

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 10

Amendment 44 – October 2016

1. This letter provides details on Amendment 44; 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/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<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.

4. Amendment 44 affects chapters 61 and 62. The changes
 - Chapter 61 - incorporates DMG Memos 28/15 (DLA mobility Component – Severely visually impaired People) and 14/16 (DLA – amendment to the hospitalisation rule for claimants who enter hospital under the age of 18).
 - Chapter 62 - Add guidance on payment of MA where there is entitlement in more than one MAP.
Clarifies guidance on MAP curtailment.
Make consequential changes.
5. The last two amendment packages amending Volume 10 were
Amendment 43 [June 2016]
Amendment 42 [February 2016]
6. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**

7. 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).

Remove

Statutory Instruments

SS (LP & Misc Amdts) Regs – WP (Emp O) Des
O 14 (2 pages)

Chapter 61

Conts 61491 - Conts Appendix 7 (2 pages)

61332 - 61339 (1 page)

61651 - 61879 (12 pages)

61890 - 61999 (1 page)

Appendix 7 (1 page)

Chapter 62

Conts 62001 - 62736 (2 pages)

62553 - 62580 (3 pages)

Insert

Statutory Instruments

SS (LP & Misc Amdts) Regs – WP (Emp O) Des
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Conts 61491 - Conts Appendix 7 (2 pages)

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61651 - 61879 (12 pages)

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Chapter 62

Conts 62001 - 62736 (2 pages)

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Statutory Instruments

The Social Security Lone Parents and Miscellaneous Amendments Regulations 2008 SI 2008 No. 3051	SS (LP & Misc Amdts) Regs
The Social Security (Loss of Benefit) Regulations 2001 No. 4022	SS (Loss of Benefit) Regs
The Social Security (Mariners' Benefits) Regulations 1975 No. 529	SS (Mariners' Ben) Regs
The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987 No. 417	SS (MA) (Work Abroad) Regs
The Social Security (Maternity Allowance) Regulations 1987 No. 416	SS (MA) Regs
The Social Security (Maternity Allowance) (Earnings) Regulations 2000 No. 688	SS (MA) (Earnings) Regs
The Social Security (Maximum Additional Pension) Regulations 2010 No. 426	SS (MAP) Regs
The Social Security (Medical Evidence) Regulations 1976 No. 615	SS (Med Ev) Regs
The Social Security (Miscellaneous Amendments) Regulations 1997 No. 454	SS (Misc Amdts) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2001 No. 652	SS (Misc Amdt) (No. 2) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 No. 641	SS (Misc Amdt) (No. 2) Regs 2010
The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 No. 2425	SS (Misc Amdt) (No. 3) Regs 2011
The Social Security (National Insurance Number Information: Exemption) Regulations 1997 No. 2676	SS (NINO: Exemption) Regs
The Social Security (Overlapping Benefits) Regulations 1979 No. 597	SS (OB) Regs
The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664	SS (POR) Regs
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 No. 30	SS (PFA) Misc Amdt Regs 96
The Social Security Benefit (Persons Residing Together) Regulations 1977 No. 956	SS (PRT) Regs

Statutory Instruments

The Social Security (Reciprocal Agreements) Order 1995 No. 767	SS (RA) Order 95
The Social Security (Reciprocal Agreements) Order 1996 No. 1928	SS RA Order
The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 No. 469	SS (RP etc) (Trans Provs) Regs
The Social Security (Severe Disablement Allowance) Regulations 1984 No. 1303	SS (SDA) Regs
The Social Security (Savings for Existing Beneficiaries) Regulations 1984 No. 1696	SS (SEB) Regs
The Social Security (State Pension and National Insurance Credits) Regulations 2009 No. 2206	SS (SP & NIC) Regs
The Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016 No. 743	SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016.
The Social Security (Unemployment, Sickness, and Invalidity Benefit) Regulations 1983 No. 1598	SS (U, S, & IVB) Regs
The Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978 No. 529	SS (W & W IVP) Regs
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 No. 642	SS (WB & RP) Regs
The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 No. 643	SS (WB, RP & OB) (Trans) Regs
The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 No. 1926	SS (Wfl for lone parents) Regs
The Social Security (Work-focused Interviews) Regulations 2000 No. 897	SS (Wfl) Regs 00
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003 No. 455	SS (WTC & CTC) (Cons Amdt) Regs
The Statutory Sick Pay Regulations 1982 No. 894	SSP (Gen) Regs

Statutory Instruments

Education (Student Support) Regulations (Northern Ireland) Order SR 1999/192	Support (NI) Order
The Education (Student Support) Regulations	Support Regs
The Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 No. 938	TC Comm No. 3 Order
The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2885	TP (FtT) (SEC) Rules
The Tribunal Procedure (Upper Tribunal) Rules 2008 No. 2698	TP (UT) Rules
The Workmen's Compensation (Supplementation) Scheme 1982 No. 1489	WC(S) Scheme
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DLA mobility component - people without both legs

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

1. have both legs amputated either through or above the ankle **or**
2. have one leg amputated either through or above the ankle and are without the other leg **or**
3. are without both legs to the same extent as if they had been amputated through or above the ankle¹ for example children born without legs.

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

61333 People who satisfy the conditions in DMG 61332 **1.** and **2.** do so because they are without both legs¹, regardless of whether they use artificial limbs or appliances.

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

DLA mobility component - severely visually impaired

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

1. have been certified by a consultant ophthalmologist as
 - 1.1 severely sight impaired **or**
 - 1.2 blind¹ **and**
2. are severely visually impaired².

Note: If people do not satisfy these conditions they can only get the higher rate mobility component on the basis that they are both deaf and blind³ (see DMG 61340 et seq).

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

61335 People are severely visually impaired if

1. they have visual acuity, with appropriate corrective lenses if necessary, of less than 3/60¹ **or**
2. they have
 - 2.1 visual acuity of 3/60 or more, but less than 6/60, with appropriate corrective lenses if necessary **and**
 - 2.2 a complete loss of peripheral visual field **and**
 - 2.3 a central visual field of no more than 10° in total².

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

- 61336 For the purposes of DMG 61335 DMs should note that
1. it is the combined visual acuity of both eyes in cases where a person has both eyes¹;
 2. visual acuity is measured on the Snellen Scale²;
 3. it is the combined visual field of both eyes in cases where a person has both eyes³.

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

Evidence of visual acuity/visual field

- 61337 As well as satisfying the condition that a certificate has been issued as in DMG 61334 1., evidence may also have to be obtained to allow DMs to decide if the person is severely visually impaired. If the DM has a certificate showing the claimant
1. is totally blind (cannot distinguish light and dark) **or**
 2. satisfies DMG 61335 1. or 2. **or**
 3. does not satisfy DMG 61335 1. or 2.

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

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

- 61338 DMG 01084 gives guidance on the meaning of HCPs. For the purposes of the higher rate of DLA mobility component for the severely visually impaired¹, professionals prescribed as HCPs are

1. an optometrist registered with the General Optical Council;
2. an orthoptist registered with the Health Professions Council².

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

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

Supersession of existing awards

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

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

Hospitals, Similar Institutions and Care Homes

General rule on payability for hospitals and similar institutions

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

1. a hospital or similar institution under specified legislation¹ **or**
2. a hospital or similar institution maintained or administered by the Defence Council².

