

Chapter 61 - Attendance Allowance and Disability Living Allowance

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Chapter 61 - Attendance Allowance and Disability Living Allowance

General rules on entitlement

Introduction

Attendance Allowance

61001 Attendance Allowance is a benefit designed to help severely disabled people who need

1. attention from another person **or**
2. supervision from another person **or**
3. another person to watch over them.

61002 There is only one Attendance Allowance component made with two rates which are

1. the higher rate **and**
2. the lower rate.

Severely disabled people may be entitled to either of these rates. The rate depends on the level of attention, supervision or watching over a person needs¹.

1 SS C&B (NI) Act 92, sec 64

61003 – 61007

Disability Living Allowance

61008 Disability Living Allowance is a benefit that depends on a person's need for care and help with mobility arising from a disability¹. It is the functional deficiency, physical or mental **and** whether

1. care needs **or**
2. mobility needs **or**
3. both care and mobility needs

which result from the functional disability satisfy any of the entitlement conditions².

1 R(DLA) 3/06; 2 SS C&B (NI) Act 92, sec 72(1)(a) to (c) & 73(1)(d)

Example

Amy, aged nine, has behavioural problems and learning difficulties. Medical evidence indicates mental health problems but there is no diagnosis as to the disabilities which Amy suffers. The decision maker accepted that, despite no diagnosis, Amy was unable to control her behaviour and was at risk of substantial danger requiring continual supervision throughout the day. The decision maker accepted that the supervision Amy required was substantially in excess of a nine year old who does not have Amy's disability.

61009 Disability Living Allowance is made up of two components. These are

1. the care component **and**
2. the mobility component.

A disabled person may be entitled to one or both components. See guidance in DMG 61603 for claims with evidence of one component only.

61010 There is a range of disability conditions relating to care and mobility needs. Satisfying any one of the conditions gives entitlement.

61011 There are three rates of the Disability Living Allowance care component and two rates of the Disability Living Allowance mobility component. The rate of benefit payable depends on which of the disability conditions are satisfied.

Primary qualifying conditions

61012 The three primary qualifying conditions which apply to Attendance Allowance and Disability Living Allowance are

1. age **and**
2. residence, presence and competency **and**
3. disability.

Although there is no formal order of consideration of these conditions, if either of the first two are not satisfied, then the third need not be considered.

Age

61013 To be entitled to Attendance Allowance a person must be

1. pensionable age or over **and**
2. not entitled to Disability Living Allowance or Personal Independence Payment¹.

Note: From 6.12.18² the age condition changed from age 65 to pensionable age³. See DMG Chapter 75 for guidance on the meaning of pensionable age.

1 SS C&B (NI) Act 92, sec 64(1); SS (DLA) Regs (NI), Sch 1, para 7; WR (NI) Order 15, art 82; PIP Regs (NI) 16, reg 25-27; 2 Pensions Act (NI) 08, sec 11; 3 SS C&B (NI) Act 92, sec 75(1)

61014 To be entitled to Disability Living Allowance a person must be

1. under pensionable age **and**
2. in the case of
 - 2.1 the lower rate of the mobility component, aged five or over (see DMG 61251 et seq) **or**
 - 2.2 the higher rate of the mobility component, aged three or over (five years or over before 9.4.01).

Note: From 6.12.18¹ the age condition changed from being under age 65 to being under pensionable age². See DMG Chapter 75 for guidance on pensionable age.

1 Pensions Act (NI) 08, sec 11; 2 SS C&B (NI) Act 92, sec 75(1)

The residence and presence and competency conditions

61015 **[See DMG Memo Vol 2/108 & 10/89]** To become entitled to Attendance Allowance or Disability Living Allowance a person must satisfy the conditions of residence and presence conditions and competency condition, under United Kingdom law (see DMG Chapter 07).

Day for payment of Attendance Allowance and Disability Living Allowance

Attendance Allowance

61016 Attendance Allowance is a weekly benefit payable on Mondays unless

1. it is linked with another benefit **and**
2. the decision maker arranges for it to be paid on that benefits payday¹.

There are also circumstances when Attendance Allowance can be paid daily (see DMG 61881 et seq)

1 SS (C&P) Regs (NI), reg 22(3) & Sch 6

Disability Living Allowance

61017 Disability Living Allowance is a weekly benefit, payable on Wednesdays, unless

1. it is combined with another benefit **and**
2. the decision maker arranges for it to be paid on that benefit's payday¹.

1 SS (C&P) Regs (NI), reg 22(3) & Sch 6

61018 The amount payable is the total of the care component and mobility component awarded. It is normally paid 4 weekly (see DMG 61017 for exceptions). But in certain cases it can be paid on a daily basis (DMG 61881 et seq).

61019 Following the transition from Attendance Allowance to Disability Living Allowance, former Attendance Allowance recipients retained the right to weekly payments and Monday paydays. If Disability Living Allowance is combined with another benefit, it is paid at the same interval as the other benefit.

Provision of national insurance number

61020 For Attendance Allowance and Disability Living Allowance there is a specific requirement¹ for a claimant to provide sufficient information or evidence to establish their national insurance number. See DMG Chapter 02 for full guidance.

1 SS (NI) Act 92, sec 1(1A) & (1B)

Medical advice

Customer Case Management Adult and Children's Medical Guidance

- 61021 General information on the likely care and mobility needs arising from the more commonly occurring medical conditions can be found in the Customer Case Management Adult and Children's Medical Guidance.
- 61022 The Medical Guidance is available to all decision makers. They are produced by Medical Policy in consultation with
1. the Disability Living Allowance Advisory Board **and**
 2. many organisations representing disabled people and health professionals.
- 61023 The Medical Guidance provides information which can help the decision maker to understand the evidence provided on claims. It is also useful in helping the decision maker to decide when and from whom to seek further medical advice. References to the Medical Guidance will be made in this Chapter.

Referrals for medical advice

- 61024 If the decision maker has difficulty in interpreting the medical evidence the case may be referred to a Medical Officer for advice. In the event of an appeal, this advice should be put before the tribunal for comment. Decision makers should consider the guidance in DMG Chapter 03 when giving consideration to a medical opinion. Where the Medical Officer's advice conflicts with the claimed needs, the decision maker should consider whether further evidence needs to be obtained.

Note: The Medical Officer has no authority to determine claims and cannot advise directly on whether a person satisfies one of the disability tests.

- 61025 Before submitting a case to a Medical Officer, the decision maker should be clear on why help is needed. Examples of cases where Medical Services may help are where
1. there is a discrepancy between
 - 1.1 the description of the effects of a particular condition in the Medical Guidance **and**
 - 1.2 any evidence submitted by the claimant **or**

2. there are inconsistent statements in the claim pack **or**
3. there is a corroborative statement which is inconsistent with claimed needs **or**
4. the medical condition does not appear in the Medical Guidance **or**
5. a prognosis is needed to help in determining duration of award **or**
6. there is doubt as to what type of further evidence may be needed.

61026 Any request for medical advice should normally contain

1. a brief explanation of the problem **and**
2. a list of the evidence **and**
3. any authorities consulted.

All sources of reference should be shown. This indicates to the Medical Officer how far the decision maker has progressed in the investigations.

61027 The questions should refer specifically to the effects of the medical conditions in each individual case. General inquiries about disability needs arising from a particular medical condition should be avoided where possible. General advice may not always be relevant and may be misleading.

Examination and report

61028 If the evidence in the claim form and advice from the Medical Officer is still insufficient to decide the disability questions, the decision maker may

1. request further evidence such as a report from the General Practitioner's or hospital's records
2. request a health care professional's examination report¹.

Note: The decision maker may request other reports, for example from a physiotherapist, as necessary.

1 SS (NI) Order 98, art 19(1)(a)

61029 Reports will be provided by a health care professional approved by the Department¹. A health care professional¹ is a

1. registered medical practitioner **or**
2. registered nurse **or**
3. registered occupational therapist or physiotherapist² **or**
4. member of such other regulated profession³ as prescribed.

Note: For the purposes of 4. no other professions have been prescribed as health care professionals at present.

*1 SS (NI) Order 98, art 2(2); 2 Health Act 1999, sec 60;
3 NHS Reform & Health Care Professions Act 2002, sec 25(3); SS (NI) Order 98, art 2(2)*

Failure to attend for or submit to examination

61030 The decision maker must decide the claim or revise the decision against the person¹ if the decision maker refers the person to a Medical Advisor or health care professional (see DMG 61028) **and** the person fails to attend for examination without good cause.

Note: Further information on medical evidence can be found at DMG Chapter 01.

1 SS (NI) Order 98, art 19(3)

61031 – 61050

Attendance Allowance and Disability Living Allowance care component

The disability conditions

61051 To satisfy the disability conditions for Attendance Allowance, a person must need¹

1. attention from another person **or**
2. supervision from another person **or**
3. another person to watch over them.

1 SS C&B (NI) Act 92, sec 64(2) & (3)

61052 To satisfy the availability conditions for the Disability Living Allowance care component, a person

1. must need¹
 - 1.1 attention **or**
 - 1.2 supervision **or**
 - 1.3 watching overas in DMG 61051 **or**

2. cannot prepare a cooked main meal even if they have the ingredients².

1 SS C&B (NI) Act 92, sec 72(1)(b) & sec 72(1)(c); 2 sec 72(1)(a)(ii)

The day condition

61053 The day condition is satisfied if a person is so severely disabled physically or mentally that, they require from another person

1. frequent attention throughout the day in connection with bodily functions¹ **or**
2. continual supervision throughout the day in order to avoid substantial danger to themselves or others².

1 SS C&B (NI) Act 92, sec 64(2)(a); sec 72(1)(b)(i); 2 sec 64(2)(b), sec 72(1)(b)(ii)

The night condition

61054 The night condition is satisfied if a person is so severely disabled physically or mentally that, **at night** they require

1. prolonged or repeated attention in connection with bodily functions from another person¹ **or**
2. another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over them in order to avoid substantial danger to themselves or others².

1 SS C&B (NI) Act 92, sec 64(3)(a), sec 72(1)(c)(i); 2 sec 64(3)(b); sec 72(1)(c)(ii)

Rates of Attendance Allowance

Higher rate

- 61055 Attendance Allowance is payable at the higher rate if a person satisfies **both** the day condition and the night condition or is terminally ill (see DMG 61491 et seq)¹.

1 SS C&B (NI) Act 92, sec 65(3)

Lower rate

- 61056 Attendance Allowance is payable at the lower rate if a person satisfies **either** the day condition **or** the night condition¹.

1 SS C&B (NI) Act 92, sec 65(3)

61057 – 61060

Rates of Disability Living Allowance care component

Highest rate

- 61061 The highest rate is payable to people who are so severely disabled physically or mentally that they satisfy the day condition (DMG 61053) **and** the night condition (DMG 61054)¹.

1 SS C&B (NI) Act 92, sec 72(4)(a)

Middle rate

- 61062 The middle rate is payable to people who are so severely disabled physically or mentally that they satisfy the day condition (DMG 61053) **or** the night condition (DMG 61054)¹.

1 SS C&B (NI) Act 92, sec 72(4)(b)

Lowest rate

- 61063 The lowest rate is awarded to people who are so severely disabled physically or mentally that

1. they need attention from another person for a significant portion of the day in connection with their bodily functions (whether during one period or a number of periods)¹ **or**
2. they cannot prepare a cooked main meal for themselves even if they have the ingredients² (provided they are 16 years old or over).

1 SS C&B (NI) Act 92, sec 72(1)(a)(i); 2 sec 72(1)(a)(ii)

Change of rate

- 61064 A person may be awarded only one of the rates. If a person

1. has satisfied the disability condition at a lower rate for three months **and**
2. then begins to satisfy the conditions for a higher rate

only the lower rate is payable until the conditions for a higher rate component have been satisfied for three months¹.

1 SS C&B (NI) Act 92, sec 72(4)

Example

A woman makes a claim on 6 February. She has satisfied the conditions for the middle rate for over three months. On 8 January, her condition has deteriorated and the conditions for the highest rate are now satisfied. The decision maker awards the middle rate from 6 February and the highest rate from 8 April.

Special provisions

61065 Special provisions apply for people who are

1. terminally ill¹ (DMG 61491 et seq) **or**
2. under 16 years of age² (DMG 61520 et seq) **or**
3. undergoing renal dialysis³ (DMG 61220 et seq).

