

Chapter P4: Exceptions to normal payability rules

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Chapter P4: Exceptions to normal payability rules

Hospitals and Similar Institutions and Prisons

Introduction

P4001 This chapter is about payability of PIP and also the exceptions to payability and entitlement.

Effect of imprisonment or detention on PIP

P4002 When a person is in prison or detained in legal custody, for either criminal or civil offences, PIP is affected. Unless P4003 – P4007 applies, no amount in respect of PIP daily living component and mobility component is payable in respect of a claimant whilst they are undergoing imprisonment or detention in legal custody¹. (Please note that persons released on licence are not classed as in legal custody but persons released on *temporary* licence are still deemed to be in legal custody. See ADM Chapter E3 for more detail.)

1 WR Act 12, s 87

P4003 PIP is payable for the first 28 days of imprisonment or detention in legal custody¹. However, the 28 days is **not** payable if entitlement does not begin until

1. the day of entry to prison or detention in legal custody **or**
2. after they have entered prison or detention in legal custody².

1 SS (PIP) Regs, reg 31(1); 2 reg 31(2)

P4004 If at the end of criminal proceedings¹ the claimant is detained in a hospital or similar institution and the conditions in P4006 do not apply, payment of benefit may be restricted under the normal hospital payability conditions (see ADM Chapter P3).

Note: PIP will only be payable for the first 28 days.

1 SS (PIP) Regs, reg 31(3)

P4005

P4006 P4004 does not apply where

1. the claimant is detained under Mental Health legislation¹ and directed by the higher courts to be detained in a hospital **and**
2. that person is being detained on or before the day which the Secretary of State has certified to be that release date² **or**
3. the claimant is detained under the
 - 3.1 criminal procedure legislation in Scotland³ **or**

3.2 Mental Health legislation in Scotland⁴.

*1 SS (PIP) Regs, reg 31(4)(a)(i); MH Act 83, s 45A & s.47; 2 s 50(3);
SS (PIP) Regs, reg 31(4)(a)(ii); 3 reg 31(4)(b)(i); 4 reg 31(4)(b)(ii)*

P4007 For the purposes of P4004 'hospital or similar institution' means any place¹ not being a

1. prison
2. detention centre
3. young offenders institution **or**
4. remand centre

in which persons suffering from mental disorder are or may be received for care or treatment.

1 SS (PIP) Regs, reg 31(5)(a)

P4008 For the purposes of P4004 criminal proceedings against any person are deemed to be concluded upon that person being found insane in those proceedings with the effect that

1. that person cannot be tried **or**
2. the trial of that person cannot proceed¹.

1 SS (PIP) Regs, reg 31(5)(b)

P4009 Periods of imprisonment or detention in legal custody outside GB should be treated the same as imprisonment or detention in GB¹. This is subject to all other conditions of entitlement being met.

1 SS (PIP) Regs, reg 31(6)

P4010 – P4015

Exceptions to payability whilst in hospital (or similar institution), a care home or prison

P4016 When a person enters

1. a care home **or**
2. hospital (or similar institution)¹ **or**
3. prison²

for the first time, provided they are not in the hospital (or similar institution), care home or prison on the first date of entitlement, PIP is payable for the first 28 days they are there. See P4019 for conditions for the mobility component when in a care home.

Note: See P4022 – 4023 where a claimant's entitlement to PIP arises whilst they are in a hospital (or similar institution), care home or prison.

Note: This does not apply if the person is under 18 years of age when they enter a hospital or similar institution. In that circumstance PIP is payable throughout that period in the hospital or similar institution.³

1 SS (PIP) Regs, reg 30(1); 2 reg 31(1) 3 reg 29(3)

P4017 For the purposes of calculating the 28 days

1. the day they enter the hospital (or similar institution), care home or prison is treated as a day out of such residence **and**
2. the day they leave the hospital (or similar institution), care home or prison is a day out of the residence¹.

