Chapter P3: Hospitals, similar institutions and care homes

Contents

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Hospitals and similar institutions

Definition of a hospital

P3001 A hospital[1] is any of the following

1. an institution for the reception and treatment of

1.1 persons suffering from illness

1.2 persons during convalescence

1.3 persons needing medical rehabilitation

2. a maternity home

3. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 H&PSS (NI) Order 72, art 2(2)

Hospital in-patient

P3002 To be treated as a hospital in-patient a person must be receiving

1. medical treatment (for example surgical treatment or administration of drugs and/or injections) **or**

2. other treatment which includes nursing services by professionally trained staff in the form of observation, therapy, support appropriate to the person's needs, advice and training in domestic and social skills.

It does not include straightforward personal care and attention by medically unqualified staff.

A similar institution

P3003 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the decision maker should decide as a question of fact whether it is similar to a hospital taking into account

1. the purpose of the institution **and**

2. the type of treatment provided **and**

3. the level of care offered.

P3004 – P3009

Rules on payability for hospitals and similar institutions

P3010 No amount in respect of the daily living component or mobility component is payable for any claimant who is an in-patient[1] at a hospital or similar institution, where any of the costs are paid out of public funds. This is subject to the 28 day rule, see ADM Chapter P4.

1 WR (NI) Order 15, art 91(1); PIP Regs (NI), reg. 29(1)

P3011 For the purposes of P3010 the costs of treatment, accommodation and any related service are borne out of public funds if the claimant is undergoing medical or other treatment as an in-patient in

1. a hospital or similar institution under specified legislation[1] **or**

2. a hospital or similar institution maintained or administered by the Defence Council[2].

1 WR (NI) Order 15, art 91(2); H&PSS (NI) Order 72; 2 PIP Regs (NI), reg 29(2)

P3012 A claimant is treated as being maintained in a hospital or similar institution, where costs are borne out of public funds unless

1. accommodation and services are being provided for that person as a private patient **or**

2. the person is meeting the full cost of their maintenance as a private patient in a private hospital.

Claimants who enter a hospital or similar institution under the age of 18

P3013 If a claimant enters the hospital or similar institution under the age of 18 payments of Personal Independence Payment will continue[1]

Note: A claimant who reaches the age of 18 whilst they are a hospital in-patient will continue to be paid Personal Independence Payment even after the age of 18 provided that particular stay in the hospital or similar institution commenced when the claimant was under the age of 18

1 PIP Regs (NI), reg 29(3)

Example 1

Peter turned 16 on 30.6.16 and subsequently made a claim to Personal Independence Payment. The decision maker decided that Peter was entitled to the standard rate of both the daily living and mobility component of Personal Independence Payment from 8.8.16 - 7.8.18. On 9.9.16 Peter enters hospital as an in-patient and remains there for 6 months. His Personal Independence Payment is not stopped during this period as he was under the age of 18 when he entered the hospital as an in-patient.

Example 2

Anastasia is aged 17 and was awarded the enhanced rate of the daily living component of Personal Independence Payment for the period 1.7.16 - 30.6.19. She entered hospital on 10.10.16 and remained there as an in-patient until 10.12.16 when she was discharged. Whilst in hospital she turned 18 on 10.11.16. Anastasia's Personal Independence Payment will not be stopped for the period 10.10.16 - 10.12.16 as she was under the age of 18 when she entered the hospital as an in-patient. Anastasia is discharged and then re-enters hospital as an in-patient on 1.1.17 and remains there until 1.3.17. However, for this second spell in hospital her Personal Independence Payment will be stopped after 28 days as she was over the age of 18 when she entered the hospital as an in-patient. Her Personal Independence Payment is therefore stopped from 30.1.17 and payment will not recommence until 1.3.17.

P3014 – P3018

Hospices

Definition of a hospice

P3019 A hospice[1] is a hospital or other institution, whose primary function is to provide palliative care for residents who have a progressive disease in its final stages.

