Disability living allowance mobility component and hospital in-patients

Research Paper 96/111

29 November 1996

This paper summarises changes to the mobility component of disability living allowance for hospital in-patients, brought into force on 31 July by the *Social Security (Disability Living Allowance and Claims and Payments) Amendment Regulations 1996*.

Richard Cracknell
Social Policy Section

House of Commons Library

CONTENTS

A. Introduction

Under the former rules this benefit was generally not affected by a hospital stay. Regulations came into force on 31 July 1996 so that the allowance generally ceases after 4 weeks as an in-patient (12 weeks in the case of a child). They are due for debate on 5 December 1996.

Some transitional protection for existing recipients is provided as described in the note.

Further discussion of the regulations and more detailed summary of responses to the consultation exercise can be found in the *Report by the Social Security Advisory Committee on SI 1996/1436*[1]. This includes the regulations, an explanatory memorandum from the DSS on the original regulations, a summary of the representations made to the SSAC, the SSAC report on the regulations and the Secretary of State's statement on the report.

B. Disability living allowance - the former rules

Disability living allowance (DLA) is a benefit for disabled people. Its main features are:

- Available to both children and adults;
- Introduced in April 1992, replacing the old mobility allowance and attendance allowance for people under 65 with a single benefit;
- Aimed at people who need help looking after themselves and who have difficulty walking;
- Tax-free, not means-tested or related to national insurance contributions;
- Provided a person continued to satisfy the conditions of entitlement, the mobility component of DLA was unaffected by a hospital stay. The care component is not paid after 4 weeks for adults or 12 weeks for children.

---

[1] Cm 3233, June 1996

There are two elements to DLA:

- **a care component** for help with personal care needs, paid at three different levels;
- **a mobility component** for help with walking difficulties, paid at two levels. The higher rate is currently £33.90 pw and the lower £12.90 pw.

It is paid in addition to earnings or other income and generally the whole allowance is paid on top of any other social security benefits.

The regulations affect the mobility component. To qualify for this, a person must be over 5 and under 66 when they first claim. The must also be able, from time to time, to benefit from "facilities for enhanced locomotion"[2]. Thus a person who cannot be moved for medical reasons would not be eligible. They must also satisfy the disability conditions, detailed below:

DLA mobility component conditions of entitlement

For the higher rate a person must be:

either suffering from a physical disability such that they are unable to walk;

or suffering from a physical disability such that they are virtually unable to walk;

or both deaf and blind;

or a double amputee or have been born without feet;

or severely mentally impaired *and* have severe behavioural problems *and* qualify for the highest rate of disability living allowance care component.

For the lower rate a person needs to show that although they are able to walk they are so severely disabled, physically or mentally, that, ignoring familiar routes, they are unable to take advantage of their walking abilities outdoors without guidance or supervision from another person most of the time.

For both rates a person must have satisfied one of these conditions for at least the past 3 months and be likely to satisfy it for the next 6 months (unless they are terminally ill)

---

[2] Section 73 of the *Social Security Contributions and Benefits Act 1992*

C. Disability living allowance - the new rules

From 31 July 1996, the mobility component of DLA is no longer paid after 4 weeks of an in-patient stay (12 weeks for children).

The change was first announced briefly by Peter Lilley, Secretary of State for Social Security, in his 1995 statement on the uprating of benefits. Among a number of measures to remove anomalies, he proposed to "align the mobility component of disability living allowance more closely with similar benefits that are withdrawn during hospital stays."[3] The reasons for the change were explained in an accompanying press notice:[4]

> "DLA is intended to help with the extra costs arising out of a disability and the mobility component is primarily intended to help disabled people be independently mobile.
>
> Hospital patients, especially acute patients, have little scope to be independently mobile whilst in hospital and most of their needs are met by the NHS. Most other Social Security benefits are either withdrawn or reduced when a person goes into hospital to prevent duplicate provision from public funds. It cannot be right to pay people who are unable to use the benefit for the purpose intended and who are already having most of their needs met by the taxpayer.
>
> We believe the move is justified in ensuring that taxpayers' money goes to those best placed to benefit from it."

In the DSS' Explanatory Memorandum to the SSAC it was suggested that hospitals are accumulating large sums of money from unspent benefits paid to in-patients. Also, in some cases where the NHS was already meeting all a patient's needs, the allowance was being used to buy tobacco, cigarettes, sweets etc, rather than for mobility purposes. The DSS maintains this is evidence of the healthcare and social security systems overlapping, both providing for the same contingencies, and DLA as a result is either unspent or inappropriately spent.