However, the day the claimant leaves one residence and immediately enters another residence, the earlier period of residence ends on the day the claimant leaves the first residence². This has the effect that if a claimant leaves hospital (or similar institution) or prison, but enters a care home immediately, then the mobility component will be payable from the following day.

1 SS (PIP) Regs, reg 32(1); 2 reg 32(3)

Meaning of period of residence

P4018 A period of residence¹ is a period during which the claimant

1. is
 - 1.1 resident in a care home **or**
 - 1.2 an in-patient in a hospital or similar institution **or**
 - 1.3 undergoing imprisonment or detention in legal custody **and**
2. is prevented from receiving PIP unless the provision for the first 28 days applies.

1 SS (PIP) Regs, reg32(1)

P4019 The mobility component only will continue to be paid to any claimant who is in a care home, but not when in hospital (or similar institution) or prison. However, see P4051 for rules when in hospital (or similar institution).

Linking rules

For Prisoners

P4020 Where there are two or more distinct periods of residence in prison or legal detention which are separated by not more than 1 year, then the claimant will not receive a further payment of PIP for the first 28 days¹. If the claimant is in prison, for example on remand, for less than 28 days, and then is released, they will be entitled to the remainder of the 28 days should they re-enter custody within one year.

1 SS (PIP) Regs, reg 32(5)

Example 1

Maurice is entitled to PIP daily living component at the standard rate. He is taken into legal custody on 7.4.14, but continues to receive payment of PIP for the first 28 days, until 5.5.14. If Maurice is then discharged from prison on 16.9.14 and within 12 months is again taken into legal custody, he will not receive a further 28 days paid benefit.

Example 2

Janet enters prison on remand on 3.5.13 and is entitled to PIP mobility component at the standard rate. She continues to receive the benefit for the first 28 days, until 31.5.13. She is then discharged from prison on bail on 19.9.13, and her benefit is put back into payment from 19.9.13. Following trial she is then imprisoned again from 28.11.13, and as this is within 1 year of her previous detention, the 28 days period before impacting on entitlement does not apply and benefit is stopped immediately.

Example 3

Gary enters prison on remand on 3.4.14 and is entitled to PIP at the standard rate of the daily living component. His case is then heard on 23.4.14 and he is acquitted. Payment of his benefit continues as he has only had 19 days in prison. He is again taken into legal custody on 3.10.14. As this is within 12 months it links with his previous period on remand. He is therefore only entitled to a further 9 days paid benefit, until 12.10.14, before it becomes not payable. On this occasion Gary is found to be guilty and remains in prison for a further 18 months.

For hospital (and similar institution) in-patients and care home residents

P4021 Where there are two or more distinct periods of residence in a hospital (or similar institution) or care home which are separated by not more than 28 days, these periods will link¹. This results in the DM awarding the remainder of any of the 28 days payment remaining, or ceasing payment of the benefit immediately.

Note: If the claimant has been in a care home, and payment of the mobility component is still in payment, then there will be a full 28 days entitlement for the mobility component if the claimant is admitted to hospital (or similar institution) or prison.

1 SS (PIP) Regs, reg 32(4)

Example

Gordon enters hospital on 6.9.13 and is entitled to PIP at the enhanced daily living component rate. He receives payment of PIP for up to the first 28 days from 7.9.13. However, he is discharged on 15.9.13, so he has only received payment from 7.9.13 to 14.9.13 as an in-patient, amounting to 8 days. He then re-enters hospital on 1.10.13, which is within 28 days of the previous discharge. Therefore he is paid the

remainder of the 28 days benefit from 2.10.13 to 21.10.13. Benefit then ceases being paid until he is again discharged from hospital.

When moving between prison and hospitals (or similar institutions) or care homes

P4022 If the claimant moves between a prison and a hospital (or similar institution) or care home, or vice versa, separated by not more than 28 days, these periods will also link. However, if the claimant returns to a prison then the 1 year linking period applies, as at P4020.