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

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

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

Exception to the general rule - first 28 days

61653 Where a person is already entitled to AA or DLA on the day treated as the first day in a hospital or similar institution¹, AA or DLA continues to be payable for

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

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

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

61654 Any DLA claimant who has not attained the age of 18 on the day they enter a hospital or similar institution as an in-patient will not have their DLA payment stopped whilst they remain in hospital or similar institution as an in-patient¹.

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

Example 1

Peter turned 13 years old on 30.6.16 and subsequently made a claim for DLA. The DM decided that Peter was entitled to the middle rate care component of DLA from 8.8.16 – 7.8.18. On 9.9.16 Peter enters hospital as an in-patient and remains there

for 6 months. His DLA is not stopped during this period as he was under the age of 18 when he entered the hospital as an in-patient.

Example 2

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

The Motability Scheme – exceptions to the general rule

61655 Before 8.4.13 the general rule on payability was modified¹ for people with a Motability agreement. See also Appendix 5 to this Chapter for people who have been in hospital since before 31.7.96 (including linked periods). For Motability agreements before 8.4.13 see Appendix 6 to this Chapter.

1 SS (DLA) Regs, reg 12B

61656 - 61664

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

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

1. date the agreement began
2. period of the agreement
3. weekly amount payable to Motability under the agreement
4. type of vehicle.

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

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

61669 Where on 8.4.13

1. the claimant is maintained free of charge while undergoing treatment as an in-patient¹ in
 - 1.1 a hospital or similar institution under specified legislation² **or**
 - 1.2 a hospital or similar institution maintained or administered by the Defence Council **and**
2. a Motability Agreement entered into by or on behalf of the claimant is in force DLA (Mobility Component) will continue to be payable until the date determined in accordance with paragraph 61670 below.

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

61670 Where the conditions in paragraph 61669 are satisfied DLA (Mobility Component) will continue to be payable until whichever is the earliest of the following dates¹

1. the first day after 8.4.13 on which the person ceases to fall within paragraph 61669 1. above (i.e. ceases to be a hospital in-patient) for a period of more than 28 consecutive days **or**
2. the date determined in accordance with paragraph 61671 below **or**
3. 8.4.16.

1 DLA Regs, reg 12B(8)

61671 The date referred to in paragraph 61670 2. above is whichever of the following dates applies¹

1. in the case of the **hire of a vehicle**, where the vehicle is
 - 1.1 returned to the owner before the expiry of the current term of hire, **the date the vehicle is returned to the owner**
 - 1.2 returned to the owner at the expiration of the current term of hire, **the date the current term of hire expires**
 - 1.3 retained by or on behalf of the claimant with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**
 - 1.4 retained by or on behalf of the claimant otherwise than with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**
 - 1.5 retained by or on behalf of the claimant otherwise than with the owner's consent after the date of an early termination of the current term of hire, **the date of that early termination**
2. in the case of a hire purchase agreement
 - 2.1 the date the vehicle is purchased

2.2 where the vehicle is returned to the owner under the terms of the hire purchase agreement before the completion of the purchase, **the date the vehicle is returned to the owner**

2.3 where the vehicle is repossessed by the owner under the terms of the hire purchase agreement, **the date of repossession.**

1 DLA Regs, reg 12B(8A)

Meaning of “current term of hire”

61672 In paragraph 61671 **1.** above the phrase “current term of hire” means¹ the last term of hire that was agreed on or before 8.4.13 but it does not include any extension of that last term applying after 8.4.13.

1 DLA Regs, reg 12B(8B)

61673 - 61689

Hospices

Definition of hospice

61690 A hospice is a hospital or other institution, whose primary function is to provide palliative care for residents who have a progressive disease in its final stages¹.

1 SS (AA) Regs, reg 8(5); SS (DLA) Regs, reg 10(7) & 12B(12)

61691 A hospital or other institution is not a hospice if it is

1. an NHS hospital or trust hospital¹ **or**
2. a hospital maintained or administered by the Defence Council **or**
3. an institution similar to 1. or 2.².

1 NHS Act 06, s 275; NHS (Wales) Act 06, s 206; NHS (Scot) Act 78, s 108(1);

2 SS (AA) Regs, reg 8(5); SS (DLA) Regs 10(7) & 12B(12)

Rules on payability for hospices

61692 AA or DLA is payable to a person who is terminally ill (see DMG 61491) and living in a hospice, provided that the DM has been informed that the person is terminally ill

1. on a claim for either benefit **or**
2. on an application for revision or supersession of an award **or**
3. in writing in connection with an
 - 3.1 award **or**
 - 3.2 claim **or**
 - 3.3 application for revision or supersession¹.

1 SS (AA) Regs, reg 8(4); SS (DLA) Regs, reg 10(6) & 12B(9A)

61693 DMG 61692 does not apply if the person is not entitled to AA or DLA under the "special rules"¹ (see DMG 61491 - 61499).

1 SS (AA) Regs, reg 8(4); SS (DLA) Regs, reg 10(6)

61694 Where the person is not entitled to AA or DLA under the "special rules" (see DMG 61491 - 61499) the DM should consider whether the rules on payability apply instead for

1. a hospital or similar institution¹ **or**
2. care homes².

1 SS (AA) Regs, reg 6; SS (DLA) Regs, reg 8 & 12A; 2 SS (AA) Regs, reg 7; SS (DLA) Regs, reg 9

61695 - 61699

Care homes other than hospitals and hospices from 6.10.03

Note: Appendix 5 to this Chapter includes guidance on care homes for periods before 6.10.03.

Definition of a care home

61700 A care home is an establishment that provides accommodation together with nursing or personal care.¹

1 SS CB Act 92, s 67(3) & s 72(9); R (on the application of Moore and others) v Care Standards Tribunal [2005] EWCA Civ 627

61701 The DM should consider a range of evidence to determine whether on the balance of probabilities whether the establishment is a care home. The following table has been devised to assist the DM with this:

More likely to be a care home	Less likely to be a care home
Registered under HSCA 2008 to provide activity in paragraph 2(1) schedule 1 to HSCA 2008 (Regulated Activities) Regs 2014 – <i>residential accommodation together with nursing or personal care</i> . This may also be termed “accommodation for persons who require nursing or personal care” but check that both elements are being provided together. It may also be registered under paragraph 3 as “accommodation for persons who require treatment for substance misuse” but check what care/treatment is being provided.	Registered under HSCA 2008 to provide an activity set out in paragraph 1 schedule 1 of HSCA 2008 (Regulated Activities) Regs 2014 other than paragraph 2 (accommodation for persons who require nursing or personal care) – e.g. paragraph 1: personal care, paragraph 4: treatment of disease, disorder or injury, paragraph 5: assessment or medical treatment for persons detained under the Mental Health Act 1983, paragraph 13: nursing care. Or not registered at all under HSCA 2008.
Accommodation and care provided by same provider, same legal entity or as one service. Any tendering process did not allow different unconnected organisations to tender for the care and for the accommodation. [If two legal bodies, check whether they have registered as a partnership for the regulated activity of accommodation together with nursing or personal care.]	Separate bodies providing accommodation and care. Provision of accommodation separate from provision of care; e.g. care provided by domiciliary care agency.
Mutual reliance or coordination between two functions of accommodation and care. E.g. person receiving accommodation is dependent on receiving care from accommodation provider or associated	Lack of reliance and coordination between two functions of accommodation and care.