1 SS C&B (NI) Act 92, sec 72(5); 2 sec 72(1A); 3 SS (DLA) Regs (NI), reg 7

61066 – 61080

Attendance Allowance and Disability Living Allowance care component - definitions

Preparation of the cooked main meal

61081 The “main meal test” determines a person’s ability to perform key daily tasks. It is a hypothetical test to calibrate the severity of a person’s disability¹. It is not a test of cooking ability or of the person’s ability to survive or enjoy a reasonable diet without assistance. It is a measurement of a person’s physical and mental capacity to carry out complex functions. A cooked main meal means a meal for one person freshly cooked on a traditional cooker.

Note: This applies to the lowest rate of the Disability Living Allowance care component only.

1 Moyna v Secretary of State

61082 The definitive interpretation of the cooking test is now that of the House of Lords¹. This requires taking a broad view over the relevant period of time taking into account the available evidence of the claimant’s abilities and testing them against the hypothetical test. This can be done by looking at the persons abilities to perform activities involved in cooking, including direct evidence of actual difficulties with cooking, such as gripping, lifting, bending, planning as well as indirect evidence of other activities using the same bodily functions that are normally used in cooking, for example, eating, washing, driving, shopping, cleaning, being aware of danger or any other physical or mental activity using the same bodily functions as are normally used in cooking.

1 Moyna v Secretary of State

61083 The meal must be a traditional one and freshly prepared on a daily basis, not a pre-prepared or frozen meal which merely requires reheating. Factors such as diet and culture and the type of facilities or equipment available are not relevant to the test. Whether a person **actually** prepares and cooks a main meal is not the issue; it is whether that person is capable of performing the necessary skills such as

1. handling utensils
2. turning water, electricity and gas taps on and off
3. peeling and chopping vegetables
4. using a cooker
5. coping with hot pans.

Note: This list is not exhaustive.

- 61084 People unable to perform the tasks associated with preparing a cooked main meal for themselves are not normally able to carry out other daily tasks which require similar skills.
- 61085 Claimants who can physically manage all the tasks necessary to prepare a cooked main meal, could satisfy the test if they would be at risk of injury whilst cooking. The risk must be of real and tangible danger.

Example

John has epilepsy and experiences frequent fits without warning. Although he is physically capable of performing the tasks needed to prepare the cooked main meal there is a risk that he might have a fit whilst chopping vegetables or standing over a cooker. He cannot prepare a daily cooked meal because the disability makes the task dangerous and so he therefore satisfies the test.

- 61086 The ability to plan a main meal is also important. Some people who have a mental disability may be able to carry out all the different tasks involved separately, but may still be unable to prepare and cook a main meal. This is because they cannot plan it or do all the necessary tasks in a logical way without help.
- 61087 Claimants who are unable because of mental disability to start to prepare a meal or to carry it through once started, will satisfy the condition. The lack of motivation to cook or the fear of cooking must be the result of mental disability.

61088 – 61100

Attention with bodily functions

- 61101 Attention is defined as some personal service of an active nature in connection with bodily functions, including
1. breathing
 2. dressing
 3. drinking
 4. eating
 5. eliminating waste products
 6. getting into or out of bed
 7. hearing
 8. seeing

9. sitting
10. sleeping
11. walking
12. undressing **and**
13. functions of the brain¹.

It does **not** in general include cooking, shopping, keeping the house clean, or other domestic tasks which are commonly done by one person for the benefit of another².

1 R(DLA) 1/07; 2 R(A) 2/80 Appendix

- 61102 Where a domestic task is closely associated with a bodily function and performed as part of a continuous single episode of attention in connection with that bodily function, the domestic task may form part of that episode of attention¹.

1 Cockburn v S of S for Social Security

Example

A disabled person with arthritis is incontinent at night. Because of the arthritis she needs help to change and wash her soiled clothing and bedding. If, after helping her to change, the carer rinses or puts the soiled clothing and bedding to soak, that will form part of the attention being given. The consequences of the incontinence must be dealt with on the spot to qualify.

- 61103 Attention must be required to be provided in the physical presence of the disabled person and will generally involve physical or personal contact. It may also be given by means of the spoken word, only where there is physical presence. Examples of attention by means of the spoken word include

1. guiding a blind person in unfamiliar surroundings will involve giving oral directions
2. reading personal correspondence to a person with a visual impairment
3. encouraging a person with a mental disability to eat, wash, dress, get out of bed or some other activity where he would not otherwise do so.

This list is not exhaustive. Also, decision makers must not overlook the need to check the usual requirements of mental/physical disablement and whether that is **so severe** that the person reasonably requires attention (not merely assistance) in connection with one or more specific "bodily function", and what precisely the relevant impairment of function is.

- 61104 The decision maker should look at the evidence and consider¹

1. whether the person has a disability

2. what bodily functions are impaired
3. whether the person reasonably requires attention in connection with those functions
4. how often the attention is required and how long it takes.

1 Mallinson v S of S for Social Security; R(A) 3/94

61105 To satisfy the conditions of entitlement, attention has to be reasonably required, not medically required¹. However, any medical attention (such as from a District Nurse), that is reasonably required should be aggregated with other attention requirements, giving consideration to frequency as well as quantity. It is the amount of attention **regularly required** that is the determining factor, not the amount of attention **received**.

1 R(A) 3/86

Example

Someone may provide more attention than is actually needed. They may check if the person needs to go to the toilet during the night when there is no evidence of incontinence.

61106 The amount of attention required to satisfy the conditions of entitlement is not defined in legislation. This should be decided from the

1. frequency and pattern of the person's need for attention **and**
2. evidence of the person's requirements over a period of time¹.

Note: Someone may manage without attention even though it is reasonably required.

1 R(A) 2/74; R(A) 4/78

61107 Attention required to enable a person to carry out a reasonable level of social or leisure activity is reasonably required¹. The decision maker should consider whether it is reasonable for a person with the claimant's disability to want to undertake a particular activity. It may be that there are activities in which the disabled person cannot take part, whatever attention is given. Such attention is not reasonably required.

1 S of S for Social Security v Fairey

61108 Examples of bodily functions for which attention may be required are in DMG 61120 - 61136. The list is not exhaustive, and decision makers should use their own judgement in each case. Some functions considered on their own may need relatively little help, but combined with others may bring a person within the scope of Attendance Allowance or Disability Living Allowance (care). Further guidance is available in the Online Medical Guidance.

- 61109 Decision makers must also have regard to the fact that some guidance or supervision needs that are considered for the award of the Disability Living Allowance lower rate mobility component, can also go towards attention or supervision needs qualifying a person for entitlement to the Disability Living Allowance care component¹. See DMG 61393.

1 R(DLA) 4/01

61110 – 61119

Breathing

- 61120 A disabled person may need a considerable amount of help with breathing from someone else. Further guidance is available in the Online Medical Guidance.

Example

People with severe respiratory problems may only be able to breathe reasonably well when propped up in bed. If they slide down the bed they may become very breathless. If they are unable to pull themselves back upright, they are likely to need repeated propping up in bed.

Cleanliness and skin protection

- 61121 Help with washing, cleaning teeth, and caring for the hair, nails and skin may be needed, because a person is
1. physically incapable of carrying out these tasks **or**
 2. so disturbed mentally as to neglect personal hygiene.

Dressing and undressing

- 61122 Dressing and undressing are usually only needed at the beginning and end of the day. But it may be a long slow process for those who are disabled physically or mentally. (For example a person with severe arthritis may not have enough function in the hands to do up buttons.) Further guidance is available in the Online Medical Guidance.
- 61123 There may be a reasonable need for attention even though a person is able to perform this function. For example, a person with dementia may not even recognise the need to dress and may need to be reminded repeatedly to do so. Further guidance is available in the Online Medical Guidance.

Eating and drinking

- 61124 Severe disability can lead to difficulty with cutting up food or with feeding. If a person has special cutlery or other aids this should be taken into account when assessing the amount of help that is needed.

Getting into or out of bed

- 61125 A person may need help with getting in and out of bed. But the possession of suitable aids should be considered when assessing the need for attention.

Going to the toilet (elimination of waste products)

- 61126 Incontinence is a feature of many disabilities. A disabled person may be physically incapable of getting to the toilet in time because

1. of general infirmity **or**
2. the person does not get enough warning of the need to go to the toilet.

- 61127 Incontinence may also occur when a mentally disabled person is unaware of the need to go to the toilet.

- 61128 Other needs connected with incontinence, such as help with clothing, changing bedding and emptying commodes, should also be taken into account. Further guidance is available in the Online Medical Guidance.

- 61129 Help with going to the toilet is not limited to people who are incontinent. It can include help

1. to get there **or**
2. with clothes whilst there **or**
3. on and off the toilet **or**
4. with wiping.

Hearing

- 61130 If a person with severe hearing difficulties needs a third party to interpret in order to communicate with another, the interpreter is providing attention with the bodily functions of hearing (and normally speaking). In a two-way conversation however, where the parties are signing or lip reading rather than speaking to communicate, that will not amount to attention, as communication is being maintained normally. Someone who has to speak more loudly or slowly, or listen more carefully is not providing attention. Only if there is an element of service involved is the other party

to a two-way conversation providing attention; for example, when teaching a deaf person to learn sign language.

- 61131 Attention is reasonably required if communication is made significantly more efficient or effective by the use of an interpreter, having regard to the practicability and desirability, from the point of view of privacy, of having another person in attendance. If communicating through an interpreter is made significantly more efficient or effective than communicating through writing, or trying to converse with a person who has to shout loudly, then it could be considered that the services of an interpreter are reasonably required¹.

1 R(DLA) 2/02; R(DLA) 3/02

- 61132 Attention in connection with bodily functions should include 'unusual efforts' reasonably required to attract the claimant's attention in order to initiate communication¹. Any 'unusual efforts' however must not be '*de minimis*' and must be more than reaching out and tapping a shoulder, stamping, switching a light on momentarily to count as attention.

1 R(DLA) 3/02

Seeing

- 61133 A visually impaired person may need
1. help with reading letters **or**
 2. help with choosing appropriate clothing **or**
 3. Guidance which may be given by touch or by the spoken word¹, to avoid injury when walking in unfamiliar surroundings.

1 Mallinson v S of S for Social Security

Sitting

- 61134 Attention may be needed if a person cannot get up from a chair. The use of any suitable furniture or special aids a person has should be considered when assessing care needs.

Sleeping

- 61135 The inability to sleep does not in general, give rise to additional needs for adults. But assistance to a person who, through discomfort or distress, is unable to sleep without relief should be taken into account. Some people may need comforting or settling after disturbed sleep, (for example someone who has a mental illness or children who

have bad dreams). Others may need help to turn over to become comfortable in bed. These requirements should also be taken into account.

Example

Simon suffered with Schizophrenia and claimed benefit for night needs as he frequently woke during the night with extreme anxiety and depression, resulting in night terrors. In order to help him settle down his wife had to talk to him and calm him down before he could get back to sleep. This happened once or twice a night and took about an hour each time to settle him. This occurred on 4 or 5 nights per week. The decision maker decided that Simon was entitled to the middle rate care component for attention with night needs, for a period of 3 years, to see if his present medication improved his condition in the future.

Taking medication

- 61136 A person with impaired manual dexterity may not be able to administer their own medication. A person who is confused may need attention to ensure the correct dose of medication is taken at the right time.

Turning over in bed

- 61137 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. Further guidance is available in the Online Medical Guidance.

Frequent - by day

- 61138 The ordinary definition of frequent is “occurring often or in close succession”. Whether attention is given frequently depends on the length of time which passes between each spell of attention¹.

1 R(DLA) 5/05

- 61139 “Frequent” means several times - not just once or twice¹. Attention given three times should not automatically be taken to mean frequent - all the facts of the case should be considered. The attention must be required throughout the day².

1 R(A) 2/80 Appendix; 2 SS C&B (NI) Act 92, sec 72(1)(b)(i)

Example

Attention given first thing in the morning, again at lunch time and again in the evening, is not normally regarded as frequently throughout the day.

Alternatives to attention or supervision

- 61140 The need for attention or supervision may be reduced or removed by practical solutions. These may be in the form of an aid, or appliance, or some other measure.

Example 1

Someone who needs help to use the toilet because of difficulty climbing stairs may be able to use a commode downstairs unaided.

Example 2

Someone who needs help getting out of bed at night to take medication may not need that help if the medication were to be placed by the bedside.