1 PIP Regs (NI), reg 30(4)

P3020 A hospital or other institution is not a hospice[1] if it is

1. a hospital under the Health and Personal Social Services (NI) Order 1972 or the Health and Personal Social Services (NI) Order 1991 **or**

2. a hospital maintained or administered by the Defence Council **or**

3. an institution similar to **1.** or **2.**[2].

1 PIP Regs (NI), reg 30(4); 2 reg 30(4)(b)

Rules on payability for hospices

P3021 Personal Independence Payment is payable to a person who is terminally ill and living in a hospice, provided that the decision maker has been informed that the person is terminally ill

1. on a claim for Personal Independence Payment **or**

2. on an application for revision or supersession of an award of Personal Independence Payment **or**

3. in writing in connection with an

3.1 award **or**

3.2 claim **or**

3.3 application for revision or supersession[1].

1 PIP Regs (NI), reg 30(3)

Note: P3021 does not apply if the person is not entitled to Personal Independence Payment under the terminal illness rules (see ADM P2076 - P2079).

P3022 Where the person is not entitled to Personal Independence Payment under the terminal illness rules (see ADM P2076 - P2079) the decision maker should consider whether the rules on payability apply instead for

1. a hospital or similar institution[1] **or**

2. care homes[2].

1 PIP Regs (NI), reg 29; 2 reg 28

P3023 – P3025

Care Homes

Definition of a care home

P3026 A care home is an establishment that provides accommodation together with nursing or personal care[1], for people who

1. are or have been ill **or**

2. have or have had a mental disorder **or**

3. are disabled or infirm **or**

4. are or have been dependent on alcohol or drugs.

1 WR (NI) Order 15, art 90(3)

P3027 The nursing or personal care[1] may be provided or subsidised in whole or in part from public or local funds under specified enactments for qualifying services, such legislation is used by

1. Boards/Trusts **and**

2. Education Authorities.

Note: Please refer to P3029.

1 WR (NI) Order 15, art 90(3)

P3028 The decision maker should consider a range of evidence to determine whether on the balance of probabilities whether the establishment is a care home. The following table has been devised to assist the decision maker with this.

More likely to be a care home	**Less likely to be a care home**
Described as care home, establishment, or similar institution.	Described as supported living, adult placement. Communal dwelling where main provision is accommodation and anything extra is tailored support to enable independent living.
Accommodation and care provided by same provider, same legal entity or as one service. Any tendering process did not allow different unconnected organisations to tender for the care and for the accommodation. [If two legal bodies, check whether they have registered as a partnership for the regulated activity of accommodation together with nursing or personal care.]	Separate bodies providing accommodation and care. Provision of accommodation separate from provision of care; e.g. care provided by domiciliary care agency.

More likely to be a care home	Less likely to be a care home
Mutual reliance or coordination between two functions of accommodation and care. E.g. person receiving accommodation is dependent on receiving care from accommodation provider or associated company body and vice versa.	Lack of reliance and coordination between two functions of accommodation and care.
Not a private dwelling (although claimant may have own room within establishment).	Claimant living in own private dwelling or dwelling of carer.
No tenancy agreement (although claimant may have to sign behavioural or management agreement in order to receive accommodation and care). If there is a tenancy or management/ framework agreement, rights of occupation should be linked to care so it is clear they are being provided as one service.	Claimant has tenancy agreement with landlord or provider of accommodation. Any agreement should show clear separation between accommodation and care.
Claimant pays nothing towards accommodation or care costs.	Claimant pays private rent or housing benefit towards accommodation costs.

Note: None of these factors is absolutely decisive on their own. The decision maker needs to make a judgement based on the whole picture and the sum total of multiple factors.

Rules on payability for care homes

General

P3029 The daily living component is not payable where the claimant is resident in a care home **and** <u>any</u> of the costs of qualifying services provided for the claimant are met out of public or local funds[1] by virtue of specified enactments[2].

Note 1: See P3031 for guidance on qualifying services.

Note 2: See Appendix 1 to this Chapter for a care home payability flow chart.