Example

The claimant is entitled to PIP. He enters prison and his PIP award is payable for the first 28 days, after which the payability ends. He is released from prison, and spends 20 days at home, before entering hospital. As fewer than 28 days have elapsed since leaving prison, the claimant does not receive 28 days of payability when entering hospital. The claimant is discharged from hospital and then spends the next 50 days at home. At that point they are sent back to prison. As less than one year has elapsed since they were last in prison the claimant does not receive 28 days of payability when entering prison again.

Entitlement begins during a period in a hospital (or similar institution), care home or prison

P4023 Where on the date of entitlement to PIP the claimant is

1. a hospital (or similar institution) in-patient **or**
2. a resident in a care home **or**
3. undergoing imprisonment or detention in legal custody

PIP will only be payable from the first pay day on or after the day of discharge¹.

Note: This does not apply if the person is under 18 years of age when they enter a hospital or similar institution. In that circumstance PIP is payable throughout that period in the hospital or similar institution.²

1 SS (PIP) regs, reg 30(2) & 31(2). 2 reg 29(3)

P4024 If the claimant then subsequently re-enters a hospital, care home or prison PIP will still be payable for the first 28 days **even if** they are re-admitted to the hospital or care home or prison within 28 days of the day of discharge or release. This is because the periods do not link as the claimant has not yet benefited from the 28 day rule. Any subsequent discharge and readmission is dealt with at P4020 – 4021.

Example

Eric enters hospital on 1.8.16. He becomes entitled to the standard rate of the daily living component of PIP from 1.9.16 but the DM decides that this is not payable as he was a hospital in-patient at date of entitlement. Eric is discharged on 20.9.16 and

his PIP becomes payable from this date. On 28.9.16 Eric is re-admitted to hospital as an in-patient. PIP remains payable for the first 28 days of his stay in hospital and is not payable from 27.10.16 unless he is discharged any earlier.

P4025 – P4030

Payment at daily rate

P4031 When a claimant

1. leaves a hospital or care home for a short period after receiving the first 28 days of benefit payment **and**
2. is expected to re-enter that residence within a further period of 28 days

that claimant may be paid PIP at the daily rate of 1/7th of the weekly rate. This is payable on a weekly basis for all days they are out of the relevant residence¹ (see ADM chapter B1).

1 UC, PIP, JSA & ESA (C&P) Regs, reg 50

P4032 The DM may arrange to pay PIP on any day of the week, and part weeks may be paid at the daily rate of 1/7th of the weekly rate. Where there are any changes that are not on the normal pay day, the DM can arrange to pay the remaining days at the daily rate¹.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 50(2), (3) & (4)

P4033 The claimant will continue to receive PIP at the daily rate whenever the periods out of the residence are linked by periods not exceeding 28 days¹. Once the claimant leaves the relevant residence for longer periods than 28 days, their PIP will be paid at the normal 4 weekly rate.

Note: If the claimant is in a care home the mobility component will continue to be paid throughout.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 50

Example 1

Gillian has had a stroke and has been in hospital for several months. To be able to assess her ability to cope at home she is allowed home at weekends for a period of time. She has put in a claim for PIP and has been awarded the enhanced rate of the mobility component and the standard rate of the daily living component. She goes home on a Friday and comes back into hospital on a Monday, so she is entitled to payment of PIP for 4 days. She is also entitled to PIP for the first 28 days on her first return to hospital. After her 28 days entitlement has been paid, she then stays in hospital for a further two weeks and comes home at the weekend again. This pattern continues for some time, and each time she goes on home leave she is entitled to be paid PIP for the days she stays at home, until such time she is discharged from hospital.