- 61141 Although items may be **available** to reduce the effects of a person's disability, the decision maker must decide whether it is

1. reasonable **and**
2. practicable

for that disabled person to obtain and use them¹.

1 R(A) 3/86; R(A) 1/87

- 61142 It is also essential to consider the **consequences** of any suggested solution¹. The decision maker should seek advice from a Medical Officer where it is not clear that an item is medically appropriate. It may be necessary to seek further evidence about the claimant's home circumstances, for example from the carer.

1 R(A) 3/90

61143 – 61149

Continual supervision

- 61150 Supervision is **not** attention. It is a more passive concept, such as being in the same room as a disabled person and prepared to intervene if necessary¹. To satisfy the supervision test the following conditions must be satisfied

1. the medical condition is such that it might give rise to a substantial danger (DMG 61171) to the disabled person or someone else **and**

2. the substantial danger is not too remote a possibility **and**
3. there is need for supervision to ensure that the disabled person avoids the substantial danger **and**
4. the supervision needed is continual².

1 R(A) 1/88 Appendix; 2 R(A) 1/83

61151 Continual supervision is different from continuous supervision. Continual means that the supervision must be going on all the time subject to only brief interruptions.

61152 People who have adequate warnings of epileptic fits, for example, may not need continual supervision as they can summon assistance or put themselves in a safe position in time.

61153 If attacks are unpredictable, it may be necessary for somebody to be on hand in case an attack occurs¹. Where there is no warning, the frequency of fits is not relevant, unless the risk of substantial danger is such a remote possibility that it can be disregarded².

1 R(A) 1/88 Appendix; R(A) 2/89; 2 R(A) 3/90

61154 If another person's presence is necessary to reduce the substantial dangers of a sudden attack then that may satisfy the continual supervision condition. Benefit should not be refused solely on the grounds that even if someone is present, that person would not be able to act quickly enough to avoid the substantial danger¹.

1 (RA) 4/92

61155 People who are mentally competent

1. should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing **and**
2. would not necessarily need continual supervision¹.

1 R(A) 5/90

61156 – 61160

Watching over - by night

61161 "Watching over" should be given the ordinary dictionary meaning and should be distinguished from supervision. The person does not need to be actually looking at the disabled person for the whole of the time. It is enough that the person is awake for the purpose of watching over the disabled person for the necessary period or periods.

61162 – 61163

Frequent intervals

- 61164 The frequent intervals need not be spread throughout the night, but can be concentrated in one part of the night.

Prolonged and repeated

- 61165 “Prolonged” has been defined as “some little time”¹. As a starting point for decision makers, anything less than 20 minutes is unlikely to be “prolonged”. However, decision makers should consider each case on its own facts and look for factors that may result in attention of less than 20 minutes being prolonged².

1 R(A) 2/80 Appendix; 2 R (DLA) 5/05

- 61166 “Repeated” means more than once. It suggests that there is a certainty in the attention that is required - it is not a one-off or occasional requirement¹.

1 R(A) 2/80 Appendix

61167 – 61170

Substantial danger

- 61171 This phrase should not be too narrowly construed¹. Substantial danger can result from a fall, exposure, neglect and in many other circumstances. The word substantial is left to discretion in each case.

1 R(A) 1/73

- 61172 Healthy people recognise the potential dangers of traffic, and electricity and gas supplies. People with certain mental disabilities may be unaware of these dangers and put themselves at risk of serious injury. Further guidance is available in the Online Medical Guidance.

- 61173 People with certain mental disabilities may create danger for others without being aware of the consequences of their actions; for example they may lash out at others, or they may turn on a gas fire but not light it.

- 61174 People may be at risk as a result of fits (such as epilepsy). Other medical conditions can give rise to blackouts and these need similar consideration. Further guidance is available in the Online Medical Guidance.

- 61175 People may be of substantial danger to themselves if there is a risk of suicide. Continual supervision **may** be needed to reduce the risk of harming themselves. But this may not eliminate all the substantial danger. See also DMG 61154¹.

1 R(A) 3/93

61176 – 61178

Falling

61179 A person may be at risk of substantial danger because of physical disability. For example, certain disabilities may put a person at risk of falling. These falls should be distinguished from accidental falls which could happen to anybody. Further guidance is available in the Online Medical Guidance.

61180 Where a person is at risk of falling as a result of disability, the decision maker should consider

1. whether the falling is predictable
2. if predictable, whether the person can reasonably be expected to avoid the risk unless supervised
3. if unpredictable, whether the falling may result in substantial danger to the person
4. whether the risk of substantial danger is too remote¹.

1 R(A) 3/89

61181 – 61199

Night and day

61200 Night should normally be taken to mean that period of inactivity through which each household goes in the dark hours. There may be considerable variations between different households which need to be considered. There must however be an objective content to the word night. Where the disabled person has abnormal sleeping habits “night” should be assessed objectively by reference to a hypothetical household and whether the carer would reasonably consider that he or she was providing night care¹. Day should be taken to mean any time which is not considered to be night.

1 R(A) 1/78; R(A) 1/04

Example 1

Jasmin, a five year old child, went to bed at 8pm and at 10pm her father took her to the toilet. This was attention relevant to the day condition and not the night condition as her parents went to bed at 11pm. The household therefore shut down at 11pm.

Example 2

George is aged 81 and suffers from dementia. He lives alone. He has always had a pattern of having very little sleep for a maximum of four to five hours per night. He has always risen early, sometimes as early as 4.30am or even earlier. He often got up early and would go out walking. He had previously had an allotment and would often visit that allotment as early as 4.30am. Once he was up he spent a lot of time out of doors. At times he would become confused forgetting even his name, his destination or the purpose of his trip. George satisfies the night "watching over" provision as his resident carer would consider that 4.30am was night.

Renal dialysis

- 61201 In renal dialysis cases the guidance in DMG 61200 can be modified. Night and day should follow the pattern of dialysis, if this differs from the household's pattern. For example, where the setting up and recalibration of dialysis equipment is carried out during the day but the dialysis is undertaken at night, this preparation should also be counted as night attention.

Day and night needs

- 61202 People at risk of danger by day are not necessarily at risk at night. For example, a person with dementia who wanders by day and needs supervision may sleep soundly at night. Such a person is in need of supervision by day but not by night. Further guidance is available in the Online Medical Guidance.
- 61203 Many disabled people feel at risk from fire or burglars during the night etc, and there may be a need for someone to sleep in the same house. This does not fulfil the night "watching over" condition.

Period throughout which

- 61204 The "period throughout which"¹ condition is met if a person satisfies the conditions of entitlement to either component, in a general sense, throughout the relevant period. The decision maker should take a broad view, look at the whole period and determine whether the claimant can fairly be described as satisfying the conditions of entitlement². This does not mean that care needs have to be required on

1. any particular day and/or night **or**
2. a specific number of days and/or nights each week.

Taking the whole period into account involves an exercise in judgement rather than a simple arithmetical calculation of frequency.

1 SS C&B (NI) Act 92, sec 72(1); 2 R(A) 2/74

61205

Significant portion

61206 The word “significant” should be given its ordinary meaning of not negligible or trivial. What may amount to a “significant portion of the day” depends largely on a person’s individual circumstances. An hour may be considered reasonable in many cases. Attention required for a period of less than an hour may be sufficient if

1. attention is provided on a considerable number of small occasions and produces other disruptions to the carer’s affairs **or**
2. the attention required is very intense (such as cleaning up after faecal incontinence or administering complex therapies)¹.

1 Ramsden v Secretary of State for Work and Pensions; R(DLA) 2/03

So severely disabled physically or mentally

61207 The phrase "so severely disabled physically or mentally" raises two important issues that must be considered when deciding if someone satisfies any of the statutory tests¹. These are

1. does the claimant have a disability, i.e. do they have a functional deficiency, physical or mental **and**
2. do the care needs to which the functional deficiency give rise, satisfy any of the statutory tests and if so which.

Medical evidence although important and extremely useful is not essential, it is important in helping to decide whether the claimant has a disability and if so helping to determine the extent of their care needs. The absence of a diagnosis does not mean the claimant cannot make a claim to Disability Living Allowance. Consideration of all the evidence about the functional abilities of the claimant together with medical evidence and relevant findings of fact made in relation to those abilities will help to decide whether the disability is such as to satisfy one or more of the statutory tests².

1 SS C&B (NI) Act 92, sec 72(1)(a) to (c) & 73(1)(d); 2 R(DLA) 3/06

61208 Where there is a claim from a claimant who indulges in violent, criminal or irresponsible behaviour, the decision maker should consider whether it is within the

claimant's power to avoid behaving as they did¹. If it is not within their power to avoid such behaviour, the claimant may be disabled within the criteria of the legislation².

1 R(DLA) 3/06; 2 SS C&B (NI) Act 92, sec 72(1)(a) to (c) & 73(1)(d)

61209 There is no free standing need for a severe disability. The claimant must have a functional deficiency either physical or mental and the care or mobility needs arising from that functional deficiency must satisfy the statutory tests. If the appropriate level of care or mobility needs exist and are caused by the functional deficiency of the person, this will be sufficient. The severity of the disability is therefore determined by reference to the needs that arise and not by reference to the general nature of the disabling condition¹. If the disability is such that the person comes within any of the conditions of entitlement, then the person is "so severely disabled"².

1 R(DLA) 10/02; 2 SS C&B (NI) Act 92, secs 64, 72 & 73

61210 – 61219

Renal dialysis

61220 People undergoing renal dialysis may satisfy the

1. disability test for the middle rate of the Disability Living Allowance care component **or**
2. Attendance Allowance day condition if they undergo the dialysis by day **or**
3. Attendance Allowance night condition if they undergo dialysis by night.

61221 A person satisfies the appropriate provision in DMG 61220 if

1. they regularly undergo renal dialysis for two or more sessions each week¹ **and**
2. either
 - 2.1 their type of dialysis **normally** requires attention or supervision² **or**
 - 2.2 in their particular case they require another person
 - 2.2.a to provide attention in connection with bodily functions **or**
 - 2.2.b to supervise them and avoid substantial danger to themselves³ during dialysis sessions.

However, if people undergo renal dialysis by day **and** night they can only satisfy the day or night conditions, not both⁴.

¹ SS (AA) Regs (NI), reg 5(2)(a); SS (DLA) Regs (NI), reg 7(2)(a)(i); ² SS (AA) Regs (NI), reg 5(2)(b)(i); SS (DLA) Regs (NI), reg 7(2)(a)(ii); ³ SS (AA) Regs (NI), reg 5(2)(b)(ii); SS (DLA) Regs (NI), reg 7(2)(a)(iii); ⁴ SS (AA) Regs (NI), reg 5(1)(c); SS (DLA) Regs (NI), reg 7(1)(c)

61222 Any attention required during the period of dialysis need not be frequent by day, or repeated or prolonged by night. Similarly, any supervision or watching over required need not be continual by day or for a prolonged period or at frequent intervals at night. To satisfy the conditions in DMG 61220, the attention or supervision need only be something beyond a minimal level of attention or supervision¹.

¹ R(A) 1/93

61223 Each case should be considered on its merits. But haemodialysis and intermittent peritoneal dialysis normally require attention or supervision. For guidance on night and day in renal dialysis cases see DMG 61201. Further guidance is available in the Online Medical Guidance.

Exceptions

61224 A person cannot be deemed to satisfy either the day condition or the night condition if the renal dialysis

1. is carried out under the Health Service **and**

2. is out-patient treatment **and**

3. is carried out

3.1 in a hospital or similar institution **and**

3.2 with the assistance or supervision of any member of the hospital staff¹.

1 HPSS (NI) Order 72; SS (AA) Regs (NI), reg 5(3); SS (DLA) Regs (NI), reg 7(2)(b)

61225 Any period spent receiving treatment for renal dialysis as in DMG 61224 can be counted towards

1. the Disability Living Allowance care component

1.1 3 month qualifying period¹ (DMG 61461 1.) **and**

1.2 6 month prospective test² from 26.8.93 (DMG 61461 2.) **or**

2. the 6 month qualifying period for the day or night condition for Attendance Allowance³.

1 SS (DLA) Regs (NI), reg 7(3); 2 SS C&B (NI) Act 92, sec 72(2)(b); 3 SS (AA) Regs (NI), reg 5(4)

61226 Where DMG 61225 applies, payment of the Disability Living Allowance care component can only be made during periods where the conditions in DMG 61221 are satisfied.