1 WR (NI) Order 15, art 90(2); 2 H&PSS (NI) Order 72, arts 5, 15 & 36; The Mental Health (NI) Order 86; Carers and Direct Payments Act (NI) 02, sec 8; PIP Regs (NI), reg 28(2)

P3030 If it is determined that a claimant is in a care home where <u>any</u> of the costs of qualifying services are met out of public or local funds, then any Personal Independence Payment daily living component will not be payable if the claimant

was residing in that accommodation at the date of claim or following the first 28 days of their stay[1] (see ADM P4016).

1 PIP Regs (NI), reg 30 (1)

Qualifying services

P3031 Qualifying services[1] for the purposes of P3029 are

1. accommodation **and**

2. board **and**

3. personal care **and**

4. such other services as may be prescribed.

Note: There are no other services prescribed at present.

1 WR (NI) Order 15, art 90(4)

Direct payments

P3032 Health Trusts may make payments for care needs, including residential care, directly to the disabled person[1]. The person uses the payments to make their own arrangements for care services. Direct payment may not be made

1. where care services are provided by any of the person's family living in the same household[2]

2. for periods in residential care exceeding four weeks in twelve months[3].

Where a person has made their own arrangements for entering a care home using a direct payment, then this is treated as being borne out of public or local funds. Periods paid for by direct payments should be added to other periods in a care home provided by a Health Trust.

1 Carers and Direct Payments Act (NI) 02;
2 The Personal Social Services and Children's Services (Direct Payments) Regs (NI) 04, reg 7(1); 3 reg 8(1)

P3033 – P3040

Funding exceptions

P3041 Where any of the costs of any qualifying services are borne out of public or local funds by virtue of specified legislation[1] P3029 applies. This includes any enactment relating to persons under a disability or to young persons or to education or training. However P3029 does not apply where the cost of any qualifying service is met out of public or local funds under specified legislation for

1. to grants in aid of educational services or research[2] **or**

2. financial assistance for purposes related to education or children[3] **or**

3. assisting persons to take advantage of educational facilities or grants to education authorities[4].

1 PIP Regs (NI), reg 28(2); 2 reg 28(2)(d)(i); The Education and Libraries (NI) Order 86, art 50 & 51;
3 PIP Regs (NI),reg 28(2)(d)(ii); The Education and Libraries (NI) Order 93, art 30;
4 PIP Regs (NI), reg 28(2)(d)(iii); The Education (Student Support) (NI) Order 98, art 3

P3042 Furthermore, P3029 does not apply

1. for any period during which the Board/Trust places a person in a private dwelling with a family, or with a relative or suitable person[1], provided the person is under 18 years old **and**

1.1 specific legislation[2] (impairment of health and development) applies because the claimant's health is likely to be significantly impaired, or further impaired without the provision of services **or**

1.2 specific legislation[3] (disability) applies because services are required for children in need of care and attention due to disability **or**

2. where accommodation is provided outside the United Kingdom and the cost is met wholly or partly by a Board/Trust under certain legislation[4].

1 PIP Regs (NI), reg 28(4); 2 reg 28(3)(a)(i); The Children (NI) Order 95 art 17(b);
3 PIP Regs (NI), reg 28(3)(a)(ii); The Children (NI) Order 95 art 17(c);
4 PIP Regs (NI), reg 28(3)(b); The Education (NI) Order 96, art 11

P3043 – P3046

Self-funders

P3047 Personal Independence Payment daily living component and the mobility component will be payable for any period during which the whole costs of all the qualifying services are met

1. out of the resources of the person for whom the qualifying services are provided **or**

2. partly out of that person's own resources and partly with the assistance from another person or charity **or**

3. on that behalf by another person or a charity[1].

1 PIP Regs (NI), reg 30(5)

People with homes to sell or who await other release of funds

P3048 People who enter a care home for the first time may have a home to sell, or other capital assets. The available assets or value of a property are taken into account by the Board/Trust when assessing payment of care home fees.

P3049 When a person first enters a care home the decision maker is required to establish who is funding their stay and will this change. This information should be obtained from the Board/Trust.

