

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

## Decision Makers Guide

### Volume 10

### Amendment 48 – June 2018

1. This letter provides details on Amendment 48; 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 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.

3. Amendment 48 affects chapters 60 & 61. The changes:
  - make minor amendments and update the 'earnings limit for gainful employment' at Appendix 1 of chapter 60
  - make minor amendments and update the 'rates of benefit' for AA and DLA at Appendices 3 & 4 of chapter 61.
4. 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

##### Chapter 60

60049 – 60060 (1 page)

60075 – 60081 (1 page)

Appendix 1 (1 page)

##### Chapter 61

61340 – 61346 (1 page)

Appendix 3 – Appendix 4 (2 pages)

#### Insert

##### Chapter 60

60049 – 60060 (1 page)

60075 – 60081 (1 page)

Appendix 1 (1 page)

##### Chapter 61

61340 – 61346 (1 page)

Appendix 3 – Appendix 4 (2 pages)

60049 The DM should consider the care position in the weeks before entitlement to CA begins if the temporary break in care began within the first 22 weeks of entitlement.

## **Break in care due to severely disabled person in hospital**

60050 Where the reason for the temporary break in care is because the severely disabled person is in hospital, entitlement to CA will depend on the continuing payment of

1. AA or
2. the care component of DLA at the highest or middle rate or
3. CAA.

If payment of these benefits ends there can be no entitlement to CA<sup>1</sup>. The severely disabled person in effect is not classed as severely disabled due to the fact that the benefit they are entitled to is no longer payable after a prescribed period of time in hospital. See DMG 60033 for meaning of severely disabled person.

*1 SS CB Act 1992, s 70(2)*

## **Gainful employment**

60051 [\[See DMG Memo 4/18\]](#) A person is in gainful employment on every day in a week where the earnings in the week immediately before are greater than the earnings limit (see Appendix 1 to this Chapter)<sup>1</sup>. Earnings in one week affect entitlement to CA in the following week. It does not matter whether the person is still gainfully employed in the following week.

**Note:** See DMG Chapter 15 for full guidance on earnings, and DMG 60057.

*1 SS (ICA) Regs, reg 8(1)*

60052 When deciding if a person should be treated as being gainfully employed, that person's earnings should be ignored for any week which is classed as a temporary break in care<sup>1</sup> (see DMG 60045 - 60050).

*1 SS (ICA) Regs, reg 8(2)(a)*

## **The absence disregard before 12.12.95**

60053 Before 12.12.95, if a person was absent from work with the employer's authority, the earnings from that employment were ignored<sup>1</sup>. This was known as "the absence disregard concession", and also applied to people who were off work sick getting SSP.

*1 SS (ICA) Regs, reg 8(2)(b)*

## **Absences from 12.12.95**

60054 From 12.12.95, changes in regulations mean that a person's earnings cannot be ignored when absent from work for whatever reason<sup>1</sup>.

*1 Social Security (Invalid Care Allowance) Amendment Regulations 1995, reg 2*

## Transitional provisions

60055 Where

1. the period covered by the claim **and**
2. any entitlement to CA

began **before 12.12.95**, any income can still be ignored if the person is absent from work with the employer's authority before **12.12.95**<sup>1</sup>.

*1 Social Security (Invalid Care Allowance) Amendment Regulations 1995, reg 3*

60056 Where DMG 60055 applies, the concession continues to apply until

1. the claim ends **or**
2. the person stops being absent from work with the employer's authority.

Once ended, the concession cannot apply again. If the concession did not already apply at **11.12.95**, it can never apply.

## Earnings in the week before the first week of entitlement

60057 Before **25.11.96**, regulations provided that any earnings in the week immediately before the first week of entitlement to CA could be ignored<sup>1</sup>. This regulation was revoked from **25.11.96**. Any claims for a period starting before **25.11.96** can still have any earnings in the week immediately before the first week of entitlement to CA ignored<sup>2</sup>.