Example

A student who undergoes haemodialysis on Tuesdays and Thursdays at the Health Service hospital near her University returns home for the summer vacation in July. She undergoes dialysis at home, with her father supervising, until her return to University in September. Dialysis then continues at hospital as before.

The middle rate care component of Disability Living Allowance is payable for the period she spends at home.

61227 The assistance or supervision required with dialysis and provided by hospital staff as in DMG 61224 can count with other attention or supervision needs towards satisfying the day or night conditions.

61228 The higher rate of Attendance Allowance or the highest rate of Disability Living Allowance care component is payable if a person undergoes

1. renal dialysis during the day and also satisfies the night conditions **or**
2. renal dialysis during the night and also satisfies the day conditions.

But if a person undergoes renal dialysis during the day and satisfies the day conditions for another reason, only the middle rate of Disability Living Allowance care component or the lower rate of Attendance Allowance is payable.

61229 – 61250

Disability Living Allowance mobility component

Disability Living Allowance mobility component - conditions of entitlement

Introduction

61251 There are two rates of Disability Living Allowance mobility component, higher and lower, which cover different needs and circumstances¹. The higher rate of Disability Living Allowance mobility component is for people aged three years and over (five years or over for any period before 9.4.01), who are so severely disabled that they satisfy one of the higher rate mobility criteria² (see DMG 61255). The lower rate of Disability Living Allowance mobility component is for people aged five or over³ who satisfy the lower rate mobility criteria⁴ (see DMG 61256). The person does not have to meet the above criteria on any particular day or a specific number of days each week and a broad view should be given to this issue. The residence and presence conditions, and competency condition, in DMG Chapter 07 must also be satisfied.

1 SS C&B (NI) Act 92, sec 73(10) & (11); 2 sec 73(1)(a); 3 sec 73(10) & (11); 4 sec 73(1)(d)

61252 – 61254

Higher rate

61255 The higher rate is payable to people who

1. are unable or virtually unable to walk because of a physical disability¹ (see DMG 61276 et seq) **or**
 2. are severely visually impaired and satisfy the conditions² in DMG 61334 - 61339 **or**
 3. if 2. does not apply, then are both deaf and blind and satisfy the conditions³ in DMG 61340 - 61348 **or**
 4. are severely mentally impaired⁴ **and**
 - 4.1 display severe behavioural problems⁵ **and**
 - 4.2 satisfy the conditions for the highest rate of the Disability Living Allowance care component at DMG 61061⁶ (see DMG 61350 - 61380)
- or**

5. have had both legs amputated either through or above the ankle⁷ (see DMG 61332) **or**
6. are for any reason without both legs to the same extent as if they had been amputated either through or above the ankle⁸ (see DMG 61332 - 61333).

Further guidance is available in the Online Medical Guidance.

Note 1: The higher rate can only be payable under condition **3.** if condition **2.** does not apply⁹.

Note 2: The higher rate is payable only where during most of the period of any award, the condition allows the person from time to time to benefit from enhanced facilities for locomotion (see DMG 61413 - 61414)¹⁰.

1 SS C&B (NI) Act 92, sec 73(1)(a); SS (DLA) Regs (NI), reg 12(1); R(M) 1/78, 3/78;

2 SS C&B (NI) Act 92, sec 73(1AB)(a); Handbook, chapters 10 & 39;

3 SS C&B (NI) Act 92, sec 73(1AB)(a); SS (DLA) Regs (NI), reg 12(2);

4 SS C&B (NI) Act 92, sec 73(1)(c) & (3)(a); SS (DLA) Regs (NI), reg 12(5);

5 SS C&B (NI) Act 92, sec 73(1)(c) & (3)(b); SS (DLA) Regs (NI), reg 12(6);

6 SS C&B (NI) Act 92, secs 72(1)(b) & (c), and 73(1)(c) & (3)(c); 7 sec 73(1)(a);

SS (DLA) Regs (NI) reg 12(1)(b); 8 SS C&B (NI) Act 92, sec 73(1)(a); SS (DLA) Regs (NI), reg 12(1)(b);

Handbook, chapter 9; 9 SS C&B (NI) Act 92, sec 73(1AB), sec 73(1)(b); 10 sec 73(8)

Lower rate

- 61256 The lower rate is payable to people who can walk but are so severely disabled mentally or physically (see DMG 61207 et seq) that they need guidance or supervision from another person most of the time when walking out of doors¹ (DMG 61391 et seq). Any ability the person has to use routes which are familiar to them is disregarded. Further guidance is available in the Online Medical Guidance.

1 SS C&B (NI) Act 92, sec 73(1)(d)

- 61257 During most of the period of the award their condition must allow them from time to time to benefit from enhanced facilities for locomotion (DMG 61413 - 61414)¹.

1 SS C&B (NI) Act 92, sec 73(8)

- 61258 The conditions for the lower rate are quite different to those for the higher rate. They relate to the needs people have to enable them to walk out of doors, rather than their inability to walk. Therefore, where a claimant has a disability which prevents them from walking out of doors, there is no entitlement to the lower rate Disability Living Allowance mobility component (see DMG 61392).

Note: See DMG 61400 - 61401 for guidance where a mental health disability leading to fear and anxiety prevents people from walking out of doors.

- 61259 If a person has satisfied the disability conditions at the lower rate for three months, and then begins to satisfy one of the conditions for the higher rate, only the lower rate

is payable until the conditions for the higher rate have been satisfied for three months¹.

1 SS C&B (NI) Act 92, sec 73(11); CAO v Morgan

61260 There are special provisions for people who

1. have a terminal illness¹ (DMG 61491 et seq)
2. are under age 16² (DMG 61520 et seq)
3. have the use of an invalid carriage or other vehicle provided by the Department or who have the use of a prescribed appliance³ (DMG 61421 et seq).

1 SS C&B (NI) Act 92, sec 73(12); 2 sec 73(4); 3 sec 73(13)

61261 – 61275

Disability Living Allowance mobility component - definitions

Unable or virtually unable to walk

61276 One of the conditions for entitlement to the higher rate Disability Living Allowance mobility component is that the disabled person is unable or virtually unable to walk (DMG 61255 1.). People are taken to be unable or virtually unable to walk if and only if their physical condition is such that

1. they are unable to walk¹ **or**
2. their ability to walk out of doors is so limited when considering
 - 2.1 the distance over which **or**
 - 2.2 the speed at which **or**
 - 2.3 the length of time for which **or**
 - 2.4 the manner in whichthey can make progress on foot without severe discomfort, they are virtually unable to walk² **or**
3. the effort needed to walk would put their life at risk or be likely to lead to a serious deterioration in their health³.

The decision maker should not take account of where people live or the nature of their work.

1 SS (DLA) Regs (NI), reg 12(1)(a)(i); 2 reg 12(1)(a)(ii); 3 reg 12(1)(a)(iii)

61277 – 61279

Physical or mental disability

61280 The differences between mental and physical disability may not always be obvious but are distinctive. To count towards virtually unable to walk, a person's disability must be physical. Any limitation in a person's ability to walk must be because of a physical disablement not a physical manifestation of the person's mental condition. Further guidance is available on the Online Medical Guidance.

61281 In cases where a claimant's inability or virtual inability to walk is caused by both physical and mental factors, the claimant is entitled to the higher rate of the mobility component if the physical disability is a material cause i.e. if its contribution to the inability or virtual inability to walk is more than *de minimis* (medical advice should be sought if there is any doubt). The physical cause must be one which is likely to be

still current from the start date of and the preceding qualifying period award and throughout the period of the award, but it does not matter at what point in the chain of causation it comes e.g. the physical cause may be subsequent to a mental disability.

- 61282 Pain, dizziness or other symptoms are not a feature of the claimant's "physical condition as a whole"¹ within the meaning of the legislation² unless they have a physical cause. Difficulty in walking which results from pain, dizziness or other symptoms affecting physical functions which are found to have an entirely mental or psychological cause cannot therefore qualify a claimant for the higher rate of the Disability Living Allowance mobility component.

1 R(M) 1/88 (Appendix); 2 SS (DLA) Regs (NI), reg 12(1)(a)

- 61283 Chronic fatigue syndrome which may also be called post-viral fatigue syndrome or myalgic encephalomyelitis, consists of a mixture of both physical and psychological factors. The lack of physical findings in the medical evidence is not sufficient to show that the limitation is entirely mental in origin. Chronic fatigue syndrome can involve a physical element that is capable of supporting an award of the Disability Living Allowance mobility component at the higher rate even if it is not identifiable as such. The physical element present **may** support an award of the higher rate of the Disability Living Allowance mobility component if

1. the other conditions for an award are met
2. there is nothing to suggest that the claimant's mobility is wholly or largely limited by the mental component of chronic fatigue syndrome, if it is possible to distinguish it from the physical component.

- 61284 Decision makers should note that

1. there must be a physical cause for the claimant's disability and consequent inability to walk
2. the relevant case law¹ must be followed
3. the physical cause does not have to be diagnosed medically
4. the physical disability must contribute to the claimant's inability to walk and must still be present at the time the decision to award the higher rate of the mobility component is made.

1 R(M) 1/88 (Appendix) & R(DLA) 4/06

Example 1

Yasmin has arthritis which is the material cause of her walking disability and she is assessed as being physically able to walk 100 metres at a slow speed. However she also suffers from depression as a result which exacerbates her difficulties with

walking. She can only walk 50 metres at a very slow speed. She would satisfy the conditions for being virtually unable to walk as her arthritis is a material physical cause.

Example 2

Basil has a verruca. This is a temporary condition which has minimal interference with walking and does not cause severe discomfort. He has difficulty walking however the effect is minimal and he would not satisfy the conditions for being virtually unable to walk.

61285 – 61289

Refusal/reluctance to walk

61290 People with behavioural problems often refuse to walk. Although most behavioural problems result from a mental disability, they can be the result of a reaction to a physical condition over which the person has no control. For example, children with Down's syndrome may be virtually unable to walk¹ or they may refuse to walk despite coaxing. But this does not mean that all people with Down's syndrome are virtually unable to walk.

1 R(M) 2/78

61291 The question the decision maker should consider is whether the person **could** not walk, rather than **would** not walk¹. Advice from a medical officer may help in establishing whether a refusal to walk stems from a physical or mental disability (see DMG 61207 et seq) and the likely duration of any difficulty with walking.

1 R(DLA) 3/06; R(M) 3/86

Example 1

Robert, who had been walking perfectly satisfactorily decides to stop. However his refusal to continue further can be overcome with the promise of a reward or the threat of punishment. Therefore the refusal to walk has not arisen from a physical condition over which he has no control.

Example 2

Sabrina refuses to walk to school. This refusal to walk would not have arisen from a physical condition over which she has no control.

61292 People who sometimes refuse to walk as the result of a physical condition can be considered to be suffering from temporary paralysis. The decision maker should consider whether the frequency and extent of such a temporary paralysis means that they are virtually unable to walk¹. It would be unlikely that a person would satisfy the

conditions on this basis alone. Where a person refuses to walk on a couple of occasions a week but was otherwise able to walk normally taking a broad view (see DMG 61204) that person could not be described as virtually unable to walk.

I R(M) 3/86

61293 For the purposes of DMG 61292 the decision maker should consider the

1. time **and**
2. speed **and**
3. distance **and**
4. manner of walking out of doors.

The decision maker should consider both good and bad days and take a common sense approach, having regard to the proportion of good and bad days and the claimant's behaviour on each type of day.

Example 1

June suffers from Down's syndrome and on one or two occasions a week refuses to walk. At other times her walking ability is unimpaired. Although June can be taken to be unable to walk at those times when she refused to walk (as this is attributable to a physical cause), because her walking ability at other times was unimpaired she does not satisfy the test.

Example 2

Fraser is autistic. There is evidence that his autism has a physical cause. On occasions he suffers from temporary paralysis. There is evidence that Fraser has more bad days than good days. On the bad days he is unable to walk; on good days he can walk only very short distances with difficulty. Fraser satisfies the test.

61294 – 61299

Severe discomfort

61300 Severe discomfort must arise from the physical act of walking, but it is not necessary for the severe discomfort to first arise or to be increased by walking. If a claimant suffers from physical disablement which affects the physical act of walking, and which causes severe discomfort even when not walking, any walking accomplished despite the severe discomfort must be disregarded.