company body and vice versa.	
Described as care home, establishment, or similar institution (check CQC reports).	Described as supported living, adult placement. Communal dwelling where main provision is accommodation and anything extra is tailored support to enable independent living.
Not a private dwelling (although claimant may have own room within establishment).	Claimant living in own private dwelling or dwelling of carer.
No tenancy agreement (although claimant may have to sign behavioural or management agreement in order to receive accommodation and care). If there is a tenancy or management/framework agreement, rights of occupation should be linked to care so it is clear they are being provided as one service.	Claimant has tenancy agreement with landlord or provider of accommodation. Any agreement should show clear separation between accommodation and care.
Claimant pays nothing towards accommodation or care costs	Claimant pays private rent or housing benefit towards accommodation costs.

Note: None of these factors is absolutely decisive on their own. The DM needs to make a judgement based on the whole picture and the sum total of multiple factors.

61702 - 61714

Rules on payability for care homes

61715 AA or the DLA care component is **not** payable where a person is resident in a care home in circumstances where any of the costs of any qualifying services provided for him are met out of public or local funds¹ under

1. specified legislation² **or**
2. any other enactment relating to people with a disability³ **or**
3. any other enactment relating to
 - 3.1 people with a disability **or**
 - 3.2 young people **or**
 - 3.3 education or training⁴.

Note 1: See Appendix 1 for a list of enactments relating to people with a disability, young people and education and training.

Note 2: See DMG 61822 for a care home payability flowchart

1 SS CB Act 92, s 67(2) & s 72(8); 2 SS (AA) Regs, reg 7(2)(a); SS (DLA) Regs, reg 9(2)(a); NA Act 48, Part III; SW (Scot) Act 68; MH (C & T) (Scot) Act 03; Community Care and Health (Scotland) Act 02; MH Act 83; Health and Social Care Act 01, s 57; Care Act 14, Part 1; 3 SS (AA) Regs, reg 7(2)(b); SS (DLA) Regs, reg 9(2)(b); 4 SS (DLA) Regs, reg 9(2)(b);

61716 If it was determined that a claimant was in a care home where any of the costs of any qualifying service provided for him are met out of public or local funds in accordance with DMG 61715 then any DLA care component or AA would not be payable following the first 28 days of their stay¹.

1 SS (DLA) Regs, reg 10(1) & (2) & SS (AA) Regs, reg 8(1)

Qualifying Services

61717 Qualifying services¹ for the purposes of 61715 are

1. accommodation **or**
2. board **or**
3. personal care.

1 SS CB Act 92, s 67(4) & s 72(10)

61718 Costs of any qualifying services in DMG 61717 do not include

1. domiciliary services, including personal care, provided in a private dwelling¹ **or**
2. improvements to, or furniture and equipment for
 - 2.1 a private dwelling to meet the needs of a disabled person² **or**

- 2.2 a care home for which a grant or payment has been made out of public or local funds, unless the grant is regular or repeated³ **or**
- 3. social and recreational activities provided outside the care home for which grants or payments have been made out of public or local funds⁴ **or**
- 4. the purchase or running of a motor vehicle used in connection with any qualifying service provided in a care home for which grants or payments are made out of public or local funds⁵
- 5. **before 8.4.13** services provided under specified legislation⁶
- 6. **after 7.4.13 services under specified legislation where amended⁷.**

*1 SS (AA) Regs, reg 7(3)(a); SS (DLA) Regs, reg 9(6)(a); 2 SS (AA) Regs, reg 7(3)(b); SS (DLA) Regs, reg 9(6)(b);
 3 SS (AA) Regs, reg 7(3)(c); SS (DLA) Regs, reg 9(6)(c); 4 SS (AA) Regs, reg 7(3)(d); SS (DLA) Regs, reg 9(6)(d);
 5 SS (AA) Regs, reg 7(3)(e); SS (DLA) Regs, reg 9(6)(e); 6 SS (AA) Regs, reg 7(3)(f) & (g); SS (DLA)
 Regs, reg 9(6)(f); NHS Act 06; NHS (Wales) Act 06; NHS (Scot) Act 78; 7 Social Security (Disability
 Living Allowance, Attendance Allowance and Carer's Allowance) (Amendment) Regs, Regs 2013,
 reg 3 (7)(b) & reg 4(7)(c)*

61719 - 61734

Direct payments

- 61735 The LA may make payments for care needs, including residential care, directly to the disabled person¹. The person uses the payments to make their own arrangements for care services. Direct payment may not be made
- 1. to people aged 65 or over (unless a payment was made in the twelve months before reaching age 65²)
 - 2. where care services are provided by any of the person's family living in the same household³
 - 3. for periods in residential care exceeding four weeks in twelve months⁴ unless DMG 61738 applies.

1 Community Care (Direct Payments) Act 96, s 1; SW (Scot) Act 68, s 12B;

2 Community Care (Direct Payments) Regs & Community Care (Direct Payments) (Scotland) Regs, reg 2(2)(a);

3 reg 3; 4 reg 4

- 61736 The four week period in DMG 61735 **3.** may be made up of shorter periods separated by less than four weeks.
- 61737 Where a person has made their own arrangements to stay in a care home using direct payments, the general rule in DMG 61715 applies. Periods paid for by direct payments should be added to other periods in a care home provided by the LA when calculating the period as in DMG 61853.
- 61738 From 1.11.13 payments are made for an indefinite period where they are made for the cost of residential accommodation, together with nursing or personal care, under specified legislation¹ by a LA listed² at Appendix 7 to this Chapter. Claimants

affected by this are treated as receiving direct payments³ under specified legislation⁴. Therefore, AA or DLA care component will not be payable.

1 Health and Social Care Act 2008, Part 1; 2 Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2009, Sch 2A; 3 reg 13(2B); 4 NA Act 48, Part III

Exceptions to the general rule

61739 Where accommodation is funded under legislation relating to education, training or young people the accommodation will usually be a school, college or children's home. However the DLA care component remains payable

1. for any period during which the LA places a person in a private dwelling with a family, relatives, or suitable person¹, provided that the person is
 - 1.1 under 16 and being looked after by the LA² **or**
 - 1.2 under 18, and specific legislation³ (impairment of health and development) applies because the person's health is likely to be significantly impaired, or further impaired without the provision of service⁴ **or**
 - 1.3 under 18, and specific legislation (disability) applies⁵ **or**
2. where the accommodation is provided outside the UK and the cost is met wholly or partly by the LA under certain legislation⁶.

