

GUIDE TO DISABILITY LIVING ALLOWANCE (DLA) AND ATTENDANCE ALLOWANCE (AA)

(Rates shown from April 2009, are normally up rated annually)

The Law:

Social Security Contributions and Benefits Act 1992 (as amended) - Sect 71-76
Social Security (Disability Living Allowance) Regulations 1991 (as amended)

- 1 This Guide is designed to give you a basic knowledge of the requirements of DLA and the confidence to tackle the exercises you will face during the selection process. It does not cover the many procedural complexities of the benefit, and will do no more than alert you to intricacies in the substantive law. We have deliberately left out references to case law. A note about AA is at the end of this document.
- 2 **Appeals** against decisions on awards, or the refusal of an award, are heard by a Tribunal consisting of a legally qualified Judge who chairs the Tribunal, a medically qualified Medical Member and Disability Member who is a person with experience of disability either in a personal or professional capacity. *These titles changed from 3 November 2008.*
- 3 **DLA** is a non-means tested and non-contributory benefit aimed at those below the age of 65 who are so severely disabled (mentally or physically) that they have either mobility or care needs, or both. It is a single benefit, divided into two components, **Mobility** and **Care**. Each component is divided into rates.
 - Care has 3 rates: lowest, middle and highest.
 - Mobility has 2 rates: higher and lower.
- 4 Qualifying periods: The claimant must have met the criteria for the component and rate claimed for a period of 3 months before the claim, and be expected to continue to fulfil the criteria for a period of 6 months afterwards.
- 5 Claim packs are based upon self-assessment, but the claimant may include evidence of his conditions and disability from others, such as a carer or GP. By the time an appeal reaches a tribunal, it may have reports from diverse sources.
- 6 To learn more and see the forms visit:
http://www.direct.gov.uk/en/DisabledPeople/FinancialSupport/DG_10011731
- 7 The Department of Work and Pensions (DWP) may also request medical or other reports for the purposes of the claim, such as a factual report from the claimant's GP or consultant, or a report from an Examining Medical Practitioner (EMP).
- 8 The DWP obtains its EMP reports from an independent contractor, 'ATOS', whose doctors have training in disability medicine and the application of the statutory criteria. The EMP, who normally makes a home visit, bases his report on interview, examination and observations. EMPs do not have the claimant's medical files available to them and will not have met the claimant before the examination takes place.

The Mobility Component:

- 9 There are two rates at which the mobility component may be paid – higher or lower. A claimant may be awarded one rate or the other but not both.
- 10 An award can only be made where the claimant will benefit from enhanced facilities for locomotion. This is liberally interpreted.

- 11 **Higher Rate (£49.10 per week):** This guide is confined to the criterion of virtual inability to walk as a route to entitlement to the higher rate of mobility. This is because the vast majority of appeals involve this issue.
- 12 **Virtual inability to walk:** The test is whether the claimant's **physical** condition, taken as a whole is such that ... :
- ◆ his ability to walk out of doors is so limited, as regards to
 - the distance over which; or
 - the speed at which; or
 - the length of time for which; or
 - the manner in which, he can make progress on foot without **severe discomfort**,
 - ◆ that he is virtually unable to walk.
- 13 The test envisages walking on ordinary pavements that are relatively flat. The claimant's individual circumstances are not taken into consideration. It is therefore irrelevant that he may live up a steep hill.
- 14 **Lower Rate (£18.65 per week):** The criteria is that the claimant is able to walk but is:
- so severely disabled physically *or mentally* that,
 - disregarding ability to walk on familiar routes on own
 - he cannot take advantage of the faculty of walking out of doors
 - without guidance or supervision from another person most of the time.
- 15 This rate applies to those with physical and/or mental disablement, and includes a wide range of problems such as blindness, agoraphobia, dizziness and disorientation arising from mental disability, epilepsy, and falling down while walking from a variety of causes. The list is open-ended.
- 16 Supervision may take various forms, but is basically passive. It may involve watching or monitoring to gauge the claimant's physical, mental or emotional state, a readiness to intervene and help, if needs be, to look out for obstacles or dangers, or distract, encourage, persuade or cajole him to walk or keep walking.
- 17 Guidance is more active, generally, and may entail physically leading the claimant or giving physical help with obstacles or dangers.
- 18 Where the reason a claimant cannot go out alone is fear or anxiety, the fear or anxiety must be, or proceed from, a mental disability.
- 19 Any walking on routes with which the claimant is familiar is disregarded. In other words, it is immaterial if the claimant can get to a local place that he knows well. On the other hand, it must be evidentially significant if he needs guidance or supervision even on familiar routes because of his disability.
- 20 The higher and lower rates of mobility have entirely distinct criteria. The lower rate cannot be awarded because the claimant has 'just missed' being virtually unable to walk.