**Note:** See DMG Chapter 15 for full guidance on earnings for the purpose of CA.

*1 SS (ICA) Regs, reg 8(2)(c); 2 Social Security (Invalid Care allowance) Amendments Regulations 1996, reg 3*

## The age condition

60058 From 28.10.02<sup>1</sup> the upper age limit is abolished and carers aged 65 or over can qualify for CA. To satisfy the age conditions for CA a person must be at least 16 years of age<sup>2</sup>.

*1 Regulatory Reform (Carer's Allowance) Order 2002, art 3; Social Security Amendment (Carer's Allowance) Regulations 2002, reg 2(1)(b); 2 SS CB Act 92, s 70(3)*

## People who have reached age 65

60059 New claimants aged 65 or over, making a first claim, will have to satisfy all the conditions of entitlement. This includes the requirement to care for the severely disabled person and not being gainfully employed. CA is still subject to the overlapping benefit rules, with it being adjusted against other SS benefits (e.g. RP).

## Transitional protection

60060 Before 28.10.02 a person over age 65 was entitled to CA if

1. they were entitled **or**

2. supervised study
3. examination or practical work
4. taking part in any
  - 4.1 exercise
  - 4.2 experiment
  - 4.3 project

which forms part of the course<sup>1</sup>.

It will usually be sufficient to accept the evidence of the educational establishment rather than actual time spent by the student.<sup>2</sup>

**Note:** Supervised study need not be done in the presence of the tutor, but it must be study directed to the course and the curriculum of the course involved<sup>3</sup>.

*1 SS (ICA) Regs, reg 5(2)(a); 2 CA SSWP v Amanda Deane {2010} EWCA Civ 699;  
3 Fleming v. Secretary of State; R(G) 2/02;*

60075 When considering DMG 60074 the DM should not include time spent on

1. meal breaks or
2. unsupervised study, whether on or off the educational premises<sup>1</sup>.

*1 SS (ICA) Regs, reg 5(2)(b)*

60076 People who start on a course of education are treated as attending it for the usual number of hours each week during any vacation or temporary interruption as in term time until

1. the course ends or
2. they abandon it or
3. they are dismissed from it<sup>1</sup> or
4. they have an exemption from the full hours required (see DMG 60069).

*1 SS (ICA) Regs, reg 5(3)*

### Meaning of temporary interruption

60077 [\[See DMG memo 2-17\]](#) Temporary interruption means any interruption to the period of study other than a permanent interruption due to abandonment of, or dismissal from, the course (see DMG 60078 - 60080).

#### Example

Anjana is attending university for 30 hours a week. On 29.3.10 she stops attending her course because she is pregnant. She gives birth to a daughter on 5.5.10. On 7.6.10 Anjana makes a claim for CA. She states that she will resume her course when her daughter is older, and this is agreed with the educational establishment. She has not abandoned the course. The DM decides that Anjana is not entitled to CA because she is treated as attending a course of education for 30 hours a week.

### **Meaning of end of the course**

60078 The end of the course means the date on which the last day of the final academic term falls for the course on which the student is enrolled.

### **Meaning of abandons**

60079 The term abandons should be given its normal everyday meaning of gives up completely. If the DM is uncertain that the course has been abandoned, documentary evidence should be obtained from the educational establishment to the effect that the student is no longer enrolled on that course.

#### **Example**

Anjana was disallowed CA as she was a full-time student, even whilst she temporarily interrupted her course to have a baby. Therefore, she had no entitlement from 7.6.10. She makes a new claim on 7.9.10 stating that she has now abandoned her course, and she has confirmation from the University that she last attended the course on 29.3.10. Her new claim can now be allowed and be backdated three months under normal rules to 7.6.10.

### **Meaning of dismissed**

60080 Dismissed means the total, final and permanent ending of a person's participation on a course by the educational authorities. In cases of doubt the DM should ask for documentary evidence from the educational establishment.

