOSPITAL UNDER THE AGE OF 18

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### INTRODUCTION

- 1 This memo provides guidance on the Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations 2016 (S.I. 2016/556). The changes come into force on 29.6.16<sup>1</sup>.

*1 Social Security (Disability Living Allowance and Personal Independence Payment) (Amendment) Regulations 2016, reg 1(2)*

### BACKGROUND

- 2 Payment of the daily living and mobility component of PIP is stopped when a claimant has been maintained free of charge whilst undergoing medical or other treatment as an in-patient in a hospital or similar institution for more than 28 days.<sup>1</sup>

**Note:** see ADM P3001-3003 for the definition of a hospital or similar institution

*1 SS(PIP) Regs, reg 29 & 30(1)*

- 3 The DLA hospitalisation rule for children, that stops payment after 84 days, was challenged through the appeal system and resulted in a Supreme Court judgment<sup>1</sup>

which unanimously allowed the appeal and set aside the decision to stop payments of a child's DLA after 84 days in hospital. In that case the claimant was 3 years old and was entitled to DLA. On 4 July 2010 the claimant was admitted to hospital. He remained there until 4 August 2011. After 84 days in hospital the claimant's DLA was stopped. The Supreme Court held that the application of the hospitalisation rule was not justified in this case, and therefore breached Article 14 (prohibition of discrimination) of the European Convention on Human Rights. In essence, the court found that the withdrawal of DLA was not justified because the family "attended no less to his bodily functions than when he had been at home". In addition they faced increased rather than decreased costs in order to provide that care. In support of their finding, four of the five judges also considered that the rule breached international law (the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child) on the basis that they were not satisfied that the Government had given sufficient consideration to the needs of disabled children. The Supreme Court concluded that the claimant had been entitled to continued payment of DLA whilst in hospital, but left it to the Secretary of State to decide what measures should be taken to avoid a similar breach in the case of other disabled children who could be considered comparable to the claimant.

[1 \[2015\]UKSC 47](#)

## **CHANGES TO PIP**

- 4 From 29.6.16 the 28 day hospitalisation rule will be amended. If a claimant entered the hospital or similar institution under the age of 18 payments of PIP will continue until the person is discharged from hospital.<sup>1</sup>

*1 SS(PIP) Regs, reg 29(3)*

### **Example 1**

Peter turned 16 on 30.6.16 and subsequently made a claim for PIP. The DM decided that Peter was entitled to the standard rate of both the daily living and mobility component of PIP 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 PIP 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**

Anastasia is aged 17 and was awarded the enhanced rate of the daily living component of PIP for the period 1.7.16 – 30.6.19. She entered hospital on 10.10.16 and remained there as an in-patient until 10.12.16 when she was discharged. Whilst in

hospital she turned 18 on 10.11.16. Anastasia's PIP will not be stopped for the period 10.10.16 – 10.12.16 as she was under the age of 18 when she entered the hospital as an in-patient. Anastasia is discharged and then re-enters hospital as an in-patient on 1.1.17 and remains there until 1.3.17. However, for this second spell in hospital her PIP will be stopped after 28 days as she was over the age of 18 when she entered the hospital as an in-patient. Her PIP is therefore stopped from 30.1.17 and payment will not recommence until 1.3.17.

## TRANSITIONAL CHANGES

- 5 Currently, in most cases, once a DLA entitled claimant reaches the age of 16 they will be invited to claim PIP as soon as reasonably practicable<sup>1</sup>. However, the changes mean that if the DLA claimant entered hospital or a similar institution as an in-patient under the age of 18, they should not be invited to claim PIP until they are discharged<sup>2</sup>. This will be the case even if the claimant reports a change of circumstance whilst in hospital.<sup>3</sup> If the claimant's DLA is due to expire whilst they are still an in-patient in the hospital or similar institution, the DLA award may be extended appropriately<sup>4</sup> if the claimant continues to satisfy the conditions of entitlement.

*1 PIP(TP) Regs, reg 3(3); 2 reg 2(1) & 3(4A); 3 reg 3(5B); 4 reg 19(1)(b)*

### Example

Katy is aged 15 and is due to turn 16 on 19.7.16. She is entitled to the highest rate of the care component and the higher rate of the mobility component of DLA from 21.6.14 – 20.6.17. She enters hospital on 18.7.16 and remains there as an in-patient until 23.8.18. Her DLA will not be stopped for any period as she was under the age of 18 on the day she entered the hospital as an in-patient. As Katy's DLA is due to expire on 20.6.17 it will be extended as appropriate whilst she is in hospital. She will not be invited to claim PIP until she is discharged.

### Example 2

Declan is entitled to the highest rate of the care component and the higher rate of the mobility component of DLA. He turns 16 on 17.9.16 and is invited to claim PIP. On 30.9.16 Declan makes a claim to PIP. He is subsequently taken into hospital on 5.10.16. Although he is now a hospital in-patient, Declan's PIP claim continues. A decision is made on his PIP claim that his DLA will terminate on 23.11.16 and he will be entitled to the enhanced rate of the daily living component and the enhanced rate of the mobility component of PIP from 24.11.16 – 23.11.19. He is paid DLA up to 23.11.16 and payment of PIP from 24.11.16 will continue whilst he remains in hospital as he was under the age of 18 when he was admitted to hospital on 5.10.16.

## DECISION MAKING

- 6 The decision of the Supreme Court on 8.7.15 referred to in paragraph 3 is a “relevant determination” as it changed a previously held interpretation of the law. The effect of this is that PIP can be paid in cases where a claimant is a hospital in-patient under the age of 18 after 8.7.15 but before the new legislation referred to in paragraph 4 above comes into force.
- 7 Where
1. an application is made for a supersession decision relating to entitlement to PIP and
  2. a decision on that application falls to be made in accordance with the relevant determination

then the effective date of that supersession will be the date of the relevant determination (8.7.15)<sup>1</sup>.

*1 SS Act 98, s27 & UC, PIP, JSA & ESA (D&A) Regs, reg 35(5)*

## ANNOTATIONS

The number of this Memo (16/16) should be noted against the following ADM paragraphs: 3013 and 5018-5019.

## CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: June 2016**

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**