Example 2

Clifford has had a heart attack and has spent several weeks in hospital. Before his hospitalisation he had been assessed as being entitled to the standard rate of the mobility component and the standard rate of the daily living component. His heart attack requires him to undergo surgery and there are complications which means he has to stay in hospital for several weeks. As Clifford lives at home on his own it is necessary for him to learn how to cope with his own care needs. After being in hospital for 28 days, benefit is no longer paid until he is allowed to go home at weekends to help him adjust to living again in his own home. He goes home on a Friday and comes back on a Monday, and is therefore paid PIP for 4 days. He stays in hospital during the week and then goes home again. This pattern continues for 6 weeks, with only a few days before each visit home. He then returns home permanently after the 6 weeks and his benefit is put back into payment. He may also undergo a reassessment of his PIP to see if he requires more help than previously.

P4034 – P4050

Payability of the mobility component

P4051 In certain circumstances the mobility component of PIP is not payable. These are when the claimant has received or is receiving any payment

1. by way of a grant under specified legislation¹ towards the costs of running a private car **or**
2. of mobility supplement under specified legislation² **or**
3. out of public funds which the Secretary of State is satisfied is similar to a payment³ under **1. or 2.**

Note: Mobility component is payable if the claimant is in a care home.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 61; NHS Act 06, s 5 & Sch1, para 10; NHS (Wales) Act 06, s 5 & Sch 1, para 10; NHS (Scot) Act 78, s 46; 2 UC, PIP, JSA & ESA (C&P) Regs, reg 56(1)(b); NMAF (Dis & Death) SPO 06; PI (Civ) Sch 83; WP (NAP) Sch 64; Pen (PF) Sch 64; WP (MM) Sch 64; Order of Her Majesty in relation to the Home Guard 22.12.64; Ulster Defence Regiment 4.1.71; 3 UC, PIP, JSA & ESA (C&P) Regs, reg 61(3)

P4052 Payments made under any of the legislation specified in P4051 are an overlapping benefit¹ for the purposes of PIP.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 61(3)

Payment of PIP on behalf of a claimant with a motability agreement

P4053 Motability¹ is the company that has been set up under that name as a charity and incorporated by Royal Charter. A claimant may use their mobility component, if paid at the enhanced rate only, to hire a car or wheelchair or buy a car or wheelchair on hire-purchase from Motability.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 62(5)

P4054 The DM may arrange that any award of the enhanced rate mobility component of PIP may be made in whole or in part, on behalf of the claimant, in settlement of any agreement made between the claimant and Motability for the purchase or hire of a vehicle¹.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 62(2)

Effect of hospitalisation on the Motability agreement

Hire of vehicles

P4055 In the case of a claimant who has hired a vehicle (which includes wheelchairs) from Motability when they enter hospital, after 28 days the mobility payment will cease. Motability will be informed by the DM and contact will be made with the claimant within 28 days to discuss the return of the vehicle.

P4056 Any agreement with Motability will be terminated by the DM where the vehicle is

1. returned to the owner (Motability) at or before the end of the term of hire or any agreed extension of the term of hire, on expiry of the term or extended term **or**
2. retained by or on behalf of the claimant, with the owner's consent after the end of the term of hire or any agreed extension, on expiry of the period of the term or extended term **or**
3. retained by or on behalf of the claimant, with the owner's consent, after the end of the term of hire or any agreed extension, or its earlier termination, on expiry of whichever is the longer of the following periods
 - 3.1 the period ending the return of the vehicle to the owner **or**
 - 3.2 the period of the term of hire or any agreed extension of the term of hire¹.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 62(3)

Purchase of vehicles

P4057 Subject to the claimant being in hospital for more than 28 days, and the payment of the mobility component ceasing, after the DM informing Motability, the claimant will be contacted within the next 28 days to discuss the hire-purchase agreement¹ (which may include wheelchairs) which will be terminated

1. on the purchase of the vehicle **or**
2. where the vehicle is returned to, or is repossessed by, the owner under the terms of the agreement, before the completion of the purchase, at the end of the original period of the agreement.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 62(4)

Powers of DM to terminate a Motability agreement

P4058 The DM may terminate an arrangement¹ under P4054 if

1. requested to do so by the owner of the vehicle **or**
2. it appears to the DM that the arrangement is causing undue hardship to the claimant and that it should be terminated earlier than provided for by regulations as in P4055 and P4056.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 63

P4059 The DM **must** terminate an arrangement¹ made under the terms of P5054 if the DM is satisfied that the

1. vehicle has been returned to the owner **and**
2. the expenses of the owner arising out of the hire or hire-purchase agreement have been recovered following the return of the vehicle.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 64.

