

Welfare

R I G H T S

***Disability Living Allowance
and
Attendance Allowance
For People Who Are Terminally Ill***

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Disability Living Allowance & Attendance Allowance for People who are Terminally Ill – SPECIAL RULES Claims

Disability Living Allowance is a benefit paid to people who have an illness/disability who are aged under 65 and have care and/or mobility needs.

Attendance Allowance is a benefit paid to people who have an illness/disability who are aged 65 and over who need help with personal care.

Different rates of each benefit are awarded for each benefit depending on the nature and amount of help the disabled person needs. For more information about the general rules and eligibility please see the companion guides in this series "DLA – What is it and How to Claim", "AA – What is it and How to Claim", "DLA - Completing the Claim Form", "DLA - Completing the Claim Form for People with Mental Health Problems" and "AA – Completing the Claim Form".

Special Rules

People who are considered to be terminally ill, however, can claim Disability Living Allowance or Attendance Allowance under the "Special Rules". This means that they do not have to satisfy the usual disability tests or serve the relevant qualifying periods.

This briefing note sets out to explain those who are treated as terminally ill, what the "Special Rules" are and clarify the rules about claiming.

WARNING

The information contained in this guide is as accurate as possible at the time of printing. However it is only a guide and therefore cannot be completely accurate in every respect and cover possible situation.

It is recommended that you seek advice from a competent person if you have any doubts.

This booklet is available in other languages. If you would like a translated copy please contact:

The Welfare Rights Training/Information Officer, Tel: 0116 2787111.

The Social Services Department is constantly working to improve its services. If you would like to make a comment, suggestion or complaint, please contact:

- **Corporate Complaints Manager**

Social Care Service
FREEPOST LE17795
County Hall (Eastern Annex)
Glenfield
Leicester
LE3 8XR

Tel: 0116 305 5875

Email: social-services-tell-us@leics.gov.uk

Who is considered to be terminally ill?

The terminal illness test is in two parts: -

- i. The Diagnosis Test
- ii. The Prognosis Test

The Diagnosis Test

You must be suffering from a **“progressive disease”**. This is an illness that develops and gets worse, eg cancer, multiple sclerosis, motor neurone disease, AIDS.

The Prognosis Test

This is more difficult to satisfy and more open to dispute as it is based on medical opinion.

The test consists of two parts: -

- i. **“Death can reasonably be expected as a consequence of the disease”**

The disease itself may not be the sole reason for death to be expected – other factors may be involved, eg your age or general physical condition. However it is important that the disease plays a major role in the likelihood of death.

- ii. **“Death can reasonably be expected within 6 months”**

The expectation must be reasonable on the basis of medical evidence. No upper limit is put on life expectancy, so the test may be satisfied if the longest period the claimant can be expected to live is longer than 6 months as long as death within 6 months is more than a mere possibility.

If DLA/AA is awarded due to “Special Rules” the award will be for a fixed period of three years. If the claimant is still alive after three years DLA/AA will have to be renewed by completing the same process. It can still be awarded for “Special Rules” if the claimant again fulfils the above conditions.

What are the "Special Rules"?

If you are treated as terminally ill you will automatically satisfy the conditions for an award of the Higher Rate Attendance Allowance/Disability Living Allowance Care Component.

In addition you:

- Do not have to serve the relevant qualifying periods for either benefit
- You will be paid at the higher rate from the date of your claim
- You do not have to serve the qualifying period for the Mobility Component of Disability Living Allowance, although you will have to satisfy one of the disability tests for mobility to qualify
- You do not need to have been present in Great Britain for the previous 26 weeks to qualify for DLA/AA

How to claim

The claim forms are available from the Department for Work and Pensions (DWP) Benefit Enquiry Centre by calling 0800 882200 or the Disability and Carers Service on 0845 7123456. State that you wish to register a claim for Attendance Allowance (Form AA1) or DLA (Form DLA1A Adult or DLA1A Child for children under 16). The form should be stamped on issue with the date you have called and a return by date; if you are awarded AA or DLA you will be paid from the date that you registered the claim. Some claim forms are available from Adult Social Care Services offices and local advice centres but if these forms are used benefit will only be paid from the date the completed forms are received.

To claim DLA under the Special Rules complete Part 1 and Part 2, which are concerned with your personal details and any diagnosis and details of medical professionals who are involved in your care. Make sure you tick the box in part 2 on page 11 indicating you wish to claim under the special rules.