Example 1

Denise suffers Porphryia a condition that causes the skin to blister when exposed to sunlight. Although able to walk any exposure to sunlight triggered her condition.

Denise's discomfort would not render her virtually unable to walk as it was being out of doors that caused the discomfort and it did not arise from the act of walking itself¹.

1 R(DLA) 6/99

Example 2

Ahmed suffered serious multiple injuries in a road traffic accident. As a result Ahmed's foot is extremely painful and stiff and he is in severe discomfort all the time. The severe discomfort does not increase on walking but the nature of the pain alters. Ahmed suffers from a physical disablement which affects the physical act of walking and causes his severe discomfort even when not walking. Any walking Ahmed accomplishes despite the severe discomfort has to be discounted.

- 61301 A person who can walk only with severe discomfort is likely to suffer from effects such as pain and breathlessness¹. The test is one of severe discomfort rather than of severe pain or distress². The term "severe discomfort" does not apply to the refusal to walk where this is by conscious choice³. But see DMG 61290 et seq.

1 R(M) 1/83; 2 Cassinelli v Secretary of State for Social Services; 3 R(M) 1/83

- 61302 "Pain" is medically defined as encompassing a wide range of intensities caused by stimulation of functionally specific peripheral nerve endings. "Discomfort" is not medically defined. Its ordinary meaning was the condition of being uncomfortable, uneasiness and thus might have different causes from pain. It described the sensation experienced from lesser levels of pain¹.

Note: For uneasiness to apply there has to be physical discomfort.

1 R(DLA) 4/98

- 61303 The fact that someone suffers pain as a result of walking, or walks "in pain", does not automatically mean that he or she is walking with severe discomfort or is unable to walk without severe discomfort. The pain may be mild, moderate or severe, shortlived or chronic¹.

1 R(DLA) 4/98

- 61304 Someone suffering severe pain is almost certainly suffering severe discomfort. But it does not follow that, because someone is not suffering severe pain, he or she is not suffering severe discomfort¹. "Severe" is an evaluative term which might be contrasted with moderate or mild. Thus "mild pain" might not by itself cause a sufficient level of sensation to be "severe discomfort"¹.

1 R(DLA) 4/98

- 61305 The decision maker must decide for himself whether there is severe discomfort considering all the evidence, and perhaps taking into account other factors causing discomfort in addition to the pain¹.

1 R(DLA) 4/98

- 61306 The test in DMG 61276 is of the person's ability to walk out of doors **without** severe discomfort, not the capacity to walk **with** severe discomfort¹. Any walking with severe discomfort is ignored.

1 R(M) 1/81

61307 – 61308

Relevance of stops and severe discomfort

- 61309 If a stop is the absolute limit of the claimant's capacity to walk then no issue of taking the test only to the first onset of severe discomfort arises. But if a claimant recovers after a period of rest and continues walking without severe discomfort, then the statutory test does not preclude such continued walking from being assessed¹.

1 R(DLA) 4/03

- 61310 The decision maker must judge from the evidence such relevant factors as how far the claimant can initially walk without experiencing severe discomfort, how long any severe discomfort lasts before it subsides or, if he has paused to prevent such discomfort then the necessary duration of that pause, how frequently these halts recur if at all, and what is the total distance and time he can walk in this manner without severe discomfort. Time, speed, manner and distance of walking, achieved without severe discomfort, are therefore balanced in order to reach an overall judgement on whether the claimant is virtually unable to walk¹.

1 R(DLA) 4/03

- 61311 If a claimant has to rest an hour between each set of walking before severe discomfort subsides, he or she is more likely to be virtually unable to walk than a claimant who requires only five minutes. Conversely, if a claimant with morning stiffness through rheumatoid arthritis walks the first minute out of doors in severe discomfort, stops for four minutes in order to flex his limbs and thereafter is enabled to walk ten miles without severe discomfort at a reasonable pace and speed and without further halts, it is open to the decision maker to determine that the claimant is not virtually unable to walk¹.

1 R(DLA) 4/03

Walking with support

61312 Where people can only walk with support from another person, they may satisfy the conditions for the higher rate mobility component. The decision maker should consider whether

1. the need for support arises from physical causes (rather than as a precaution or for reassurance) **and**
2. the withdrawal of support means that
 - 2.1 the claimant is unable to walk **or**
 - 2.2 the claimant is virtually unable to walk **or**
 - 2.3 the effort required to walk is harmful (see DMG 61276) **and**
3. whether the support could be replaced by a suitable prosthesis or aid¹. If a claimant is unable to walk without support from another person and is unable to use a walking aid due to insufficient grip, the inability to walk without support of another person would render that person virtually unable to walk.

1 SS (DLA) Regs (NI), reg 12(4)(a)

Artificial limbs and appliances

61313 People cannot be treated as being unable or virtually unable to walk if they regularly use¹ or could use² an artificial limb or aid to help with walking unless they are without both legs (see DMG 61332 - 61333). A person who can only swing through on crutches is unable to walk and so may qualify for the higher rate of mobility component³.

1 SS (DLA) Regs (NI), reg 12(4)(a); 2 reg 12(4)(b); 3 R(M) 2/89

61314 When considering a person's ability to walk, using a prosthesis, the decision maker should consider whether any prosthesis or artificial aid is used habitually

1. if yes, whether the person could walk using the prosthesis or artificial aid without severe discomfort
2. if no, and crutches are used the person has to be considered to be unable to walk¹.

1 R(M) 2/89

Swinging through

61315 The term 'swinging through' describes a method of propulsion leading to forward progression of the person, in which the upper body and arms, through the means of crutches, provide the main power of movement. This way of moving may be used by

people in whom the function of either or both lower limbs is severely restricted. A report that an individual uses crutches does not mean by itself that they are swinging through. Many people who have had sprains, injuries, operative procedures to the leg may use elbow crutches as a support to walking on a temporary basis during recovery. Also some people with an arthritic or painful hip, knee or ankle joint may find a crutch easier to use than a walking stick on a long term basis e.g. an elbow crutch permits the use of the forearms and hands while the person remains supported.

61316 The typical example of a person who 'swings through' is someone who has had part of one lower limb amputated and who is not using prosthesis, or someone who has one lower limb in plaster. They propel themselves forwards using two crutches. Whilst bearing weight on both crutches the person swings their normal leg forward and puts it to the ground. Then bearing weight on this leg and the crutches, the impaired leg comes forward (follows through) usually without touching the ground. A further step is then taken forward with the normal leg and the cycle is repeated. In order to move forwards in this way the person uses the strength in the arms and upper body as the main means of propulsion.

61317 A person who

1. can only make progress on foot with crutches **and**
2. places both feet on the ground alternately **and**
3. does not and cannot place any weight on one of his legs

cannot be said to be "walking" and so is "unable to walk". The dictionary definition of walking is "progress by alternative movement of the legs" and it is for that reason a person who can only "swing through" cannot "walk", and not simply because one of his feet is never placed on the ground.

Example 1

Derrick has had part of his right lower limb amputated and cannot use a prosthesis as his wound had not healed properly and is sore. He propels himself forward using two crutches. He swings both his legs forward whilst putting all his weight on his crutches, and is therefore swinging through. In this case he cannot be said to be "walking". The decision maker decides Derrick is entitled to the higher rate mobility component.

Example 2

Susan had her right leg amputated below the knee after an accident. She wears a prosthesis and can normally walk without discomfort, at a normal speed, with a slight limp. She uses a walking stick to steady herself if needed. The decision maker

decides Susan is not entitled to the Disability Living Allowance mobility component at any rate.

Example 3

Malcolm had an accident which resulted in his left leg being broken in several places. The breaks have not healed well and he still experiences pain. Although he can stand with both feet on the ground the decision maker decides that he cannot place any weight on his left leg. Malcolm uses crutches and when moving forward, although he places his left leg forward, all his weight is placed on his crutches. He then swings his right leg through as his left leg is not weight bearing. The decision maker decides that Malcolm is entitled to the higher rate mobility component.

- 61318 The decision maker may ask the medical officer whether a person could walk with suitable artificial limbs or aids, and whether or not these are available. This does not apply to people without both legs (see DMG 61332 - 61333).

Virtually unable to walk

- 61319 Virtually unable to walk means unable to walk to any appreciable extent or practically unable to walk¹. The base point is a total inability to walk. It is extended to take in people who can technically walk but only to an insignificant extent².

1 R(M) 1/78; 2 R(M) 1/91

- 61320 Whether a person is unable or virtually unable to walk depends on the person's ability to negotiate the types of pavement or road one would normally expect to find in the course of walking outdoors. No pavement or road is absolutely flat therefore a degree of "incline" and "decline" must be considered. The test is not whether the claimant can walk on unploughed land or over un-made roads or over pavements under repair. No account should be taken of exceptional hazards such as steep hills or rough terrain. The question of whether the person is able to lead a normal life is inappropriate¹.

1 R(M) 1/91

- 61321 All aspects of a claimant's walking ability must be considered, which result from physical disablement, and an evaluation of its quality then made. This is on the basis that firstly, walking achieved only with severe discomfort is discounted and secondly, that appropriate attention is paid to manner, speed, distance and time¹. All factors must be viewed before the onset of severe discomfort.

1 R(DLA) 4/03

- 61322 Distance is the total distance walked before the onset of severe discomfort (see also DMG 61309 et seq).

- 61323 In the absence of any significant indications as to the other three factors, manner, speed and time, (DMG 61276 refers), if a claimant is unable to cover more than 25 to 30 metres without suffering severe discomfort, his walking ability is not 'appreciable' or 'significant'; while if the distance is more than 80 or 100 metres, he is unlikely to count as 'virtually unable to walk'.

Example

John has a walking ability of at least 125 metres (about 135 yards) with normal gait, little pain, without the use of stick, one stop and some discomfort. John's physical condition as a whole is not such that his ability to walk out of doors is so limited, as regards the distance, speed, length of time or the manner in which he can make progress on foot without severe discomfort, that he is virtually unable to walk¹.

1 R(DLA) 4/98

- 61324 It is as important to consider quality of walking, as it is to consider quantity (ie distance). The stated distance may be less significant if it is clear that some of the distance can be achieved only at the expense of severe discomfort. If a person shuffles along, barely putting one foot in front of the other, his progress may be so poor in terms of speed and manner, to amount to virtually unable to walk.

- 61325 Speed is the pace the claimant walks at. Time is the total time it takes the claimant to walk the relevant distance (see also DMG 61309 et seq). As a guide the average person can walk in a minute

1. Brisk pace - >90 metres per minute
2. Normal pace - 61-90 metres per minute
3. Slow pace - 40-60 metres per minute
4. Very slow pace - <40 metres per minute

Example

Peter can only cover 50 metres in five minutes (or 100 metres in ten minutes). Progress at such a rate is so painfully slow as to amount to little or more than shuffling. Most people could, literally, crawl 50 metres in less than five minutes. Even if he can walk 100 metres in five minutes - which is still extremely slow pace - the decision maker should consider how significant is his ability to walk. Regard must also be had to the words "without severe discomfort".

- 61326 Manner is the way the claimant walks with particular regard to his gait and balance. In overturning a tribunal's decision, a Commissioner pointed out that there was evidence that the claimant would walk with a "stiff legged shuffling gait" and would make "a number of stops at varying distances". He indicated that the tribunal should

have considered specifically the **manner** in which the claimant was able to make progress on foot, and that it was a relevant factor to take into account alongside distance and severe discomfort.

Danger to life or serious deterioration in health

61327 The effort needed to walk is the only consideration when deciding whether a person satisfies the danger to life or serious deterioration in health test (see DMG 61276 **3.**). This could include a condition which was brought on or worsened by the effort needed to walk, for example certain heart conditions or haemophilia.

61328 The test does not include factors not connected with the effort needed to walk. Potentially dangerous places such as busy roads, or risky situations which have nothing to do with the effort needed to walk should not be taken into account¹.

1 R(M) 3/78

61329 To satisfy the test, someone who said that they fell when walking would need to show that the falling was due to the effort needed to walk. Similarly, people with epilepsy would need to show that any fits they experienced were brought on by the effort needed to walk, unless the fits were so frequent that the person could satisfy the virtually unable to walk test at DMG 61319.

61330 Any serious deterioration in health would be where there was a worsening of the person's condition from which

1. they would never recover **or**
2. they would only recover after a significant period of time **or**
3. recovering could only be made after medical intervention.