The Care Component

- 21 There are three rates of this component - lowest, middle and highest.
- 22 **Lowest Rate (£18.65 per week):** This is for a person who either:
- requires attention from another person in connection with bodily function for a significant portion of the day, whether during a single period or a number of periods;
- or,

- cannot prepare a cooked main meal for himself if he has the ingredients (if 16 years of age or over).
- 23 **Middle Rate (£47.10 per week):** Entitlement can be based on fulfilment of either **day or night** conditions.
- 24 **Day conditions for the middle rate** are satisfied if the claimant has 'attention' or 'supervision' needs of the appropriate extent.
- 25 Daytime 'attention' needs are established when the claimant requires frequent attention throughout the day from another person in connection with bodily functions throughout the day.
- 26 Daytime 'supervision' needs are established when the claimant requires continual supervision throughout the day from another person to avoid substantial danger to himself or others.
- 27 A claimant cannot qualify for the middle rate of care by combining some daytime attention needs with some daytime supervision needs.
- 28 **Night conditions for the middle rate** are satisfied if the claimant shows *either* that:
- at night, he requires from another person prolonged or repeated attention in connection with bodily functions;
- or,
- at night, requires another person to be awake for a prolonged period, or at frequent intervals, to watch over him to avoid substantial danger to himself or others.
- 29 **Highest Rate (£70.35 per week):** This rate is payable to a claimant who has needs during the day and night such that he satisfies one of the daytime middle rate conditions and one night time condition.
- 30 The permutations:
- day attention + night attention
 - day attention + night watching over
 - day supervision + night attention
 - day supervision + night watching over
- 31 Satisfaction of the lowest rate of care plus night needs does not lead to any extra benefit. The claimant will only be entitled to the higher of the two rates, viz. the middle rate based on night needs only.

The terminology

- 32 A disabled person's condition may vary over time, with good days and bad days. It is therefore a matter of judgment whether the claimant satisfies the conditions throughout the period. There is no arithmetical formula, and a broad view must be taken.
- 33 **Requires:** 'Requires' means '*reasonably* requires'. A claimant may be getting a great deal of attention from family, friends or carers, but looked at objectively, may not reasonably need it because simple aids and devices may be available to enable him to manage independently. Alternatively, a claimant may not be getting any assistance at all (perhaps because he lives alone), but looked at objectively, may reasonably require it. However, a person who *is* managing at home on his own may have developed coping strategies, adapted to his disabilities or acquired aids and equipment such that he does not reasonably require help.

- 34 **Day and night:** 'Day' does not refer to a period of 24 hours. It means the period in which, in accordance with the domestic routine of the household, the household becomes active in the morning until it closes down for the night. As a generality, night is measured from the time the household closes down for the night.
- 35 **Significant portion of the day:** There is no arithmetical approach to deciding what is significant.
- 36 **Cannot prepare a main meal for himself:** The 'main meal' or 'cooking' test is gauged against the tasks involved in making a meal for oneself. It is irrelevant that the claimant cannot or would not cook. The test presupposes that the ingredients, suitably sized pots, pans and plates plus a range of ordinary or commonly available utensils are already conveniently located in the kitchen.
- 37 The main meal contemplated is reasonably labour intensive, made with freshly prepared ingredients on a traditional cooker. It can be prepared on the hob. There is no requirement that the claimant can use an oven. An ability to cut, chop, peel, stand and sit while preparing and cooking, use a pot/pan safely and remove food from the pan (using a slotted spoon, if necessary) are plainly relevant.
- 38 The use of a microwave as a cooking tool may be considered, so long as it is used to prepare a fresh meal and not just to heat up pre-packed convenience foods. The ability to use a microwave may, in itself, indicate sufficient levels of dexterity, agility and concentration from which to infer that the claimant could prepare his meal in a more traditional way. Other activities in which the claimant engages may enable the decision maker to make similar inferences.
- 39 **Attention:** This imports service of a close and intimate nature carried out in the presence of the disabled person. Where there is a problem of faecal or bladder incontinence, attention may include help with the immediate aftermath of an accident including helping the claimant to wash himself, change his clothes and bed linen and other essential cleaning up.
- 40 It is now beyond question that attention in connection with seeing (for the blind) and hearing (including communication, for the deaf) constitutes attention close and personal enough to count for the purposes of benefit.
- 41 **Bodily functions:** 'Bodily functions' connote the action of any organ or set of organs of the body, and include the operation of the senses. Non-technically, these are activities associated with personal care all of which a person who is not suffering from any disability does for himself. They do not include cleaning or shopping, as such are things normally done by one member of the household for the others.
- 42 Prompting and encouragement required to spur a disabled person to attend to his own bodily functions care *may* count towards attention needs. The level of the prompting/encouragement given, and whether they are reasonably required and stem from the disability, will obviously be crucial questions.
- 43 **Supervision:** Supervision is a more passive concept than attention, such as being in the same room with the disabled person and prepared to intervene if necessary, but not actually intervening save in an emergency. The supervisor must have a physical presence. It cannot be provided by telephone.
- 44 **'Continually'** is not the same as 'continuously'. The supervisor may be able to leave the claimant for short periods during which there will be no likelihood of danger, for example, leaving a person prone to falling sitting in an armchair for a short while, while the supervisor goes out on a quick errand.
- 45 **To prevent substantial danger to oneself or others:** This underlines the stringency of the test. If the claimant himself could take reasonable steps to eliminate a substantial danger,

no supervision will be required. Where a person suffers falls in unpredictable situations, the question of whether supervision is required is acute.

- 46 **Night needs: prolonged or repeated attention:** The test is broad brush, and there is no inflexible benchmark in determining whether the criteria are met – all the circumstances must be considered.
- 47 **Watching over** – This test requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over the claimant.

Attendance Allowance (AA)

- 48 As described above DLA is paid to claimants aged under 65. It comprises two levels of Mobility Component, and three levels of Care Component.
- 49 AA is paid to claimants aged over 65. It has two levels, both based upon reasonably required care or supervision needs. The criteria are identical to those for the middle and highest levels of DLA.
- 50 Note - There are two significant differences between DLA and AA:
- There is no mobility component nor an equivalent to Lowest Rate Care Component, but awards of these components in DLA made before the 65th birthday continue in payment if the eligibility criteria remain satisfied.
 - The claimant must have met the criteria for 6 (instead of 3) months before the claim.