Note: Payment should be suspended until all **reasonable** enquiries are made. Every effort should be made to resolve the issue as soon as possible and the benefit put into payment or a payability decision made.

Example 1

Jim was receiving the enhanced rates of both the daily living and mobility components. His representative informed the decision maker that he had entered a care home and would not be coming home. The decision maker ascertained that the Board/Trust was at present funding Jim, and there was no indication that there would be any change to this arrangement. Jim's Personal Independence Payment was paid for the first 28 days in the care home, and then suspended until these reasonable enquiries had been made. The suspension was then lifted and a payability decision was given ceasing payment of the daily living component, but payment of the mobility component continued.

Example 2

Hannah was in a care home but her daughter still lived in the family home. When the decision maker made enquiries to the Board/Trust, although there was a property involved, there was some dispute over ownership. As such the Board/Trust had not yet decided if Hannah had any assets to fund her own stay and they continued to fund in the meantime. The decision maker decided that as the Board/Trust were funding, Hannah was entitled to the enhanced rate of the daily living component and standard rate of the mobility component. The daily living component was not payable however, whilst she is in the care home. At the same time they put a 12 month case control in place to assess the situation at a later stage. On activation of the case control the decision maker made enquires to the Board/Trust who informed him that it had been decided that Hannah did have property and that they had placed a charge on it from the date of her arrival at the home. The decision maker decided that as Hannah has been self-funding the original decision should be revised, as it had been made with incomplete evidence,

and made payment of arrears of the daily living component from the date she had been charged for. As the decision maker is aware that Hannah's funding is not indefinite a further case control is set for 24 months to check on the funding status at that time.

Example 3

Damien was placed in a care home and the decision maker made enquiries as to the nature of the funding of his care home fees. Whilst these enquiries were being made the payment of his enhanced rates of daily living and mobility components of Personal Independence Payment were paid for the first 28 days, and then his daily living component of Personal Independence Payment was suspended. On enquiries being made it was established that the Board/Trust was paying for Damien's stay and was not considering self-funding. On these findings the decision maker decided that the claimant could not be a self-funder and therefore the payment of his enhanced rate of daily living component was ceased from the date of the suspension, but his mobility component continued to be paid. Two years later Damien received an inheritance of a property from his great aunt. The decision maker was not informed immediately and it was only on a review of the benefit that it was established that Damien was now paying his own care home fees, as the property had been sold and the Board/Trust had entered into an agreement with Damien's representative. On this information the date the care home fees were being paid to the Board/Trust from was established and regulation provisions were used to supersede. As there had been a change of circumstances with the inheritance it could not be said that the original decision was made with incomplete evidence.

Background information

P3050 If there is a property involved the full market value of the property is taken into account in the assessment, less 10% for selling costs and any mortgage or loan secured on it[1] where the claimant is the sole owner of a property.

Note: The Board/Trust will make this calculation and advise the amount of repayment required.

1 Health and Personal Social Services (Assessment of Resources) Regs (NI) 93, reg 23(1)

P3051 Until the property is sold the person will probably not be able to meet all the assessed liability to pay for the accommodation. The Board/Trust may put a charge on the property. Once it is sold, the debt owing to the Board/Trust is repaid. Where

1. a claimant is in a care home being funded by the Board/Trust pending the sale of a property or other release of funds **and**

2. the fees will be repaid to the Board/Trust out of the proceeds of the sale of the property or release of funds.

Benefits should be paid unless and until the point is reached where there is a real risk that the proceeds are inadequate to make full repayment.

P3052 The value of the property is disregarded by the Board/Trust for the first twelve weeks from when permanent admission commences.

P3053 For the first 12 weeks of any such arrangement the condition in P3051 **2.** will not be satisfied as the Board/Trust will disregard the value of the property as in P3051 and the person will not have to repay the Board/Trust. If the Board/Trust is funding during this period payment of Personal Independence Payment daily living component should be removed from the appropriate date.