1. Transitional protection

Partial protection was provided for some existing recipients of mobility component of DLA. The regulations include provision to continue to pay the mobility component **at the lower**

---

[3] HC Deb 29 Nov 95 c.1214

[4] DSS Press Notice 95/160, *Peter Lilley Brings Disability Living Allowance in line with other benefits* 29 Nov 1996

rate only to some patients who when the regulations come into force have been in hospital for more than 12 months.

Excluded, or partially excluded, from this protection are those who:

- are committed to a hospital following involvement in criminal proceedings or under sentence[5] and those who have been compulsorily admitted to hospital because of their need for care and treatment as a result of their mental disorder[6]. They will be excluded from the protection given to other long stay patients;

- use their mobility component to pay for a car under the Motability scheme. They will have their benefit paid at the higher of the lower rate or the level required to meet payments under the agreement for the hire or hire-purchase of the vehicle;

- have been a NHS in-patient for less than 12 months at the time of the change.

In his statement on the regulations, Peter Lilley argues "that it has long been accepted that a person's needs are fully met during a period of hospital treatment. Where no charge is made for that treatment, any payment of benefit intended to meet the same needs would amount to double provision from public funds. For this reason, most Social Security benefits are withdrawn or reduced after a period, commonly 6 weeks, of free in-patient treatment in a hospital or similar institution."[7]

DLA mobility component is unusual in being largely unaffected by a spell as a hospital in-patient. It is common for benefits to be reduced during hospital stays. Often this first takes place at six weeks or later. The proposals for DLA mobility component for those in hospital would align it with the care component and Attendance Allowance which are withdrawn after four weeks in the case of an adult. The payment of benefits for a short spell as an in-patient recognises that financial commitments do not necessarily stop when someone goes into hospital; also they avoid the administrative costs of making adjustments of benefits for short hospital stays. Appendix 1 shows how a spell as a hospital in-patient affects various non-means-tested benefits.

---

5 Sentenced prisoners are already excluded from benefit

6 Including those detained under Parts II and III of the *Mental Health Act 1983* or Parts V and VI of the *Mental (Scotland) Act 1984*.

7 Cm 3233 para 4

D. SSAC consultation and response

The proposed regulations were referred to the Social Security Advisory Committee (SSAC). The SSAC requested representations to be made in a consultation exercise ending on 12 February 1996. There were 189 responses and the overwhelming view of these was that the proposals were based on false information and should not be implemented. The SSAC concurred with this view and also thought the proposals would introduce many anomalies. Its main conclusion was that the proposals should not be proceeded with in their present form.

The SSAC also made a number of secondary recommendations, including:

- A more rigorous analysis of the appropriateness and availability of NHS funding for the mobility needs of patients should be carried out;
- Persons detained under Part II or III of the *Mental Health Act 1983* should have the same entitlement as other patients;
- Consideration should be given to patients who need to initiate or renew a Motability agreement before they are able to leave hospital;
- A more gradual downrating of the mobility component for long-stay patients should be examined.
- A linking rule should be introduced in determining the 12 month period for transitional protection;

The Government agreed with the last of these, and the regulations now allow people who are out of hospital for 28 days or less between in-patient stays to be treated if they had been continuously in hospital, and provision for this is now contained in the regulations[8]. However they were unable to accept the other recommendations and considered the overall case for change to be "compelling".[9]

The final regulations were laid before Parliament on 7 June 1996 and came into force on 31 July 1996.[10]

---

8 Regulation 2(2)

9 Cm 3233, Statement by the Secretary of State para 41

10 SI 1996 1436

E. Reactions to the regulations

The overwhelming view of respondents to the SSAC consultation exercise was that the proposals were based on false information and should not be implemented, also that implementation of the proposals would cause individual patients financial hardship and could lengthen their stay and thus increase other areas of public expenditure.[11]

The main concerns of respondents underlying their views were:

- False assumptions made about the lack of mobility needs of long-stay patients and the meeting of them by the NHS. The fact finding exercise carried out by the DSS was fundamentally flawed in not talking to patients or those directly responsible for their day-to-day care;

- Alignment with DLA care component ignores separate benefit history and objectives. While it is easy to argue the NHS provides for the care needs of a patient and to give benefit for these would be 'double provision', it is less clear that the NHS provides for all mobility needs in the same way.