1 SS (DLA) Regs, reg 9(5); 2 reg 9(4)(a); 3 Children Act 89, s 17(10)(b); Children (Scotland) Act 95, s 93(4)(a)(ii); 4 reg 9(4)(b)(i); 5 reg 9(4)(b)(ii); Children Act 89, s 17(10)(c); Children (Scotland) Act 95, s 93(4)(a)(iii); 6 reg 9(4)(c); Education Act 96, s 320, Education (Additional Support for Learning) (Scotland) Act 04, s 25

61740 The DLA care component is payable if the cost of any qualifying service is met out of public or local funds under specified legislation for

1. grants in aid of educational services¹ **or**
2. assisting persons to take advantage of educational facilities or grants to education authorities in Scotland² **or**
3. support for funding of further education and administration of funds³ **or**
4. new arrangements for giving financial support to students⁴.

Note: See DMG 61717 for the meaning of qualifying services.

1 SS (DLA) Regs, reg 9(3)(a); Education Act 96, s 485; Education Act 02, s 14; Education (Scotland) Act 80, s 73; 2 reg 9(3)(b); Education (Scotland) Act 80 s 49 & s 73; 3 reg 9(3)(c); Further and Higher Education Act 92, s 65; Further and Higher Education (Scotland) Act 05, s 4 & s 11; 4 reg 9(3)(e); Teaching and Higher Education Act 98, s 22.

61741 - 61748

Self funders

61749 DLA care component and mobility component and AA will be payable for any period where the claimant is a resident in a care home during which the whole costs of all the qualifying services are met

1. out of the resources of the person for whom the qualifying services are provided **or**
2. partly out of that person's own resources and partly with the assistance from another person or charity **or**
3. on that behalf by another person or a charity¹.

1 SS (DLA) Regs, reg 10(8) & SS (AA) Regs, reg 8(6)

People with homes to sell or who await other release of funds

61750 People who enter a care home for the first time may have a home to sell, or other capital assets. The available assets or value of a property are taken into account by the LA when assessing payment of care home fees.

61751 When a person first enters a care home the DM is required to establish who is funding their stay and will this change. This information should be obtained from the LA.

Note: Payment should be suspended until all **reasonable** enquiries are made. Every effort should be made to resolve the issue as soon as possible and the benefit put into payment or a payability decision made.

Example 1

Jim was receiving the highest rate of the care component and the higher rate of the mobility component of DLA. His representative informed the DM that he had entered a care home and would not be coming home. The DM ascertained that the LA were at present funding Jim, and there was no indication that there would be any change to this arrangement. Jim's DLA was paid for the first 28 days in the care home, and then suspended until these reasonable enquiries had been made. The suspension was then lifted and a payability decision was given ceasing payment of the care component, but payment of the mobility component continued.

Example 2

Hannah was in a care home but her daughter still lived in the family home. When the DM made enquiries to the LA, although there was a property involved, there was some dispute over ownership. As such the LA had not yet decided if Hannah had any assets to fund her own stay and they continued to fund in the meantime. The DM decided that as the LA were funding, Hannah was entitled to the highest rate of the care component and lower rate of the mobility component of DLA. The care

component was not payable however, whilst she is in the care home. At the same time they put a 12 month case control in place to assess the situation at a later stage. On activation of the case control the DM made enquires to the LA who informed him that it had been decided that Hannah did have property and that they had placed a charge on it from the date of her arrival at the home. The DM decided that as Hannah has been self-funding the original decision should be revised, as it had been made with incomplete evidence, and made payment of arrears of the care component from the date she had been charged for. As the DM is aware that Hannah's funding is not indefinite a further case control is set for 24 months to check on the funding status at that time.

Example 3

Damien was placed in a care home and the DM made enquiries as to the nature of the funding of his care home fees. Whilst these enquiries were being made the payment of his highest rate of the care component and higher rate of mobility component of DLA were paid for the first 28 days, and then his care component of DLA was suspended. On enquiries being made it was established that the LA were paying for Damien's stay and were not considering self-funding. On these findings the DM decided that the claimant could not be a self-funder and therefore the payment of his care component was ceased from the date of the suspension, but his mobility component continued to be paid. Two years later Damien received an inheritance of a property from his great aunt. The DM was not informed immediately and it was only on a review of the benefit that it was established that Damien was now paying his own care home fees, as the property had been sold and the LA had entered into an agreement with Damien's representative. On this information the date the care home fees were being paid to the LA from was established and regulation provisions were used to supersede. As there had been a change of circumstances with the inheritance it could not be said that the original decision was made with incomplete evidence.

Background information

61752 If there is a property involved the full market value of the property is taken into account in the assessment, less 10% for selling costs and any mortgage or loan secured on it¹ where the claimant is the sole owner of a property.

Note: The LA will make this calculation and advise of the amount of repayment required.

1 NA (AR) Regs, reg 23(1)

61753 Until the property is sold the person will probably not be able to meet all the assessed liability to pay for the accommodation. The LA may put a charge on the property¹. Once it is sold, the debt owing to the LA is repaid. Where

1. a claimant is in a care home being funded by the LA pending the sale of a property or other release of funds **and**

2. the fees will be repaid to the LA out of the proceeds of the sale of the property or release of funds

benefits should be paid unless and until the point is reached where there is a real risk that the proceeds are inadequate to make full repayment.

1 HASSASSA Act 83, s 22(1)

61754 The value of the property is disregarded by the LA for the first twelve weeks from when permanent admission commences.

61755 For the first twelve weeks of such arrangements the condition in DMG 61753 2. will not be satisfied as the LA will disregard the value of the property as in DMG 61754 and the person will not have to repay the LA. If the LA is funding during this period payment of AA or the DLA care component should be removed from the appropriate date in accordance with DMG 61851 - 61862¹.

1 SS (AA) Regs, reg 7; SS (DLA) Regs, reg 9

61756 For the purposes of DMG 61751, conditions for payment of benefit will be satisfied if evidence exists of an agreement to repay the LA from the sale proceeds or release of funds. However, for the purposes of community care law there is no need for a prior agreement to repay fees to the LA.

Note: In cases of uncertainty as to the entitlement to benefit, the benefit should be suspended.

61757 In cases where sales arrangements become prolonged a risk may arise that the sale proceeds will not cover the accrued debt to LA. Once such a point is reached DMG 61753 2. is no longer satisfied. In such circumstances the benefit award may be superseded to remove payability.

61758 The effective date of the decision to remove payment of benefit is the date of change (see DMG Chapter 04). That date will be the point at which the accrued debt to the LA becomes greater than the value of the property as calculated in DMG 61753. AA or the DLA care component may however remain payable for the first 28 days of LA funding in accordance with DMG 61851.

61759 - 61800

War pensioners and civilians in relevant accommodation

61801 AA or the DLA care component may

1. not be payable **or**
2. be payable at a reduced rate

to war pensioners, civil defence volunteers and other civilians who are living in relevant accommodation.

61802 Relevant accommodation is accommodation

1. in hospitals or private nursing homes **and**
2. with nursing care paid for by the Secretary of State **and**
3. for people who are
 - 3.1 very severely disabled war pensioners¹ **or**
 - 3.2 civil defence volunteers or other civilians injured during the second world war².

*1 Naval, Military & Air Forces etc (Disablement & Death) Service Pensions Order 1983, Article 26;
2 Personal Injuries (Civilians) Scheme 1983, Article 25B*

61803 Where the weekly cost of the relevant accommodation

1. exceeds the weekly rate of AA or the DLA care component - neither is payable,
2. is less than the weekly rate of AA or the DLA care component - the weekly cost should be deducted from AA¹ or DLA².