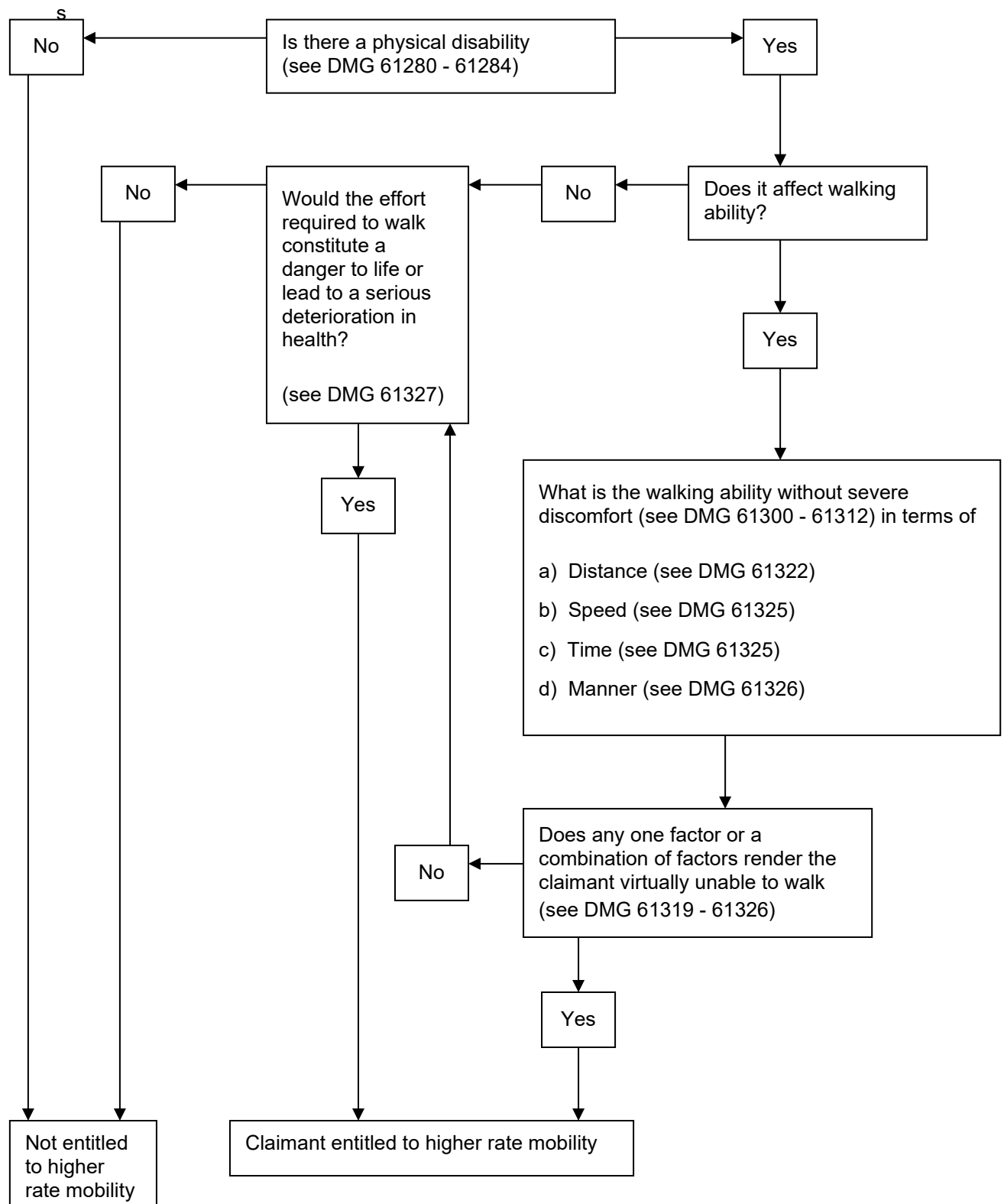
For example, a person would not be suffering any serious deterioration in their health if they recovered after a few days without the need for any medical intervention¹.

1 R(M) 1/98

Virtually unable to walk flow chart

61331 Virtually unable to walk flow chart¹.

1 SS C&B (NI) Act 92, sec 73(1)(a); SS (DLA) Regs (NI), reg 12(1)(a)(ii)(iii)



Disability Living Allowance mobility component - people without both legs

61332 People satisfy the conditions in DMG 61255 **4.** for the higher rate Disability Living Allowance mobility component if they

1. have both legs amputated either through or above the ankle **or**
2. have one leg amputated either through or above the ankle and are without the other leg **or**
3. are without both legs to the same extent as if they had been amputated through or above the ankle¹ for example children born without legs.

1 SS (DLA) Regs (NI), reg 12(1)(b)

61333 People who satisfy the conditions in DMG 61332 **1.** and **2.** do so because they are without both legs¹, regardless of whether they use artificial limbs or appliances.

1 SS (DLA) Regs (NI), reg 12(4)

Disability Living Allowance mobility component - severely visually impaired

61334 From 11.4.11 people satisfy the conditions for the higher rate Disability Living Allowance mobility component if they

1. have been certified by a consultant ophthalmologist as
 - 1.1 severely sight impaired **or**
 - 1.2 blind¹ **and**
2. are severely visually impaired².

Note: If people do not satisfy these conditions they can only get the higher rate mobility component on the basis that they are both deaf and blind³ (see DMG 61340 et seq).

1 SS C&B (NI) Act 92, sec 73(1AB)(b); SS (DLA) Regs (NI), reg 12(2)(a);

2 SS C&B (NI) Act 92, sec 73(1AB)(a); 3 sec 73(2)

61335 People are severely visually impaired if

1. they have visual acuity, with appropriate corrective lenses if necessary, of less than 3/60¹ **or**
2. they have
 - 2.1 visual acuity of 3/60 or more, but less than 6/60, with appropriate corrective lenses if necessary **and**

2.2 a complete loss of peripheral visual field **and**

2.3 a central visual field of no more than 10° in total².

1 SS (DLA) Regs (NI), reg 12(1A)(a); 2 reg 12(1A)(b)

61336 For the purposes of DMG 61335 decision makers should note that

1. it is the combined visual acuity of both eyes in cases where a person has both eyes¹
2. visual acuity is measured on the Snellen Scale²
3. it is the combined visual field of both eyes in cases where a person has both eyes³.

1 SS (DLA) Regs (NI), reg 12(1C)(a); 2 reg 12(1C)(b); 3 reg 12(1C)(c)

Evidence of visual acuity/visual field

61337 As well as satisfying the condition that a certificate has been issued as in DMG 61334 1., evidence may also have to be obtained to allow decision makers to decide if the person is severely visually impaired. If the decision maker has a certificate showing the claimant

1. is totally blind (cannot distinguish light and dark) **or**
2. satisfies DMG 61335 1. or 2. **or**
3. does not satisfy DMG 61335 1. or 2.

no further evidence is needed. The decision maker will decide that the claimant is severely visually impaired if 1. or 2. above apply and **not** severely visually impaired if 3. above applies. If the certificate does not contain this information, then a health care professional as specified in DMG 1084 and DMG 61338 will examine the person and provide the necessary evidence for the decision maker.

Note: The decision maker may have or may request a report from the hospital. If the report is based on an examination more than 1 year ago and the case is for disallowance, a report from a health care professional should be obtained in case there has been a deterioration.

61338 DMG 1084 gives guidance on the meaning of health care professionals. For the purposes of the higher rate of Disability Living Allowance mobility component for the severely visually impaired¹, professionals prescribed as health care professionals are

1. an optometrist registered with the General Optical Council
2. an orthoptist registered with the Health Professions Council².

Note: Doctors on the General Medical Council's specialist register (consultant ophthalmologist) are already health care professionals.

1 SS C&B (NI) Act 92, sec 73(1AB); 2 SS (NI) Order, art 2(1)

Supersession of existing awards.

61339 For supersession of existing awards before 11.4.11 see DMG 4109.

Note: Decision makers should have regard to the three month qualifying period being satisfied.

Disability Living Allowance mobility component - deaf and blind

61340 If a decision maker is considering a claim where the question of dual sensory impairment arises, then any such case should always be referred to Medical Services for advice on the degree of the disablement due to deafness and visual loss.

61341 People satisfy the conditions for the higher rate of Disability Living Allowance mobility component if

1. they are both deaf and blind **and**
2. as a result of the combined effects

they are unable to walk to their destination out of doors without the assistance of another person¹. Further guidance is available in the Online Medical Guidance.

1 SS C&B (NI) Act 92, sec 73(2); SS (DLA) Regs (NI), reg 12(3)

61342 For the purposes of DMG 61341 **1.** a person is blind if the degree of disablement resulting from loss of vision is 100%¹. This is defined as "unable to do any work for which eyesight is essential"². In practice this means that a person must meet one of the following criteria

1. have vision worse than 3/60 in both eyes **or**
2. have very restricted visual fields **or**
3. have a combination of restrictive fields and decreased visual acuity **or**
4. be registered blind.

A person who is registered blind should have proof of this from their local authority. They may have a form called BD8, CV1, DP1 or A655, or their local authority Social Services should be able to confirm their registration status.

1 SS (DLA) Regs (NI), reg 12(2)(a); 2 SS (Gen Ben) Regs (NI), Sch 2

- 61343 Also for the purposes of DMG 61341 **1**, a person is deaf if the degree of disablement resulting from loss of hearing is not less than 80% where 100% is absolute deafness¹. The assessment of the degree of deafness is the same as for occupational deafness in Industrial Injuries legislation². Medical Services may help in assessing the degree of disablement.

1 SS (DLA) Regs (NI), reg 12(2)(b); 2 SS (II) (PD) Regs (NI), reg 32(2), Sch 3, Parts II and III

Assessment of the degree of deafness

- 61344 The decision maker should refer cases to Medical Services for advice on the degree of the disabilities. When advising on the degree of deafness, Medical Services will arrange for an audiogram test to assess the person's average hearing loss in each ear, measured in decibels (dB)¹. If the person does not satisfy the "blind" test (see DMG 61342 **1**.) there will be no need to carry out an audiogram to test their degree of deafness.

1 SS (II) (PD) Regs (NI), reg 34(2)

- 61345 A person with severe or total hearing loss in one ear but normal hearing in the other ear will have no or minimal hearing impairment. They can compensate for the deaf ear by turning their head. Any test of hearing, including formal testing by audiometry, needs to ascertain the loss in each ear separately. The overall degree of hearing impairment is then determined by considering the effects of both deficits in combination.

- 61346 The chart below permits this to be carried out and arrive at the percentage disablement based on the occupational deafness scheme used in industrial injuries disablement benefit. In order to be 80% the person has to have a hearing loss of 87 dB or more in each ear. The hearing loss in the better ear is plotted along the vertical axis and the loss in the worse ear along the horizontal axis allowing the degree of disablement to be read from the chart. For example someone with 55 dB loss in the better ear and 88 dB loss in the other (worse) ear would have a 40% degree of disablement. Those with 80% disablement are likely to have very severe hearing difficulties. They would be unlikely to hear normal conversation, hear the television without special aids or understand a shout at one metre in a busy street.

- 61347 The decision maker should decide the degree of disablement using the following table.

1, 2, 3, kHz average	Pure Tone HL	WORSE EAR								
Pure Tone	dB	50-53	54-60	61-66	67-72	73-79	80-86	87-95	96-105	106+
B	50-53	20	22	24	26	28	30	32	34	36
E	54-60	22	30	32	34	36	38	40	42	44
T	61-66	24	32	40	42	44	46	48	50	52
T	67-72	26	34	42	50	52	54	56	58	60
E	73-79	28	36	44	52	60	62	64	66	68
R	80-86	30	38	46	54	62	70	72	74	76
E	87-95	32	40	48	56	64	72	80	82	84
A	96-105	34	42	50	58	66	74	82	90	92
R	106+	36	44	52	60	68	76	84	92	100

61348 If a person normally wears or could wear a hearing aid, the test to assess the degree of deafness is carried out with the hearing aid being used¹.

1 SS (DLA) Regs (NI), reg 12(2)(b)

61349

Severely mentally impaired with severe behavioural problems

61350 To satisfy this test for the higher rate of the mobility component a person must be entitled to the highest rate of the care component¹, be severely mentally impaired² (see DMG 61351 - 61370) and have severe behavioural problems³ (see DMG 61376 - 61379). The test is cumulative and if any part of the test is not satisfied a person cannot satisfy the test.