### **Meaning of university, college, school or other educational establishment**

60081 The legislation does not define university, school, college or other educational establishment. If a person is receiving

1. training or
2. instruction or
3. schooling

at an organization, or at an establishment set up for any of these purposes, the DM may decide that the person is attending an educational establishment.

# Appendix 1

## Earnings limit for gainful employment

|          |   |          |      |
|----------|---|----------|------|
| 5.7.76   | - | 11.11.82 | £6   |
| 12.11.82 | - | 8.4.90   | £12  |
| 9.4.90   | - | 7.4.91   | £20  |
| 8.4.91   | - | 5.4.92   | £30  |
| 6.4.92   | - | 11.4.93  | £40  |
| 12.4.93  | - | 8.4.01   | £50  |
| 9.4.01   | - | 7.4.02   | £72  |
| 8.4.02   | - | 6.4.03   | £75  |
| 7.4.03   | - | 11.4.04  | £77  |
| 12.4.04  | - | 10.4.05  | £79  |
| 11.4.05  | - | 9.4.06   | £82  |
| 10.4.06  | - | 8.4.07   | £84  |
| 9.4.07   | - | 30.9.07  | £87  |
| 1.10.07  | - | 11.4.10  | £95  |
| 12.4.10  | - | 19.5.14  | £100 |
| 20.5.14  | - | 5.4.15   | £102 |
| 6.4.15   | - | 9.4.17   | £110 |
| 10.4.17  | - | 8.4.18   | £116 |
| 9.4.18   |   |          | £120 |

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



## DLA mobility component - deaf and blind

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

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

1. they are both deaf and blind **and**
2. as a result of the combined effects

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

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

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

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

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

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

### Assessment of the degree of deafness

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

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



- 61345 A person with severe or total hearing loss in one ear but normal hearing in the other ear will have no or minimal hearing impairment. They can compensate for the deaf ear by turning their head. Any test of hearing, including formal testing by audiometry, needs to ascertain the loss in each ear separately. The overall degree of hearing impairment is then determined by considering the effects of both deficits in combination.
- 61346 The chart below permits this to be carried out and arrive at the percentage disablement based on the occupational deafness scheme used in industrial injuries disablement benefit. In order to be 80% the person has to have a hearing loss of 87 dB or more in each ear. The hearing loss in the better ear is plotted along the vertical axis and the loss in the worse ear along the horizontal axis allowing the degree of disablement to be read from the chart. For example someone with 55 dB loss in the better ear and 88 dB loss in the other (worse) ear would have a 40% degree of disablement. Those with 80% disablement are likely to have very severe hearing difficulties. They would be unlikely to hear normal conversation, hear the television without special aids or understand a shout at one metre in a busy street.

## Appendix 3

### Rates of benefit (AA)

|                | Higher | Lower |
|----------------|--------|-------|
|                | £      | £     |
| <b>6.4.92</b>  | 43.35  | 28.95 |
| <b>12.4.93</b> | 44.90  | 30.00 |
| <b>11.4.94</b> | 45.70  | 30.55 |
| <b>10.4.95</b> | 46.70  | 31.20 |
| <b>8.4.96</b>  | 48.50  | 32.40 |
| <b>7.4.97</b>  | 49.50  | 33.10 |
| <b>6.4.98</b>  | 51.30  | 34.30 |
| <b>12.4.99</b> | 52.95  | 35.40 |
| <b>10.4.00</b> | 53.55  | 35.80 |
| <b>11.4.01</b> | 55.30  | 37.00 |
| <b>09.4.02</b> | 56.25  | 37.65 |
| <b>07.4.03</b> | 57.20  | 38.30 |
| <b>05.4.04</b> | 58.80  | 39.35 |
| <b>11.4.05</b> | 60.60  | 40.55 |
| <b>10.4.06</b> | 62.25  | 41.65 |
| <b>9.4.07</b>  | 64.50  | 43.15 |
| <b>7.4.08</b>  | 67.00  | 44.85 |
| <b>6.4.09</b>  | 70.35  | 47.10 |
| <b>12.4.10</b> | 71.40  | 47.80 |
| <b>11.4.11</b> | 73.60  | 49.30 |
| <b>9.4.12</b>  | 77.45  | 51.85 |
| <b>8.4.13</b>  | 79.15  | 53.00 |
| <b>7.4.14</b>  | 81.30  | 54.45 |
| <b>6.4.15</b>  | 82.30  | 55.10 |

|                |       |       |
|----------------|-------|-------|
| <b>11.4.16</b> | 82.30 | 55.10 |
| <b>10.4.17</b> | 83.10 | 55.65 |
| <b>9.4.18</b>  | 85.60 | 57.30 |