1 SS (AA) Regs, reg 8A; 2 SS (DLA) Regs, reg 10

61804 Where a person is in relevant accommodation, AA or the DLA care component continues to be payable for

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

61805 Periods in hospital or in care homes which occur **before** admission to relevant accommodation link with periods in relevant accommodation if they are separated by 28 days or less¹.

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

61806 People who become entitled to AA or the DLA care component during a period in relevant accommodation can benefit from the 28 day rule in DMG 61851 et seq.

61807 - 61819

Whether the claimant is in a similar institution to a hospital or a care home

61820 When considering whether a claimant is in a care home or in 'a similar institution to a hospital', it is necessary for the DM to consider whether the claimant is undergoing medical or other treatment (DMG 61700), and whether the costs of treatment, accommodation or any related services are funded by the Health Authority under the relevant health service enactments for England, Scotland and Wales. Prior to the Tribunal of Commissioners decision¹, where funding was made available to a LA from a Health Authority, the LA would pass on that funding² and the claimant would be treated as being in a care home. The Tribunal of Commissioners determined, however, that the LA were merely acting as a go-between for the funds and the Health Authority continued to be responsible for those claimants. The DM will need to consider all the information on the arrangements and funding of the claimant's stay, including whether there has been an assessment of the claimant's care needs. If it is determined that the claimant is in a similar institution to a hospital then any amount of DLA would not be payable if the claimant was residing in that accommodation at date of entitlement or following the first 28 days of their stay.

1 R(DLA) 2/06; 2 NA Act 48, Part III

Example

John is a 35-year-old man with severe learning difficulties, requiring 24-hour support. He has been in a long stay hospital since 2006 and has been assessed as requiring NHS continuing health care. Arrangements are made to move him to a care home. John requires regular medical or other treatment on the premises of the care home which is provided by medically qualified staff, and the NHS will continue to be responsible for fully funding his care and accommodation. The DM obtains all the facts and determines the claimant is in a similar institution to a hospital. The claimant remains entitled to DLA but it is not payable.

Care homes funded by NHS

61821 Where any of the costs of the treatment, accommodation and any related services are paid by the NHS under the relevant National Health Service legislation, DMs should establish if

1. the care home employs doctors, qualified nurses or other health professionals, **and**
2. the claimant receives medical or other treatment by or under the direct supervision of a qualified doctor, nurse or nurses at the care home¹.

Where both **1.** and **2.** apply DMs should treat the care home as a similar institution to a hospital and follow the guidance at DMG 61651.

Where both **1.** and **2.** do not apply the DM should continue to treat the establishment as a care home and the care component or AA would not be payable² in accordance with DMG 61715.

1 SSWP v Slavin [2011] EWCA Civ 1515; SS (DLA) Regs, reg 8(1) & SS(AA) Regs, reg 6(1);

2 SS(DLA) Regs, reg 9(2)(b) & SS(AA) Regs, reg 7(2)(b)

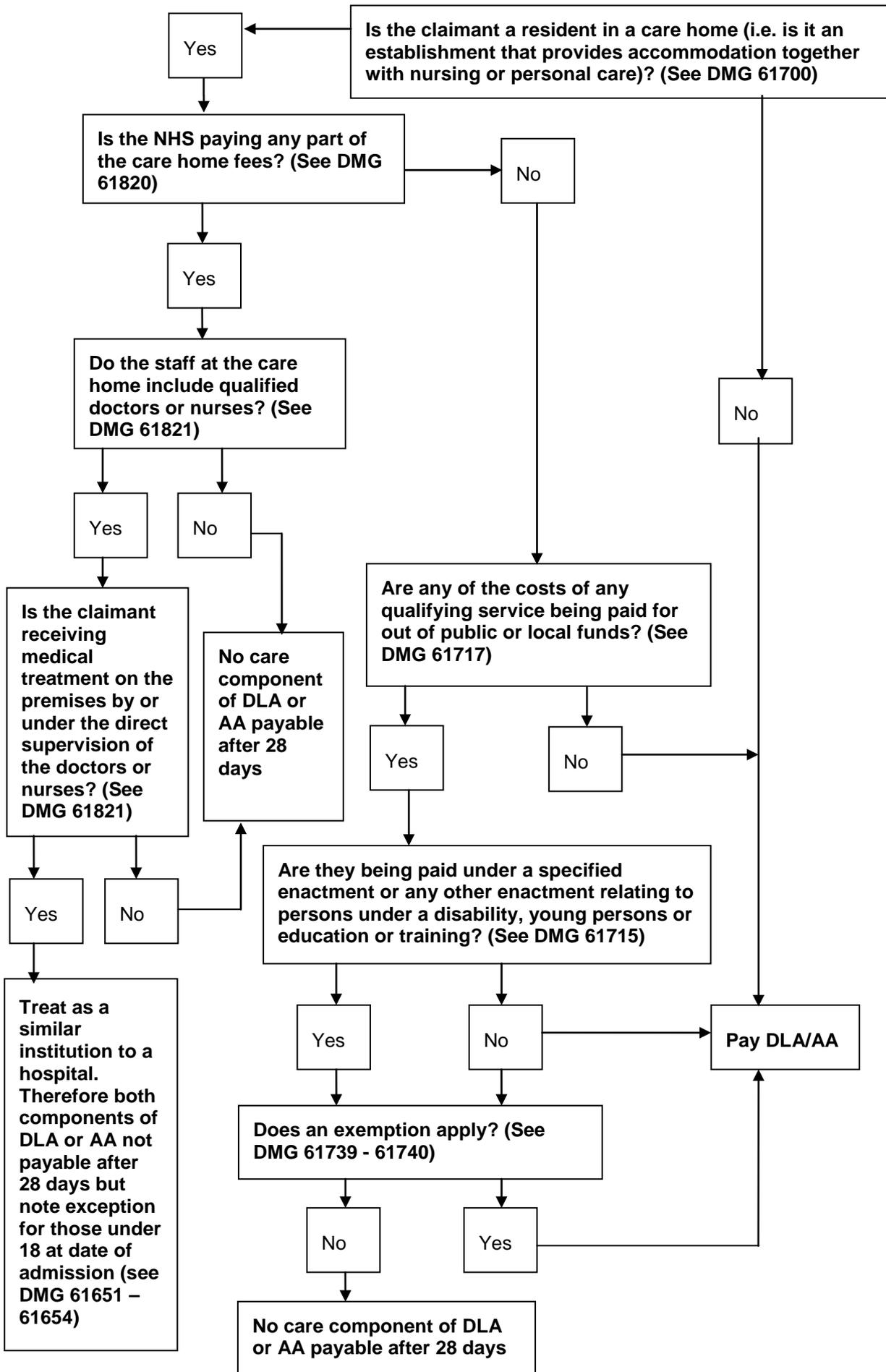
Example 1

James is entitled to the highest rate of the care component and the higher rate mobility component of DLA. He informs the DM that he has moved into a care home for the next 6 months and his stay is funded by the NHS. The DM makes enquiries and determines that the care home employs 1 doctor and 2 nurses who administer medication to James on a daily basis on the premises of the care home. The DM therefore decides that the care home should be treated as a similar institution to a hospital and therefore both the care and mobility component of DLA are not payable after 28 days from the day he entered the care home.