P4060 – P4075

New claim and entitlement to PIP when reaching the relevant age

Meaning of relevant age

P4076 The relevant age means

1. age 65 **or**
2. if higher pensionable age¹.

1 WR Act 12, s 83(1); Pensions Act 19 95, Sch 4, para 1

P4077 A claimant will continue to be entitled to PIP if they are entitled to an award of

1. the daily living component **or**
2. the mobility component **or**
3. both

on the day preceding the day on which they reached the relevant age.

1 SS (PIP) Regs, reg 25(a)

P4078 A claimant is entitled to PIP if

1. they make a claim for PIP before reaching the relevant age **and**
2. although that claim is not determined before they reached the relevant age¹ an award of
 - 2.1 the daily living component **or**
 - 2.2 the mobility component **or**
 - 2.3 both

is subsequently made in respect of them.

1 SS (PIP) Regs, reg 25(b)

P4079 Rules for those claimants approaching the age of 16 are dealt with in ADM Chapter P5.

Further claims when claimant has reached the relevant age

General

P4080 Where the previous award is in respect of **only** the daily living component¹ then the DM cannot additionally award any rate of the mobility component on a further claim.

1 SS (PIP) Regs, reg 15 & 26

P4081 Where a decision is made on entitlement on the further claim and the conditions are substantially the same mental or physical condition, the required period condition¹ is amended to the effect that the claimant does not need to satisfy the 3 month qualifying period (see ADM Chapter P1 for required period condition)².

1 SS (PIP) Regs, reg 15(2) and (3); 2 reg 12, 13 and 14

12 month linking rule

P4082 If the claimant makes a new claim for PIP

1. after the age of 65¹ **and**
2. within 12 months of the previous award ending² **and**
3. was previously entitled to an award of PIP for
 - 3.1 substantially the same condition or conditions for which the previous award was made³ **or**
 - 3.2 a new condition which developed as a result of a condition for which the previous award was made⁴

a new award for the same component⁵ at the same rate of PIP can be made⁶.

*1 SS (PIP) Regs, reg 26(2)(a); 2 reg 26(2)(b); 3 reg 15(1)(d)(i); 4 reg 15(1)(d)(ii);
5 reg 15(1)(c) 6 reg 26(2) & 15(2)*

Example

Sharon, who was aged 64, had been in receipt of PIP at the standard rate for both the daily living and the mobility component for 12 months following a stroke. She had then improved and been reassessed and the PIP entitlement was removed. 9 months after PIP ceased, but after reaching the age of 65, Sharon had a further stroke. The condition was the same as before but her needs had increased, and as the period between claims was less than 12 months, she did not have to serve the QP again for the standard rate of either component to be paid. After the QP had been served for the enhanced rate the daily living component would be increased. Although her needs were substantially worse, she could only receive the standard

rate of the mobility component due to the PIP rules (see P4083 for mobility component rules).

Mobility component

P4083 When the claimant makes a further claim and entitlement on that claim and the previous award result from substantially the same conditions in P4080 **3.1** or **3.2** then the DM can only make an award of

4. the enhanced rate if the claimant was entitled to that rate on the previous award¹ **or**
5. the standard rate² equal to the previous award or at a lower rate if they no longer satisfy the conditions for the enhanced rate.

The new award cannot be greater than the previous award even if the conditions for that rate are met.³

1 SS (PIP) Regs, reg 26(2)(c)(i); 2 reg 26(2)(c)(ii) and (d); 3 reg 26(2)(c)(ii)

Daily living component

P4084 Where the DM makes an award of the mobility component under P4083, then an award of the daily living component may additionally be made irrespective of whether the claimant had previously had an award for daily living component¹.