To claim AA under the Special Rules you only have to complete parts 1,2 and 3 making sure you tick the box stating you wish to claim under the special rules..

What if someone is unaware of their terminal illness?

If the claimant is unaware of their condition or too unwell to complete the form someone can complete and sign the form on their behalf without their knowledge. The form can be filled in by a Doctor, Carer or Social Worker but the person with a disability will be treated as the claimant and all correspondence and payment will be sent to them. Any correspondence will not state that the award is because of the "Special Rules".

Do I need any other evidence?

A medical report called a **DS1500** has to be completed by a Doctor and sent with the claim form. All doctors should have a supply of these forms. If there is a delay in getting the DS1500 do not delay in returning the completed claim form, enclose a note stating the DS1500 will be forwarded as soon as possible. This will avoid any loss of benefit but the claim will not be processed until the DS1500 is received.

You can ask either your GP or a consultant to complete the DS1500. If the first doctor you ask feels unable to issue a DS1500 it may be worthwhile approaching asking another doctor to provide you with one.

The DS1500

The DS1500 asks for details of your condition, a diagnosis and any treatment that is being provided. It does not ask for a prognosis (how long you are expected to live). It is vitally important that all relevant details are included in the report – if there is insufficient detail award of benefit may be delayed and you may have to undergo a medical examination.

If the claimant is unaware of their diagnosis details may be forwarded in a separate letter. The DWP can also ensure that no details of the claimants' medical condition are sent to them if it is likely to be harmful to their health.

The Mobility Component of DLA

An award of DLA under Special Rules will only cover the care component. If you have mobility problems you should complete Part 3 of the DLA form that concerns problems with walking and getting around. Very often High Rate Mobility Component is awarded at the same time if these questions are completed

How is the decision made?

A Decision Maker (DM) from the DWP will decide on the basis of the information contained in the DS1500 to:

- Award DLA/AA at the higher rate OR
- Not make an award on the information provided; in this case they will make an arrangement for a medical examination by a GP contacted to the DWP. On the basis of this report the DM will consider the claim under the "Special Rules" again. If the claim is unsuccessful for a second time the DM will consider the eligibility of the claim under the normal rules for AA/DLA. Benefit may still be payable under the normal rules at the relevant rate.

The DWP aim to process all "Special Rules" claims within 8 working days.

What happens next?

If the claim is successful

Once the DM has decided that you qualify for DLA under the "Special Rules" you will be paid any benefit from the date of your claim into your nominated bank account.

If the claim is turned down

There is a special procedure for reviewing claims under the special rules. A decision can be reviewed if there has been a "change in medical opinion" as to your condition or reasonable expectation of life. Such a review can be requested **at any time** and if a further DS1500 is sent in, may be processed without the need for a medical examination.

A review can also be requested under the standard AA or DLA rules.

Other Benefits

- If you are entitled to Middle/High DLA or any rate of AA someone who looks after you may be able to claim **Carer's Allowance**. The carer must provide 35 hours care per week and not earn more than £95 per week after expenses. The carer could be entitled to Income Support without having to sign on. If a carer is entitled to Income Support or Pension Credit they could qualify for the Carer's Premium or Carer's Additional Amount in the calculation of their benefit (but see below regarding Severe Disability premium/Additional Amount before claiming Carer's Allowance). (See the companion guide "Benefits for Carer's" briefing note for more information).
- If you receive any rate of DLA, you could become entitled to or receive more **Income Support, Housing Benefit** and/or **Council Tax Benefit** as you will be eligible for the Disability Premium.
- If you receive the Middle or Higher Care DLA or Attendance Allowance you may be entitled to the Severe Disability Premium/Additional Amount (see below) as part of the calculation for these benefits and the calculation for **Employment & Support Allowance (Income-Related)**.
- If you receive the Higher Rate of DLA you should also have the Enhanced Disability Premium added to the calculation of these benefits. (NB you can only qualify for the Disability Premium or Enhanced Disability Premium before your 60th birthday.)