Example 2

Jasmine is entitled to the middle rate of the care component and the lower rate of the mobility component of DLA. She informs the DM that she entered a care home on 1.6.16. Jasmine's stay at the care home is funded by the NHS. After making further enquiries the DM establishes that there are no medical professionals employed by the care home and care workers provide daily care for Jasmine and her GP visits her once a fortnight on the premises. The DM decides that the care home should not be treated as a similar institution to a hospital and therefore the care component of DLA is not payable from 30.6.16. The mobility component of Jasmine's DLA award remains payable whilst she is a resident in the care home.

61822 Care home payability flow chart



Example 1

Simon is a resident at ABC House. He has his own room within the establishment and has access to communal areas including a living room, activity room and kitchen. Enquires indicate that ABC House employs on-site care assistants who help Simon with personal care tasks such as washing, dressing and feeding himself at meal times. According to the CQC, ABC House is registered to provide “accommodation for persons who require nursing or personal care”. Simon does not pay anything towards the costs of his stay. The DM decides, taking into account all factors, that ABC House is an establishment that provides accommodation together with nursing or personal care and therefore Simon is a resident in a care home. Further enquiries undertaken by the DM indicate that Simon’s stay in the care home is funded by the local authority under Part 1 of the Care Act 2014. As this is a specified enactment for the purposes of DMG 61715 Simon’s care component of DLA is not payable after 28 days residence at ABC House. Simon continues to be paid the mobility component of DLA during his stay at ABC House.

Example 2

Jade is in receipt of the care component of DLA. On 1.8.16 Jade informs the DM that she has moved out of her parent’s home and is now resident at XYZ Place. XYZ Place is a large semi detached house owned by the local authority which is converted into 3 separate flats occupied by Jade and 2 other people. Jade holds a tenancy agreement for her flat which details how much rent should be paid per month and what responsibilities she has for the property. Jade is in receipt of Housing Benefit which she uses to fund the monthly rent and the LA has also arranged for a domiciliary care agency to provide a carer for Jade on a morning and evening to help her get washed and dressed/undressed each day. The LA is responsible for the funding of the carer. Having looked at all of the available evidence the DM decides that XYZ Place should not be treated as an establishment that provides accommodation together with nursing or personal care in accordance with DMG 61700. Therefore Jade’s care component of DLA can continue to be paid.

Example 3

Grant turned 17 years old on 16.6.16 and has been in hospital since 30.6.16. He is entitled to the highest rate care component and higher rate mobility component and this remains payable whilst in hospital as an in-patient due to Grant being under 18 years old at the date of admission. Grant notifies the DM on 1.9.16 that he will move to YYZZ House on 5.9.16 and enquiries indicate that this establishment is registered to provide “accommodation for persons who require nursing or personal care” and is described as a “care home” in CQC reports. The DM establishes that the NHS will fund Grant’s stay under the NHS Act 2006 and further enquiries indicate that there is a doctor and nurse employed on site who will administer a series of daily injections to Grant for the next 6 months. Although YYZZ House can be described as an establishment that provides accommodation together with nursing or personal care, in accordance with DMG 61700 the DM decides that the care home should be

treated as a similar institution to a hospital. Grant's DLA therefore remains payable as he is under 18 at the date of admission to YZZ House.

Payment during periods in hospital or a care home

Calculation of the period

61851 In calculating the period when AA or DLA is payable¹ the DM should add together periods in hospital or, for AA and the DLA care component, periods in a care home

1. for which a person is prevented from receiving AA or DLA **and**
2. which are separated by 28 days or less.

Note: Periods before entitlement begins do not link with periods occurring after entitlement begins (see DMG 61860 - 61862)².

1 SS (AA) Regs, reg 8(2); SS (DLA) Regs, reg 10(5) & 12B(3); 2 R(A) 4/83

Days of admission and discharge

Hospitals

61852 AA or DLA is not payable after the first 28 days for any day on which people receive medical or other treatment as an in-patient. A period of free in-patient treatment ends on the day before the day on which the claimant leaves the hospital or similar institution. Neither the day of admission nor the day of discharge are treated as days of free in-patient treatment¹.

1 SS (AA) Regs, reg 6(2A); SS (DLA) Regs, reg 8(2A) & 12A(2A)

61853 Where entitlement begins on the day after the day of admission to hospital, benefit is not payable until the day of discharge.

Care homes

61854 Days of admission and discharge and leaving and returning from leave or holiday are not days in a care home¹. These days should not be treated as days in a care home when calculating the 28 day linking period (see DMG 61851).

1 SS (AA) Regs, reg 7(4)(a) & (b); SS (DLA) Regs, reg 9(7)(a) & (b)

61855 Where entitlement begins on the day of admission to a care home, benefit is payable for the first 28 days.

Days of transfer

61856 If a person is transferred between hospitals, the day of transfer counts as a day in hospital, however, where a person is transferred between a hospital and a care home or vice versa or between care homes, the day of transfer counts as a day in a care home¹.

1 SS (AA) Regs, reg 7(5); SS (DLA) Regs, reg 9(8)

Entitlement begins during period in hospital or a care home

61857 The 28 day rule (see DMG 61851 - 61852) cannot benefit people who become entitled to AA or DLA whilst

1. undergoing medical or other treatment in hospital (see DMG 61651 et seq) **or**
2. living in a care home and none of the exceptions apply (see DMG 61700 et seq).

AA or DLA is only payable from the first pay day on or after the day of discharge, if the claimant is in a hospital or similar institution, or is in a care home. If they are readmitted, the 28 day rule applies. Benefit is payable for the first 28 days **even if** they are readmitted within 28 days of the day before the day of discharge¹. This is because the periods do not link. Any subsequent discharge and readmission is dealt with in DMG 61860 - 61862.

1 SS (AA) Regs, reg 8(3); SS (DLA) Regs, reg 10(3) & 12B(2)

Example

A man who is admitted to hospital on 2.8.01 claims and becomes entitled to AA on 15.8.01. But benefit does not become payable until 20.8.01 following his discharge on 17.8.01. On 27.8.01 he is readmitted to hospital. AA remains in payment for the first 28 days, and is not payable from 1.10.01.

Entitlement begins before admission - payability on readmission

61860 AA or DLA is payable for the first 28 days of any readmission if there are **more** than 28 days between the two periods.

61861 If there are 28 days or less between discharge and readmission the person can only be paid any balance of days up to 28 days on readmission¹. Periods in hospital that occur before entitlement begins do not link with any periods occurring after entitlement begins².

1 SS (AA) Regs, reg 8(2); SS (DLA) Regs, reg 10(5), 12B(3); 2 R(A) 4/83

Example

A woman is awarded DLA. She is later admitted to hospital and discharged after ten days. Benefit remains in payment. A week later she is readmitted. A balancing payment is due for a further 18 days.

61862 If, after receiving 28 days on admission, a person is readmitted after 28 days or less, no further benefit is payable.