1 SS (PIP) Regs, reg 15(2) & 26(2)

Example

Richard's date of birth is 21.6.49 and he was awarded DLA and then re-assessed and awarded PIP until 17.8.14. His PIP award was for enhanced rate mobility only. His award then stops and he fails to make a new claim, as he is taken ill and in hospital from July 2014 until September 2014 and then recuperating at home. On 15.2.15 Richard claims PIP again. This is within 12 months of his previous award ceasing. His condition has deteriorated with the same disability as before. He is assessed by the DM as being entitled to the enhanced rate of mobility component and the standard rate of daily living component. He is subsequently paid PIP at these rates due to the linking provision, from the date of his new claim. This is because he has claimed within 1 year of his previous claim, his required period condition is satisfied for the mobility component and his daily living component is satisfied as it is more than 6 months since his hospitalisation and deterioration.

Revision and supersession when claimant has reached the relevant age

Mobility component

P4085 Where the original award

1. is superseded for a relevant change of circumstances which occurred after the claimant attained the relevant age **and**

2. the award includes an award of the mobility component restrictions apply¹.

1 SS (PIP) Regs, reg 27(2)

Note: See DMG 74022 and Appendix 1-4 of DMG Chapter 74 for changes to the pensionable age as that gradually increases (which alters the relevant age – see P1013).

P4086 Where the current award is in respect of the standard rate of the mobility component the DM may only make an award of the standard rate where the conditions of entitlement are a result of the same mental or physical condition as for the current award¹.

Note: This applies even where the claimant meets the criteria for the enhanced rate of the mobility component.

1 SS (PIP) Regs, reg 27(3)

Example

Rita is entitled to the standard rate of the mobility component but no rate of the daily living component of PIP, and is over the relevant age. She has rheumatoid arthritis, which has recently become more severe, and she has reported a change in her mobility and daily living condition, stating that she can hardly walk, needs a wheelchair whenever she goes out, and requires help from another person with some dressing and bathing. The DM makes all the required enquiries, and consultations with the HP. Although the DM decides that the conditions for the enhanced rate of the mobility component are satisfied, as well as the standard rate of the daily living component, the DM can only award both the daily living and mobility components at the standard rate.

P4087 Where the current award is for the enhanced rate of the mobility component¹, the claimant can only retain that rate providing their entitlement results from substantially the same mental or physical condition for which the current award was made.

1 SS (PIP) Regs, reg 27(3)(b)

P4088 Where the current award does not include an award of the mobility component but the claimant had a previous award of that component, no more than 1 year prior to date on which supersession takes or would take effect, then entitlement can be considered¹.

Note: The previous award is treated as the current award and is subject to the exceptions in P4086 - P4087.

1 SS (PIP) Regs, reg 27(4)

Example

Billy is over the relevant age and suffers from arthritis in the knees. He is entitled to the enhanced rate of the mobility component of PIP. Billy then had a knee

replacement operation and reported an improvement in his condition. A DM decided to supersede his award of PIP to remove entitlement to the mobility component. Within a year Billy reported that the knee operation had not been as successful as initially thought and stated that his mobility needs had increased. The DM decided that Billy was entitled to the enhanced rate of the mobility component again. As Billy's entitlement to the mobility component under the previous award ended less than 12 months ago, Billy is awarded the enhanced rate of the mobility component because it results from substantially the same condition.

- P4089 Where an award for the mobility component is made under P4085 or P4086 the daily living component¹ may additionally be awarded provided the conditions of entitlement are met.

1 SS (PIP) Regs, reg 27

P4090 – P4096

Residence and Presence conditions

- P4097 Conditions for the residence, presence and exportability for PIP claimants are in ADM Chapter C2.

P4098 – P4999

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