1 SS C&B (NI) Act 92, sec 73(3)(c); 2 sec 73(3)(a); 3 sec 73(3)(b)

Severely mentally impaired

Arrested development or incomplete physical development of the brain

- 61351 The first test towards treating a person as being severely mentally impaired is whether they have a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning¹. Further guidance is available in the Online Medical Guidance.

1 SS (DLA) Regs (NI), reg 12(5)

- 61352 The disabilities counting towards severely mentally impaired are defined as
1. **incomplete physical development of the brain** - where a person's brain has failed to grow properly and this can be seen and assessed
 2. **arrested development of the brain** - where a person's brain is not functioning properly but no physical deficiency is apparent.

- 61353 There is no precise age at which an individual's brain stops developing. The decision maker is entitled to apply the balance of probabilities and consider the age at which brain development ceases as a broad age range, at least into the fourth decade of life and in some cases perhaps into the fifties.

- 61354 A person cannot satisfy the severely mentally impaired condition unless it can be established that the cause of the mental impairment (for example accident, disease, injury) happened before the person's brain was fully developed. Degenerative diseases such as Alzheimer's Disease that begin after the brain is fully developed do not satisfy the severely mentally impaired condition. Difficult cases should be referred to the medical officer for advice.

- 61355 If a person has arrested development or incomplete physical development of the brain, the decision maker must then consider whether this results in severe impairment of intelligence and social functioning¹.

1 SS (DLA) Regs (NI), reg 12(5); R(DLA) 1/00

Arrested development or incomplete physical development of the brain and schizophrenia

- 61356 The severity of schizophrenic disorders can vary from severe chronic deteriorating illnesses to a group of psychoses which are shorter in duration, easier to treat and leave little after effects. Most schizophrenics will not have arrested development or incomplete physical development of the brain. But for those suffering from the most

severe type of schizophrenia (in about 30% of all cases), there is neuro-development damage which is arrested development of the brain.

- 61357 Where it can be established that there is arrested development of the brain, the person still has to show that this results in **severe** impairment of intelligence and social functioning to satisfy the severely mentally impaired test for higher rate mobility component (see DMG 61366 - 61369). Medical advice is that below average intelligence or IQ is not a normal feature of schizophrenia. Schizophrenics may respond or react to others in an unusual or different way but this has no bearing on their intelligence. Therefore, someone whose only disability is schizophrenia will not normally be able to satisfy this part of the severely mentally impaired test¹.

1 SS (DLA) Regs (NI), reg 12(5)

- 61358 In cases involving schizophrenia, the decision maker should make sure that the person has no other disability which could satisfy the severe mentally impaired test¹. Difficult cases should be referred to Medical Support Services for advice.

1 SS (DLA) Regs (NI), reg 12(5)

Arrested development or incomplete physical development of the brain and attention deficit hyperactivity disorder

- 61359 Case law¹ provides that the condition Attention Deficit Hyperactivity Disorder, can be attributed to a state of arrested development or incomplete physical development of the brain within the meaning of the regulation².

1 [2025] UKUT 85 (AAC); 2 SS (DLA) Regs (NI), reg 12(5)

- 61360 When considering an award of the higher rate mobility component under the severe mentally impaired route, Attention Deficit Hyperactivity Disorder can satisfy the initial part of the first limb of the severe mentally impaired criteria, however an award of the higher rate mobility component via the severe mentally impaired route can only be made for a claimant who also satisfies the second and third parts of the test.

61361 – 61365

Severe impairment of intelligence

- 61366 Medically, someone with **severe** impairment of intelligence can generally be described as intellectually three standard deviations below the average IQ of 100. A standard deviation is 15%, so a person with **severe** impairment of intelligence will have an IQ of 55 or less. It is likely that a person with such a low IQ will have undergone tests to assess their intelligence. However, although the IQ is likely to be the essential starting point for considering impairment of intelligence, it is not necessarily decisive.

61367 As well as an IQ of 55 or less, the following points may also indicate that a person has severe impairment of intelligence and should be considered even when the IQ is over 55¹

1. difficulty with communication - speech may be severely impaired, often only monosyllabic or grunting noises, or reading or writing skills may be absent or very poor
2. severe learning difficulties
3. lack of understanding of everyday living.

People with severe impairment of intelligence are likely to need specialised schooling, and supervision of all activities. In cases of doubt and where the IQ is over 55 the decision maker should refer the case to the medical officer for expert advice.

1 Megarry v CAO

61368 The decision maker should consider whether they accept

1. that the assessment of IQ, having had regard to all available evidence, is an adequate reflection of intelligence **or**
2. having regard to all the available evidence, that despite an IQ of above 55, or in the absence of any objective IQ measurement, the claimant's behaviour is consistent with 'severe impairment of intelligence'.

The same evidence may be considered when deciding both the question of "severe impairment of intelligence" and also "severe impairment of social functioning". Nevertheless the two questions themselves are separate and should be considered accordingly.

Severe impairment of social functioning

61369 People with severe impairment of social functioning will usually have severe learning difficulties. They will only be able to acquire a few basic social skills after being shown how to perform them. They will have difficulties relating to other people and making friends, and would not be able to carry out basic social skills such as running a simple errand, using public transport and carrying on a conversation.

61370 The term "intelligence" refers to a person's intellect or ability to understand. The term "social functioning" is what that person is able to do with the intelligence they have. For example, some people who have a low intelligence can relate to other people and perform basic social skills once they are shown how to do them. But others who have a low intelligence are not able to perform basic tasks or relate to others. It is the latter who would display severe impairment of intelligence **and** social functioning.

61371 – 61375

Severe behavioural problems

61376 People are specified as having severe behavioural problems if they exhibit disruptive behaviour that

1. is extreme **and**
2. regularly requires another person to intervene and physically restrain them
 - 2.1 to prevent them injuring themselves or others **or**
 - 2.2 damaging property **and**
3. is so unpredictable that they require another person to be present watching over them whenever they are awake¹.

It is essential that **all** three conditions are satisfied. The disruptive behaviour does not need to be displayed at all times but it must be extreme. The word "extreme" is an ordinary English word which here refers to behaviour which is wholly out of the ordinary.

1 SS (DLA) Regs (NI), reg 12(6)

61377 People who have severe behavioural problems may

1. be destructive
2. be reckless with dangerous things
3. be aggressive and attention seeking
4. self-mutilate or abuse themselves
5. be hyperactive
6. display persistent body movements
7. disrupt the household during the night.

Note: This list is not exhaustive.

61378 The conditions at DMG 61376 can only be satisfied if the disruptive behaviour is

1. a regular occurrence **and**
2. a constant risk.

Aggression, destructiveness, hyperactivity and self injury may require physical restraint.

61379 The claimant's behaviour must be so destructive and unpredictable that they require the presence of another person to watch over them whenever they are awake. This is in all aspects of the claimant's behaviour both indoors and out. If a claimant

displays behavioural problems at home but elsewhere, for example at school, is well behaved then the test will not be satisfied.

Example

Jane although displaying some behavioural problems, is capable of playing alone in her room with the door closed. The claim to higher rate mobility component failed as the carer is not required to be present and watching over Jane whenever she is awake as the bedroom door was closed with the carer on one side and Jane on the other¹.

1 R(DLA) 09/02

- 61380 The claimant's condition must be such that the constant presence of another person is required to intervene, and restrain the claimant, to deal with unpredictable behaviour. The restraint must be a regular occurrence.
- 61381 Recent case law has qualified the above statements as follows. Even if the person (or child) behaves when in a structured environment then the decision maker must still consider what the consequences would be without that structure, and is there still a likelihood that the claimant could display disruptive behaviour for which intervention would be required.
- 61382 The decision maker should consider the following steps when making a decision.
1. What are the constituent parts of the assistance relied on and who gives it.
 2. Which parts of the assistance are of a sufficiently intimate and personal nature to qualify as "attention".
 3. Why is it reasonably required, and so what is it directed to and what is it a consequence of.
 4. How often and when is it given.
 5. If the claimant is under 16, how do the claimant's requirements, and thus the attention, compare with the normal requirements of persons of that age.
- 61383 The decision maker must also consider
1. what are the bodily functions that are affected by the functional disability of the claimant
 2. **if but** for the existence of the functional disability would the relevant attention be reasonably required.
- 61384 From the above assessment the decision maker should be able to determine
1. the bodily functions to which the attention relates can be identified

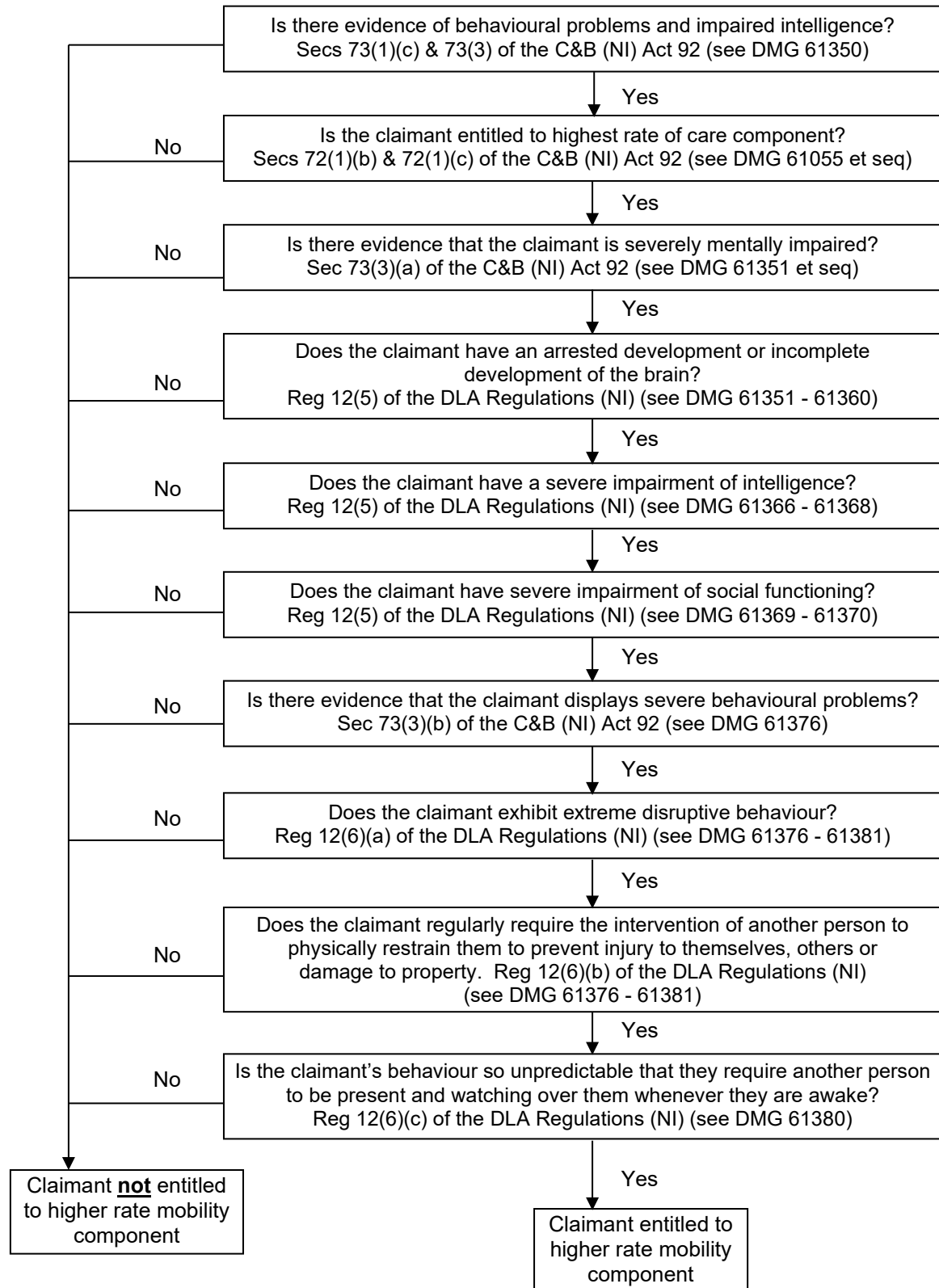
2. the link between them (and thus the relevant attention) and the relevant functional disability can be identified
3. the intimate quality of each aspect of the assistance can be assessed
4. the period or periods for which the attention is reasonably required can be assessed **and**
5. in the case of a claimant under 16 the relevant comparisons can be made.