61863 - 61879

Other restrictions on payability and exclusions

- 61890 AA or DLA is not payable to a person who is
1. in prison or detained in legal custody¹ **or**
 2. receiving an overlapping benefit².

1 SS CB Act 92, s 113(1)(b); 2 s 104; SS (OB) Regs, Sch 1

Imprisonment

- 61891 Guidance on imprisonment and detention in legal custody is given in DMG Chapter 12 and special hospitals is given in DMG Chapter 12. People who are

1. in special hospitals, **and**
2. not subject to a custodial sentence

are not disqualified from receiving AA or DLA under the general imprisonment disqualification. In such cases, although there may be **entitlement** to AA or DLA, the benefit may not be **payable** because the person is in hospital (see DMG 61651).

Note: When a claimant moves from a care home or hospital to prison and back again a further 28 days is not applicable.

Overlapping benefits

AA or DLA (care)

- 61892 AA or DLA (care) is not payable or is payable at a reduced rate, for any period a person receives AA¹ or a benefit, based on the need for attendance payable under
1. PB and MDB Scheme
 2. Personal Injuries Scheme
 3. Service Pensions Instrument
 4. 1914 - 1918 War Injuries Scheme².

1 SS CB Act 92, s 104; 2 SS (OB) Regs, Sch 1

DLA mobility component

61893 The DLA mobility component is not payable for any period

1. during which the person has the use of a vehicle provided by the Secretary of State¹ **unless**
 - 1.1 the Secretary of State is notified that the person no longer wishes to use it **or**
 - 1.2 the person signs an undertaking that it will not be used whilst awaiting its removal² **or**
 - 1.3 the Secretary of State has issued an overlap certificate so that the DLA mobility component can continue to be paid for up to six months whilst the person learns to drive³ **or**
2. for which the person has received, or is receiving
 - 2.1 a grant towards the costs of running a private car⁴ **or**
 - 2.2 a mobility supplement under a Service Pensions Instrument or a Personal Injuries (Civilians) Scheme⁵ **or**
 - 2.3 any similar payment out of public funds as the Secretary of State may decide.

1 NHS Act 06, s 5 & Sch 1 para 9; NHS (Wales) Act 06, s 5 & Sch 1, para 9; NHS (Scot) Act 78, s 46; 2 SS (C&P) Regs, reg 42(1)(a) & (2); 3 reg 42(4); 4 reg 42(1)(b)(i); NHS Act 77, s 5(2) & Sch 2; NHS (Scot) Act 78, s 46; 5 SS (C&P) Regs, reg 42(1)(b)(ii)

Adjustment of benefit

61894 AA or DLA is not payable if the benefit in DMG 61892 - 61893 is equal to or greater than the rate of AA or DLA. If the other benefit is lower than AA or DLA, then AA or DLA is payable for the difference¹.

1 SS (OB) Regs, reg 6(1)

61895 Further guidance on overlapping benefits is in DMG Chapter 17, including definitions of Service Pensions Instrument and 1914 - 1918 War Injuries Scheme.

Split payments of DLA

61896 Split payments of DLA should only be considered in **exceptional circumstances**. Where a request for split payments is received, the DM should refer the request to a senior manager who will consider whether split payments are necessary in order to protect the interests of the DLA beneficiary¹.

1 SS (C&P) Regs, reg 34

61897 - 61999

Appendix 7

List of local authorities for the purpose of DMG 61738:

Bristol City Council

Cornwall Council

Dorset County Council

Gateshead Council

Hertfordshire County Council

Hull City Council

Lincolnshire County Council

London Borough of Enfield

London Borough of Havering

London Borough of Redbridge

Manchester City Council

Milton Keynes Council

Norfolk County Council

North Lincolnshire Council

Nottinghamshire County Council

Staffordshire County Council

Stockport Council

Surrey County Council

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

Chapter 62 - Maternity benefits

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Maternity allowance period

62553 MA is payable for the MAP which is the same as the MPP in SMP cases¹. If a woman ceased employment or self-employment prior to the 11th week before the EWC the MAP starts with the 11th week before the EWC². Otherwise, subject to the modifications in DMG 62560 - 62562, the MAP for a woman who is employed as an employed or S/E earner may begin at anytime between the 11th week before the EWC and the day following the actual day of confinement³. Within this period a woman's MAP starts with the earlier of the day

1. she has chosen for her payments to begin after she has stopped work to have her baby **or**
2. following the day on which she is confined⁴.

From 1.12.14⁵, women whose EWC is on or after 5.4.15 can curtail their 39 week MAP⁶.

Note 1: As long as a woman has stopped work to have her baby, her MAP can begin during a period of annual leave or while she is receiving holiday pay.

Note 2: See DMG 62721 et seq for guidance on period for MA is paid to a participating wife or civil partner of a S/E earner.

Note 3: See DMG 62566 et seq for guidance on when women can curtail their MAP.

1 SS CB Act 92, s 35(2) & 165; 2 s 165(2); 3 s 165(3), SMP (Gen) Regs, reg 2(1); 4 reg 2(1); 5 MA (Curtilment) Regs, reg 1; 6 SPL Regs, reg 2(1); SSPP (Gen) Regs, reg 3(a)

62554 Where a woman is absent from work wholly or partly because of pregnancy or confinement which is

1. on or after the beginning of the 4th week before the EWC **and**
2. not later than the day immediately following the day on which she is confined

the MAP begins on the day following the first complete day of absence from work because of pregnancy or confinement¹.

1 SMP (Gen) Regs, reg 2(4)

62555 Where a woman leaves her employment

1. after the beginning of the 11th week before the EWC where this is before the start of the MAP **and**
2. not later than the day on which she is confined

the MAP begins on the day following the day on which she leaves¹.

1 SMP (Gen) Regs, reg 2(5)

62556 There is no extension of the MAP where confinement occurs in any week later than the EWC.

Time limit for claiming

62557 The prescribed time for claiming MA is three months beginning with any day of potential entitlement¹ (see DMG Chapter 02).

1 SS (C&P) Regs, reg 19(2) & (3)

Death of the woman

62558 A woman who is entitled to MA ceases to be entitled if she dies before the beginning of the MAP. If she dies after the beginning, but before the end, of the MAP, MA is not payable for any week within the MAP which falls after the week in which she dies¹. A week, in respect of weeks within the MAP, is the period of seven days beginning with the day of the week on which the MAP begins².

Note: See DMG 62736 for guidance on death of a participating wife or civil partner of a S/E earner.

1 SS CB Act 92, s 35(4); 2 s 35(2) & s 165(8)

Modification of the maternity allowance period

62559 There is no modification to the MAP where a claim to MA is made after confinement (see DMG 62560 - 62562 where modification is allowed).

62560 The MAP for a woman who stops working before the 11th week before the EWC is the period of 39 weeks beginning with the 11th week before the EWC. For this purpose a woman should not be regarded as having stopped work if she is absent from work due to illness, but has not yet ceased work in expectation of confinement (unless DMG 62553 - 62555 applies).

62561 However a woman who is not entitled to MA at the 11th week before the EWC can qualify by utilising a period of employment and earnings paid for weeks after the start of the 11th week before the EWC. The MAP for such a woman is a period of 39 weeks starting

1. no earlier than the day she becomes entitled to MA **and**
2. no later than the day following the day on which she is confined¹.