- Severe Disability Premium/Additional Amount** – If you receive the Middle or Higher Care Component of DLA you may be entitled to the Severe Disability Premium/Additional Amount in the above benefits as well as in the calculation of **Pension Credit**. This extra amount will be added if you technically live alone (do **NOT** count children, lodgers, and other people who receive Middle or Higher Care DLA or Attendance Allowance) **AND** no-one **receives** Carers Allowance for looking after you. Because of overlapping benefit rules some people can claim Carers Allowance and not receive it but still get a Carers Premium/Additional Amount in their benefit calculation. Seek advice if you are not sure. Similarly, if you pay rent to another member of the household, or you are a joint tenant with another person they do not count as living with you. If your partner also receives Middle or Higher Rate Care DLA/Attendance Allowance and no-one receives Carers Allowance for looking after either of you, you should be entitled to the couple rate of Severe Disability Premium/Additional Amount (if you and your partner both receive Middle or Higher Rate Care DLA/Attendance Allowance and someone receives Carers Allowance for looking after one of you, you should have the single Severe Disability Premium/Additional Amount included in your calculation.)
- Depending on each person's circumstances your carer may be better off claiming **Carers Allowance** or you may be better off claiming the **Severe Disability Premium/Additional Amount** instead. Seek advice on which benefit should be claimed.
- If you are claiming benefit on the basis of being too ill to work then you are subject to the **Personal Capability Assessment** (PCA) for Incapacity Benefit to determine your incapacity for work or the **Work Capability Assessment** (WCA) for Employment & Support Allowance (ESA) to determine your Limited Capability for Work. If you are terminally ill you are exempt from both the **PCA** and the **WCA** and you are automatically treated as being incapable of work/having a Limited Capability for Work, providing that you are not working. You are allowed to perform "Permitted Work" whilst claiming Incapacity Benefit/ESA as long as you do not work more than 16 hours work per week and your earnings are below certain limits (see the companion guide Moving Into Work for more information.). It is advisable to keep a copy of the DS1500 to use if your incapacity for work/Limited Capability for Work is tested. For ESA you are also put into the Support Group and therefore will not be expected to take part in Work-Related Activity and you will be paid the Support Component on top of your basic allowance. (See the companion guide ESA: a Basic Guide in this series.)
- If you are terminally ill and claiming **Incapacity Benefit** you will be entitled to the Long-Term Rate of **Incapacity Benefit** after 28 weeks (rather than 52 weeks.). You should provide a copy of the DS1500 with your claim or send it to the Incapacity Benefit section at the JobCentre Plus if it is less than 52 weeks since you made your claim.

- Payments of **AA** and **DLA** will stop after 28 days in hospital. Payments of **AA** and **DLA** should not be affected by a stay in a hospice.

Funeral Payments

Following the death of the terminally ill person, a surviving partner, close relative or friend may be able to claim help from the Social Fund towards the cost of paying funeral expenses.

A claim can be made by someone in receipt of **Income Support, Income – Based JSA, Housing and Council Tax Benefit, Child Tax Credit** (at a rate that exceeds the Family Element), **Working Tax Credit** (that includes a Disability or Severe Disability Element) or **Pension Credit** (both Guarantee and Savings Credit).

Claims for funeral expenses must be made within three months of the date of the funeral to the Social Fund call centre on 0845 6088543 or get a form SF200 from your local Jobcentre Plus.

The claim must be made by the person who is responsible for the funeral bill. If there is someone who has a closer relationship or responsibility to the deceased than you or there is someone who has an equally close relationship with the deceased who does not receive a qualifying benefit or have more capital than you, you will not receive funeral expenses payment.

Certain amounts will be deducted from any funeral expenses payment. These include:

- Any of the deceased assets available to you or your family
- Any lump sum due to you or a member of your family from insurance policy, occupational pension scheme, burial club or similar payable on the death of the deceased.
- Any contribution made to you by a member of your family or charitable organisation.
- Any funeral grant paid by the government for a War Disablement Pensioner
- Any amount paid or payable from or similar

Any capital you have is ignored.

Any payments from:

- The Macfarlane Trust
 - The Macfarlane (Special Payments) Trusts
 - The Fund
 - The Eileen Trust
 - The CJD Trusts
 - The Skipton Fund
 - London Bombings Relief Charitable Fund
- are not deducted from any funeral expenses payment.

If you have any doubts seek advice.

Further Information

This department's Welfare Rights Service publishes a range of briefing notes. All these are available at no cost from your local Social Services office or from Leicestershire County Council Website:

http://www.leics.gov.uk/index/social_services

If you have difficulty in obtaining these please ring your local Adults & Communities Services office.

The Welfare and Employment Rights Advice Service

The **City Council** has its own Welfare Rights team for residents of the City, who publish a wide range of free leaflets, posters and booklets about benefits. For more details of these, contact the City Council Offices, New Walk Centre, Welford Place, Leicester.

Tel: City Benefits Advice Line, 0116 2254888 (1 pm - 4 pm Monday , Tuesday & Thursday)