P3054 For the purposes of P3049, conditions for payment of benefit will be satisfied if any evidence exists of an agreement to repay the Board/Trust from the sale proceeds or release of funds. However, for the purposes of community care law there is no need for a prior agreement to repay fees to the Board/Trust.

Note: In cases of uncertainty as to the entitlement to benefit, the benefit should be suspended.

P3055 In cases where sales arrangements become prolonged a risk may arise that the sale proceeds will not cover the accrued debt to Board/Trust. Once such a point is reached P3051 **2.** is no longer satisfied. In such circumstances the benefit award must be superseded to remove payability.

P3056 The effective date of the decision to remove payment of benefit is the date of change[1]. That date will be the point at which the accrued debt to the Board/Trust becomes greater than the value of the property as calculated in P3052. Personal Independence Payment daily living component may however remain payable for the first 28 days of Board/Trust funding in accordance with ADM P4016, ADM Chapter P4.

1 UC, PIP, JSA & ESA (D&A) Regs (NI), Sch 1, part 2, para 12

P3057 – P3060

Whether the claimant is in a similar institution to a hospital or care home

P3061 When considering whether a claimant is in a care home or in a similar institution to a hospital it is necessary for the decision maker to consider whether the claimant's medical and other treatment (see P3002), and whether the accommodation is fully funded by the Board/Trust. The decision maker will need to consider all the information on the arrangements and funding of the claimant's stay, including whether there has been an assessment of the claimant's care needs. If it was determined that the claimant was in a similar institution to a hospital then any amount of Personal Independence Payment would not be payable if the claimant was residing in that accommodation at date of entitlement or following the first 28 days of their stay.

Example

John is a 35-year-old man with severe learning difficulties, requiring 24-hour support. He has been in a long stay hospital since 2006 and has been assessed as requiring continuing health care. Arrangements are being made to move him to a care home. John requires regular medical or other treatment on the premises of the care home, and the Board/Trust will continue to be responsible for fully funding his care and accommodation. The decision maker obtains all the facts and determines the claimant is in a similar institution to a hospital. The claimant is entitled to Personal Independence Payment but it is not payable.

Care homes funded by the Health Trust

P3062 To help determine if the establishment is a similar institution to a hospital, decision makers must determine whether the claimant receives on the premises medical or other treatment

1. provided by doctors, qualified nurses or other health professionals employed or otherwise engaged at the establishment **or**

2. under the direct supervision of a qualified doctor, nurse or nurses at the establishment[1].

Where both **1.**and **2.** apply decision makers should treat the care home as a similar institution to a hospital and follow the guidance at P3010-12.

Where both **1.** and **2.** do not apply the decision maker should continue to treat the establishment as a care home and the daily living component would not be payable in accordance with P3029.

1 SSWP v Slavin [2011] EWCA Civ 1515; PIP Regs (NI), reg 29(2)

Example 1

James is entitled to the enhanced rate of both the daily living and mobility component of Personal Independence Payment. He informs the decision maker that he has moved into a care home for the next 6 months and his stay is funded by the Health Trust. The decision maker makes enquiries and determines that the care home employs 1 doctor and 2 nurses who administer medication to James on a daily basis on the premises of the care home. The decision maker therefore decides that the care home should be treated as a similar institution to a hospital and therefore both the daily living and mobility components of Personal Independence Payment are not payable after 28 days from the day he entered the care home.

Example 2

Jasmine is entitled to the standard rate of both the daily living and mobility component of Personal Independence Payment. She informs the decision maker that she entered a care home on 1.6.16. Jasmine's stay at the care home is funded by the Health Trust. After making further enquiries the decision maker establishes that there are no medical professionals employed by the care home and care workers provide daily care for Jasmine and her General Practitioner visits her once a fortnight on the premises. The decision maker decides that the care home should not be treated as a similar institution to a hospital and therefore in accordance with P3029 the daily living component of Personal Independence Payment is not payable from 30.6.16. The mobility component of Jasmine's Personal Independence Payment award remains payable whilst she is a resident in the care home.

Appendix 1

Care home payability flow chart