1 SS (MA) Regs, reg 3(2A)

62562 The MAP for a woman who is confined more than 11 weeks before the EWC is a period of 39 weeks which starts on the day following the day on which she is confined¹.

1 SMP (Gen) Regs, reg 2(3)

Entitlement to maternity allowance for more than one maternity allowance period

62563 A woman may be entitled to MA in more than one MAP. Where this is the case, the woman's MA is adjusted¹.

Note: See DMG Chapter 17 for guidance on overlapping benefits and adjustment.

1 SS (OB) Regs, reg 4(1) & (5)

62564 – 62565

Maternity allowance period curtailment

62566 From 1.12.14¹, women whose EWC is on or after 5.4.15² can curtail their MAP to enable their partner to take

1. SSPP³ (see DMG 62568) **or**

2. SPL⁴ (see DMG 62569)

Note: A claimant's spouse; civil partner or her child's biological father does not have to be living with her. All other nominated partners **must live** with the claimant and her child in an enduring family relationship⁵.

*1 MA (Curtailment) Regs, reg 1; 2 Shared Parental Leave Regulations 2014, reg 2(1);
Statutory Shared Parental Pay (General) Regulations 2014, reg 3(a);
3 SS CB Act 92, s 171ZU; 4 ER Act 96, s 75E; 5 MA (Curtailment) Regs, reg 2*

Meaning of maternity allowance period curtailment date

62567 Unless DMG 62574 or 62579 apply, the MAP curtailment date is the date specified in the MAP curtailment notification¹.

Note: See DMG 62571 et seq for guidance on the MAP curtailment notification.

1 MA (Curtailment) regs, reg 2

Maternity allowance period curtailment – statutory shared parental pay

62568 A woman's MAP ends on the MAP curtailment date if

1. she gives a MAP curtailment notification¹ **and**

2. her partner

2.1 satisfies the employment and earnings conditions in order to be entitled to SSPP² **and**

2.2 shares the main responsibility for the care of the child with her **and**

2.3 qualifies for SPL **and**

3. she
 - 3.1 satisfies employment and earnings conditions relating to her partner **and**
 - 3.2 is entitled to MA³.

Note: A MAP curtailment notification can be revoked (see DMG 62576 et seq).

*1 MA (Curtailment) Regs, reg 3(a); 2 reg 3(b); SSPP (Gen) Regs, reg 5(2)(a);
3 MA (Curtailment) Regs, reg 3(c); SSPP (Gen) Regs, reg 5(3)(b) & (c)*

Maternity allowance period curtailment – shared parental leave

62569 A woman's MAP ends on the MAP curtailment date if

1. she gives a MAP curtailment notification¹ **and**
2. her partner satisfies the employment condition for SPL² **and**
3. she
 - 3.1 satisfies employment and earnings conditions **and**
 - 3.2 is entitled to MA³.

Note: A MAP curtailment notification can be revoked (See DMG 62576 et seq)

*1 MA (Curtailment) Regs, reg 4(a); 2 reg 4(b); SPL Regs, reg 5(2)(a);
3 MA (Curtailment) Regs, reg 4(c); SPL Regs, reg 5(3)(a) & (c)*

62570

Maternity allowance period curtailment notification

62571 A MAP curtailment notification must

1. be given to the Secretary of State **and**
2. specify the date on which a woman wants her MAP to end¹ (see DMG 62572)

1 MA (Curtailment) Regs, reg 5(1)

62572 For the purposes of DMG 62571 **2.**, the date specified must be

1. the last day of a week¹ **and**
2. at least one day after the end of the compulsory maternity leave period (see DMG 62573) if a woman has a right² to ordinary maternity leave³ **and**
3. at least two weeks after the end of her pregnancy⁴ if a woman does not have a right in **2.** **and**
4. at least eight weeks after a woman gives a MAP curtailment notification⁵ (unless the DM decides it is appropriate for this not to apply⁶) **and**
5. at least one week before the last day of a woman's MAP⁷.

Note 1: For the purpose of **1.** a week is a period of seven days beginning with the day of the week on which the MAP begins⁸.

Note 2: The date specified does **not** have to be the same date on which a woman returns to work. However, it can be a date after a woman's partner has taken SSPP or SPL.

1 MA (Curtilment) Regs, reg 5(2)(a); 2 reg 5(2)(b); 3 ER Act 96, s 71; 4 MA (Curtilment) Regs, reg 5(2)(b); 5 reg 5(2)(c); 6 reg 5(3); 7 reg 5(2)(d); 8 reg 5(6); SS CB Act 92, s 165(8)

Example 1

Person A is receiving MA. She and her partner, Person B, decide that Person B will take 9 weeks SSPP. This is agreed with Person B's employer. Person A notifies the Secretary of State that she will curtail her MA at the end of her 30th week of payment. Her MAP ends on that date.

Example 2

Person A is receiving MA. She and her partner, Person B, decide that Person B will take 32 weeks SPL. Person A notifies the Secretary of State that she will curtail her MA at the end of her 20th week of payment. Person B starts his SPL before that date. However, that does not effect when Person A's MAP will end.

62573 The compulsory maternity leave period is

1. two weeks¹ **or**
2. if a woman works in a factory, 4 weeks²

after childbirth. For the purposes of DMG 62572 **2.** the end of the compulsory maternity leave period is the later of the last day of those periods³.

*1 Maternity and Parental Leave etc. Regulations 1999, reg 8; 2 Public Health Act 36, s 205;
3 MA (Curtilment) Regs, reg 5(4)*

62574 Where a woman

1. returns to work before giving a notification in accordance with DMG 62571 **and**
2. subsequently gives such a notification

the MAP curtailment date is the last day of the week in which that notice is submitted. This is irrespective of the date given in that notice¹. A woman is treated as returning to work² when she is disqualified for receiving MA³ in accordance with DMG 62592 et seq.

1 MA (Curtilment) Regs, reg 5(5); 2 reg 5(7); 3 SS (MA) Regs, reg 2(1)

62575

Revoking maternity allowance period curtailment notification

62576 A woman may revoke a MAP curtailment notification before the MAP curtailment date if

1. she
 - 1.1 provided the MAP curtailment notification before her child's birth¹ **and**
 - 1.2 has not returned to work **and**
 - 1.3 has not reached the end of her MAP **or**
2. her partner dies².

1 MA (Curtailment) Regs, reg 6(1)(a); 2 reg 6(1)(b)

62577 A woman makes a revocation in accordance with DMG 62576 by giving a revocation notification to the Secretary of State

1. within six weeks of her child's birth where the revocation notification is given as in DMG 62576 1. **or**
2. within a reasonable period from the date of her partner's death¹.

1 MA (Curtailment) Regs, reg 6(2)

62578 A revocation notification must

1. state that a woman revokes the MAP curtailment notification **and**
2. where DMG 62576 2. applies, state the date of her partner's death¹.

1 MA (Curtailment) Regs, reg 6(3)

62579 A woman may not give a MAP curtailment notification after she has given a revocation notification for the same MAP unless the revocation¹ was made in accordance with DMG 62576 1..

1 MA (Curtailment) Regs, reg 6(4)

62580