

COMMUNITY CARE

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Focus on Benefits

Attendance allowance: the basics

In future newsletters, Wrigleys will be commenting on significant developments in entitlement to disability benefits. This newsletter sets the scene providing an introduction to attendance allowance.



What is attendance allowance?

Attendance allowance is a state benefit paid by the Department of Work and Pensions and is intended for people who suffer from a disability to assist them with the cost of their care.

It is the disability benefit most commonly claimed by care home residents.

How much is it worth?

There are two rates depending on how much care the claimant needs. The rates for the year 2015-16 are £55.10 (£2856.20 pa) or £82.30 (£4279.60 pa) payable depending on the extent of care needs. The lower rate is payable where either the "day condition" or the "night condition" is met (see opposite for an explanation of these conditions). The higher rate is payable where both the day and night conditions are met.

The day and night conditions

A person satisfies the **day attendance condition** if he is so severely disabled physically or mentally that, by day, he requires from another person either—

- (a) frequent attention throughout the day in connection with his bodily functions, or
- (b) continual supervision throughout the day in order to avoid substantial danger to himself or others.

A person satisfies the **night attendance condition** if he is so severely disabled physically or mentally that, at night,—

- (a) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
- (b) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.

Who can receive attendance allowance?

A person can claim attendance allowance if:

- They are over pensionable age *and*
- They have a physical or mental disability *and*
- They satisfy either the day or night condition or both *and*
- They are living in Great Britain when they claim and have lived in Great Britain for 2 of the last 3 years *and*
- They are not subject to immigration control (some exceptions).



Meaning of terms?

- **Attention** is defined as some personal service of an active nature in connection with bodily functions, including breathing; dressing; drinking; eating; eliminating waste products; getting into or out of bed; hearing; seeing; sitting; sleeping; walking; undressing and functions of the brain
 - » Attention generally only qualifies as such if it is given in the presence of the person and involves some direct contact with them, which may include speech such as encouragement or reading correspondence to them.
 - » Attention does not include ordinary domestic help such as shopping and cleaning.
- » The attention must be reasonably required but that does not mean it is must be medically necessarily, nor that the required care is actually given.
- » Attention may not be reasonably required if the need for it can be avoided by reasonably practical measures
- **Frequent** means several times not just once or twice and must be throughout the day. For example attention is not frequent if it is delivered in a single block of a few hours in the middle of the day.
- **Continual** means that the supervision must be going on all the time subject to only brief interruptions.
- **Prolonged**, in the view of the DWP, means usually at least 20 minutes.
- **Repeated** means more than once.
- **Watching Over** - for watching over it is enough that a person is awake for the purpose of watching over the disabled person for the necessary period or periods.



What evidence is required of a physical or mental disability?

The claim form is the primary source of evidence regarding the disability and the needs that flow from it.

The DWP has produced an A-Z guide to medical conditions which sets out the nature and degree of disability and the needs that these conditions are likely to produce in their various stages.

The evidence given in the claim form may be judged for its consistency with this guidance.

If there is ground for concern as to the accuracy of the evidence, the DWP may apply to their own medical services department for guidance. If this does not clarify the extent of the disability and the needs likely to flow from it, the DWP may seek external evidence, for example by writing to the claimant's GP.

The claim form should therefore be completed in as much detail as possible in order to minimise the possibility of delay in the decision.

Sample DWP Guidance on needs

Severe cognitive deficit ²

Mobility: Physical walking ability may be significantly restricted as a result of neuromuscular problems affecting the lower limbs. Impairment of cognitive function is likely to cause difficulties satisfactorily using unfamiliar routes independently.

Activities of Daily Living: The resulting disability is likely to lead them to require assistance with all activities of daily living. They are likely to require assistance with most aspects of bodily function and they are likely to require supervision to prevent potentially dangerous behaviours or activities.

Turning over in bed ³

Many disabilities make it difficult to turn over in bed. This may lead to skin damage, for example to a person who has lost skin sensation as in paraplegia or some other neurological disorder. There is a great risk of the skin breaking down and pressure sores forming if the person is not regularly turned each night. Such a person also needs regular attention to the skin.

Entitlement to attendance allowance in a care home where there is co-payment by the council or the NHS

The general rule is that where a resident is being financially supported by a local authority, attendance allowance is only payable for the first 28 days of that support.

This 28 day rule also applies to a stay in hospital and if the resident's fees for the care home are fully paid by the NHS (called NHS continuing care).

Attendance allowance remains payable either if the NHS pays only the Funded Nursing Care payment or if they pay an additional sum for health care but this falls short of them taking responsibility for the full care package.

Attendance allowance is not available where the package is for full NHS continuing care but the resident tops up the NHS payments.

A resident may own the property that was previously their home. This disregard is available for the first 12 weeks that the person resides in the care home on a permanent basis.

Prior to implementation of the Care Act on 1st April 2015, the disregard was available for the first 12 weeks of residence during which the council provided financial support. Following the introduction of the Care Act, if the resident has already been in the care home for 12 weeks when the council start financial support, the property disregard is not available. If the resident has been in the home as a self funder for less than 12 weeks before the council starts financial support, the balance of the 12 weeks

is used to disregard the property.

In so far as the resident is entitled to council financial support during that 12 week period the resident may only claim attendance allowance for the first 28 days. If the resident is likely to requalify for attendance allowance when the disregard ceases, which will put their capital above the means test upper limit, the DWP may be willing to suspend payment for the following 9 weeks and reinstate it thereafter provided proper notice and sufficient information is given. Otherwise the resident may need to reclaim after 12 weeks.

Either the resident, their appointee, attorney or deputy should notify the DWP when council support for their care fees is provided as a permanent resident. Hospital in-patient stays should also be reported.

A deferred payment agreement is an arrangement with the council in circumstances where the resident does not qualify for financial support only because they still own their former home and that home is taken into account in the means test. If requested to do so by the resident, the council will pay the care home fees and the resident must repay the council when they leave the care home or if they die in the home. To secure that debt, the council takes a legal charge on the house. If the council pays the resident's fees under such a deferred payment agreement, the resident remains entitled to attendance allowance.



Sources:

1. DWP decision makers guide para 61101
2. © Department for Work & Pensions: Medical guidance for DLA and AA decision makers (adult cases), used by permission under the Open Government Licence
3. © Department for Work & Pensions: This is an extract from the DWP Decision makers guide para 61137, used by permission under the Open Government Licence

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