- Long-stay patients, particularly, are often in hospitals in isolated areas and mobility component can be used to enable them to make and receive visits. This is even more important where children are involved;

- There is evidence that in many cases the mobility component is used imaginatively and constructively to enhance the quality of life of long-stay patients. Unspent balances are evidence of poor organisation and provision rather than lack of mobility need;

- Patients in NHS-provided homes and hospitals will be worse-off than those in homes provided by other bodies even though care provided and needs may be similar. The proposals run counter to the efforts to transfer care from hospital to community-based;

- Transitional protection does not include people who have been in hospital for less than a year who will lose benefit at 4 weeks. Also the exclusion of those in special hospitals, secure units and those detained in low/no security hospitals effectively puts them in the same position as convicted prisoners (who are already barred from benefit) rather than patients;

- Restriction of protection to those who have a vehicle via Motability excludes anyone who has similar private arrangements. Also that it will not be possible to renew a Motability agreement while in hospital;

---

[11] Cm 3233 Appendix 2

- It is already possible under existing legislation[12] to deny benefit to claimants who are unable to benefit from enhanced mobility. The reasons given by the DSS are not sufficient to justify the regulations.

A fuller summary of representations made to the SSAC appears in its report.[13]

F. Numbers affected and savings

The DSS estimates some 40,000 people would have their benefit payments of mobility component reduced or withdrawn: 25,000 people on the higher rate who would have been in hospital for 12 months or more at the time of the change would have their payments reduced; 15,000 who are either in-patients of less than 12 months or new cases would have benefit withdrawn.[14]

Within the group of patients who have been in hospital for more than 12 months are around 3,000 patients in special hospitals or secure units whose payments would cease.

Around 35,000 patients receiving the lower rate who would have been in hospital for 12 months or more at the change will see no variation in their benefit.

The savings from the change are put at £25 million in 1996/7 and £40 million in 1997/8. Around three-quarters of the savings are due to the change in the rules for adults and a quarter from the change as it affects children.[15]

A number of respondents to the consultation exercise questioned whether the cost of the change can be measured entirely in terms of benefits no longer paid. They pointed out that some of the savings could be offset by additional costs faced by the NHS if the change results in prolonging the length of stay of patients or hindering efforts to provide rehabilitation.

---

[12] Section 73 *Social Security Contributions and Benefits Act 1992*

[13] Cm 3233 Appendix 2

[14] DSS Explanatory Memorandum to the SSAC

[15] HC Deb 23 April 1996 c135W

Appendix 1

Effect of hospital stays on non-means-tested benefits

	Time in hospital				
Benefit	**At least 1 day**	**4 weeks**	**6 weeks**	**12 weeks**	**1 year**
Statutory sick pay Statutory maternity pay Maternity allowance	Paid for only a limited period only, otherwise unaffected by a stay in hospital				
Incapacity benefit Severe disablement allowance Retirement pension Widowed mother's allowance Widow's pension	If (non-spouse) adult dependent is in hospital, dependent's increase generally stops Benefit for people admitted from local authority homes reduced to £12.25pw	No further change	Benefit reduced to £24.50pw (unless patient has dependents - when reduced by £12.25pw) If dependent spouse is in hospital, dependent's addition where paid is reduced by £12.25pw or to £12.25 whichever is most beneficial	If dependent child is in hospital, dependent's increase only continues only if the claimant is still contributing to his/her maintenance	Benefit reduced to £12.25pw

	Time in hospital				
Benefit	**At least 1 day**	**4 weeks**	**6 weeks**	**12 weeks**	**1 year**
Disablement benefit	No change	Constant attendance allowance stops	Unemployability supplement is reduced in the same way as incapacity benefit	No further change	Unemployability supplement is reduced in the same way as incapacity benefit
Invalid care allowance (where carer hospitalised)	No change			Benefit stops	
Child benefit and one parent benefit	No change			Benefit continues as long as the patient is still contributing to the maintenance of the child	
DLA (mobility component)	No change	Benefit stops if claimant 16 or over		If claimant under 16 benefit stops	
DLA (care component) Attendance allowance	No change	Benefit stops if claimant 16 or over		If claimant under 16 benefit stops	

Recent Research Papers

96/101	The Education Bill [Bill 8 of Session 1996/97]	06.11.96
96/102	Controls on Firearms: The Firearms (Amendment) Bill	08.11.96
96/103	Landfill	08.11.96
96/104	Hong Kong: The Final Stages	13.11.96
96/105	Unemployment by Constituency - October 1996	13.11.96
96/106	The Working Time Directive	19.11.96
96/107	The Social Security Administration (Fraud) Bill [Bill 15 of 1996/97]	20.11.96
96/108	Economic Indicators	25.11.96
96/109	Personal Tax Allowances & Reliefs 1997-98	27.11.96
96/110	Economic & Monetary Union [not yet printed]	