## Appendix 4

### Rates of benefit (DLA)

|                | Care component |        |        | Mobility component |       |
|----------------|----------------|--------|--------|--------------------|-------|
|                | Highest        | Middle | Lowest | Higher             | Lower |
|                | £              | £      | £      | £                  | £     |
| <b>6.4.92</b>  | 43.35          | 28.95  | 11.55  | 30.30              | 11.55 |
| <b>12.4.93</b> | 44.90          | 30.00  | 11.95  | 31.40              | 11.95 |
| <b>11.4.94</b> | 45.70          | 30.55  | 12.15  | 31.95              | 12.15 |
| <b>10.4.95</b> | 46.70          | 31.20  | 12.40  | 32.65              | 12.40 |
| <b>8.4.96</b>  | 48.50          | 32.40  | 12.90  | 33.90              | 12.90 |
| <b>7.4.97</b>  | 49.50          | 33.10  | 13.15  | 34.60              | 13.15 |
| <b>6.4.98</b>  | 51.30          | 34.30  | 13.60  | 35.85              | 13.60 |
| <b>12.4.99</b> | 52.95          | 35.40  | 14.05  | 37.00              | 14.05 |
| <b>10.4.00</b> | 53.55          | 35.80  | 14.20  | 37.40              | 14.20 |
| <b>11.4.01</b> | 55.30          | 37.00  | 14.65  | 38.65              | 14.65 |
| <b>9.4.02</b>  | 56.25          | 37.65  | 14.90  | 39.30              | 14.90 |
| <b>7.4.03</b>  | 57.20          | 38.30  | 15.15  | 39.95              | 15.15 |
| <b>5.4.04</b>  | 58.80          | 39.35  | 15.55  | 41.05              | 15.55 |
| <b>11.4.05</b> | 60.60          | 40.55  | 16.05  | 42.30              | 16.05 |
| <b>10.4.06</b> | 62.25          | 41.65  | 16.50  | 43.45              | 16.50 |
| <b>9.4.07</b>  | 64.50          | 43.15  | 17.10  | 45.00              | 17.10 |
| <b>7.4.08</b>  | 67.00          | 44.85  | 17.75  | 46.75              | 17.75 |
| <b>6.4.09</b>  | 70.35          | 47.10  | 18.65  | 49.10              | 18.65 |
| <b>12.4.10</b> | 71.40          | 47.80  | 18.95  | 49.85              | 18.95 |
| <b>11.4.11</b> | 73.60          | 49.30  | 19.55  | 51.40              | 19.55 |
| <b>9.4.12</b>  | 77.45          | 51.85  | 20.55  | 54.05              | 20.55 |
| <b>8.4.13</b>  | 79.15          | 53.00  | 21.00  | 55.25              | 21.00 |

|                |       |       |       |       |       |
|----------------|-------|-------|-------|-------|-------|
| <b>7.4.14</b>  | 81.30 | 54.45 | 21.55 | 56.75 | 21.55 |
| <b>6.4.15</b>  | 82.30 | 55.10 | 21.80 | 57.45 | 21.80 |
| <b>11.4.16</b> | 82.30 | 55.10 | 21.80 | 57.45 | 21.80 |
| <b>10.4.17</b> | 83.10 | 55.65 | 22.00 | 58.00 | 22.00 |
| <b>09.4.18</b> | 85.60 | 57.30 | 22.65 | 59.75 | 22.65 |