Evidence of severe mental impairment or severe behavioural problems

61385 The information given on the claim form alone is unlikely to be enough for the decision maker to determine a case under DMG 61351 or DMG 61376. But there should be enough information to identify potential cases. Further evidence may be needed from specialists via Medical Support Services before the decision maker can decide the question.

Severely mentally impaired with severe behavioural problems flow chart

61386 Severely mentally impaired with severe behavioural problems flow chart.



61387 – 61390

Lower rate mobility component

The need for guidance or supervision

61391 The need for guidance or supervision must be linked to the person's ability to take advantage of walking out of doors. The severity of the disability is tested by its effect on the person's ability to take advantage of walking. Therefore, if a person is disabled and as a result needs guidance or supervision when walking out of doors the disability is severe. Ignore any walking they can do on familiar routes without guidance or supervision.

61392 To satisfy the "guidance or supervision" test, a person must be able to show that the guidance or supervision they get from another person will overcome their inability to take advantage of walking out of doors¹. It is the actual effect of the guidance or supervision on that person rather than looking at their disability in general. For example, someone with agoraphobia who refuses to leave the house because of the severity of their phobic condition cannot satisfy the "guidance or supervision" test because no amount of guidance or supervision will help them overcome their disability.

1 R(DLA) 6/05

61393 There is no automatic passporting between the care and mobility components. Guidance or supervision, or elements of guidance or supervision may also constitute attention or supervision which qualifies, or could go towards qualifying a person for entitlement to the care component. However whether or not a person has an award of the care component for attention or supervision is not a relevant issue when deciding the lower rate of the mobility component. Supervision for the care component, and attention, may be relevant to the lower rate of the mobility of component¹. However when considering the lower rate of the mobility component this should be determined with reference to the criteria in section 73(1)(d), and no other criteria.

1 R(DLA) 4/01

Guidance

61394 Guidance may be

1. physically leading or directing the person **or**
2. by oral suggestion or persuasion.

61395 Guidance may include guiding a person to a destination by avoiding obstacles or places, which may upset the person. A person who, as a result of their disability, has little or no ability to communicate or to understand written material such as a road map may need guidance from another person most of the time.

61396 A person with impaired hearing is **not** expected to use written notes to obtain directions. Therefore, a person with impaired hearing may need guidance from another person most of the time.

Supervision

61397 Supervision is not just limited to avoiding substantial danger as it is with the care component. For the lower rate mobility component, supervision may include

1. monitoring the disabled person's physical, mental or emotional state for signs that some intervention may be needed to encourage the person to continue walking **or**
2. checking the route ahead for obstacles, dangers, places or situations which might upset the person.

Coaxing, encouraging, persuading or providing distraction by way of conversation may come within the meaning of "supervision", although actual intervention may never be needed.

61398 A disabled person may get reassurance from the guidance or supervision. They may even call such guidance or supervision "reassurance". This in itself will not mean that the person does not satisfy the "guidance or supervision" test for lower rate mobility component. However, in itself, mere reassurance can never constitute guidance or supervision. There must be a level of monitoring or readiness to intervene on the part of the other person.

61399 Any guidance or supervision must be as a result of the person's disability. It must be needed so that the person could take advantage of walking out of doors.

Fear or anxiety

61400 From 8.4.02 a person cannot meet the conditions of entitlement to lower rate mobility component if the reason they do not take advantage of the faculty of walking out of doors unaccompanied is fear or anxiety¹.

1 SS (DLA) Regs (NI), reg 12(7)

- 61401 The restriction of DMG 61400 does not apply where the fear and anxiety is a symptom of a mental disability and is so severe as to prevent the person from taking advantage of the faculty of walking out of doors unaccompanied¹.

1 SS (DLA) Regs (NI), reg 12(8)

- 61402 Where a person suffers from fear or anxiety that is not a symptom of a mental disability so severe as to prevent him from taking advantage of the faculty of walking out of doors unaccompanied there may be effects of the persons physical disability to consider. If the person does not go out alone because the effects of his physical disability may render him incapacitated and he demonstrates that the level of difficulty thus arising means the person cannot take advantage of the faculty of walking out of doors without guidance or supervision from another person most of the time, that supervision may constitute appropriate supervision¹.

1 R(DLA) 6/05

- 61403 The need for assistance must arise from the degree of severity and frequency of the debilitating effects of a person's disability and may constitute appropriate supervision such as providing an element of monitoring or readiness to intervene in order to prevent the person's ability to take advantage of the faculty of walking from being compromised. The guidance and supervision does not have to relate directly to the act of walking but it must be instrumental in allowing the person to go out of doors and exercise that faculty¹.

1 R(DLA) 4/01; R(DLA) 6/05

Example 1

John suffers from severe epilepsy. He is subject to frequent unpredictable seizures requiring intervention from another person when outside. He cannot reasonably be expected to go out alone most of the time because he is unable to cope with the effects of a seizure that leaves him completely disorientated and confused. His partner always accompanies him when he is out walking because without the guarantee that he has someone with him who would provide assistance during a seizure, John would be unable to use the faculty of walking.

Example 2

David has asthma that is mildly debilitating and attacks are rare, nevertheless, he will not go out alone because he is afraid he will suffer an attack when out walking. David's fear and anxiety does not arise from a mental disablement and the effects of his physical disability are not severe or frequent enough for him to satisfy the test for the lower rate mobility component.

Guidance or supervision

61404 When considering guidance and supervision, the decision maker should have regard to what the person accompanying the disabled person does or would do. The decision maker should also note that

1. the person must be able to walk
2. the severity of the disability is tested by whether the person needs guidance or supervision
3. the person's ability to use familiar routes is disregarded
4. people cannot satisfy the "guidance or supervision" test if they cannot take advantage of the ability to walk even with guidance and supervision
5. the person does not have to need the guidance or supervision all the time when walking out of doors; the test is satisfied if the guidance or supervision is needed most of the time when walking out of doors
6. taking advantage of the ability to walk is a question of fact for the decision maker or appeal tribunal to determine
7. no account can be taken of any guidance or supervision that the person chooses to have, which is not actually needed
8. the guidance or supervision must be required
 - 8.1 as a result of the effects of the person's disability **and**
 - 8.2 to enable that person to take advantage of walking out of doors.

61405 – 61410

Special hospitals

61411 People in special hospitals may qualify for the mobility component of Disability Living Allowance, provided they are not excluded from benefit because they are detained in legal custody¹ (see DMG 61891 et seq).

1 SS C&B (NI) Act 92, sec 113(1); SS (Gen Ben) Regs (NI) 84, reg 2

61412 If the only reason a person needs supervision is to prevent them from absconding, they cannot satisfy the "guidance or supervision" test¹.

1 SS C&B (NI) Act 92, sec 73(1)(d)

Benefiting from enhanced facilities for locomotion

61413 A condition of entitlement to the mobility component is that during most of the period of any award the person can, from time to time, benefit from enhanced facilities for locomotion¹. The word “benefit” should be given a wide interpretation. It can also include mental stimulation from being able to get out and about without the person necessarily appreciating that such benefit is being derived. Locomotion is not limited to walking². However, for the purposes of the lower rate Disability Living Allowance mobility component, people have to be able to walk out of doors (see DMG 61256 et seq and DMG 61392).

1 SS C&B (NI) Act 92, sec 73(8); 2 R(M) 2/83

61414 It would be rare to disallow a claim solely for the reason in DMG 61413. Those excluded may include those in a vegetative state, claimants whose condition renders them unsafe to be moved and claimants so severely mentally deranged that a high degree of supervision and restraint would be required to prevent them injuring themselves or others¹. If in doubt the decision maker should seek medical advice.

1 R(M) 2/83

61415 – 61420

Mobility component - invalid carriage users

61421 A person certified by the Department to be an Invalid Vehicle Scheme beneficiary is treated as having satisfied the conditions for the higher rate mobility component in DMG 61255 1.1.

1 SS (DLA) Regs (NI), Sch 1(4); SS C&B (NI) Act 92, sec 74

61422 The mobility component is not payable to a person treated as having satisfied the conditions for higher rate mobility component as in DMG 61225 if that person has the use of

1. an invalid carriage **or**
2. other vehicle or appliance primarily designed to provide a means of personal and independent locomotion out of doors
3. which is provided by the Department under specific Acts¹.

*1 SS C&B (NI) Act 92, sec 73(13); HPSS (NI) Order 72, art 30(1);
National Health Service Act 1977; National Health Service (Scotland) Act 1978*

Invalid Vehicle Scheme beneficiary over 65

61423 People may be entitled to the higher rate of mobility component or the highest or middle rate of care component after they have reached the age of 65¹ if they

1. are an Invalid Vehicle Scheme beneficiary and the appropriate certificate has been issued² **and**

2. are provided with an invalid carriage or other vehicle by the Department³ which is

2.1 propelled by a petrol engine or electric motor **and**

2.2 provided for use on a public road **and**

2.3 controlled by the occupant.

1 SS (DLA) Regs (NI), Sch 1(4); 2 SS C&B (NI) Act 92, sec 74(1); SS (DLA) Regs (NI), Sch 1(4)(a);

3 NHS Act 77, sec 5(2)(a); NHS (Scotland) Act 78;

HPSS (NI) Order 72, art 30(1); SS (DLA) Regs (NI), Sch 1(4)(b)

61424 Many Invalid Vehicle Scheme beneficiaries who are over 65 have already established entitlement to Disability Living Allowance as in DMG 61421 - 61423. Where they subsequently give up the invalid carriage, they should report a change of circumstances which would require a supersession to restore payability.

61425 Invalid Vehicle Scheme beneficiaries aged 65 or over are entitled to the highest or middle rate care component of Disability Living Allowance if the conditions at DMG 61061 - 61062 are satisfied for a period of **six months** immediately before the date on which the award of that component begins. But the prospective test of being likely to satisfy those conditions for a period of six months from the date on which the award of that component begins does **not** have to be satisfied¹.

1 SS (DLA) Regs (NI), Sch 1(4)(2)

61426 – 61450

Qualifying period

Attendance Allowance

- 61451 There is a 6 month qualifying period before there can be entitlement to Attendance Allowance. Throughout this period a person must satisfy, or be likely to satisfy, the disability conditions in respect of either the higher or lower rate¹. This qualifying period also applies when revising the lower rate to the higher rate because of increased attendance needs. But see DMG 61491 if the person is terminally ill.

1 SS C&B (NI) Act 92, sec 65(1)(b)

Extension to the qualifying period

- 61452 The 6-month qualifying period may end on any date which falls within a period of two years immediately before the date on which the Attendance Allowance award would begin¹.

However this only applies where there has been a previous award of Attendance Allowance.

The regulations permit a greater flexibility in relation to the 6-month qualifying condition in the case of a claimant who has a relapsing condition. Where there has been a remission of his medical condition so that he ceases to satisfy the conditions for receipt of the benefit, but this is followed by a relapse, the claimant may rely upon either a 6-month period during which he has satisfied the conditions or a period during which he is expected to satisfy the conditions, provided that the beginning of that 6-month period is within two years of the ending of his last period of entitlement to Attendance Allowance.

1 SS (AA) Regs (NI), reg 3

Period for which Attendance Allowance is payable

- 61453 Attendance Allowance is payable for the period throughout which the disability conditions are satisfied or likely to be satisfied. This is for a fixed period or for an indefinite period.

61454 – 61460

Disability Living Allowance

Care component

61461 [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]

For a person to be entitled to the care component of Disability Living Allowance, one of the conditions at DMG 61061 - 61063¹

1. must be satisfied for three months
 - 1.1 immediately before the date on which the award of the care component would begin² **or**
 - 1.2 ending on the day the person was last entitled to the care component, the Child Disability Payment care component, or Scottish Adult Disability Living Allowance and that day is not more than two years before the date on which the award of the care component would begin³ **and**
2. must be likely to continue to be satisfied for
 - 2.1 six months from the date on which the award of the care component would begin⁴ **or**
 - 2.2 a period
 - 2.2.a starting with the date the award of the care component would begin and
 - 2.2.b ending with the person's death if that is expected within six months of the date on which the award would begin⁵.

Note: Where 1.2 applies, the previous award of the care component must be at least the same as or equivalent to the current award⁶.

1 SS C&B (NI) Act 92, sec 72(1); 2 sec 72(2)(a)(i); 3 sec 72(2)(a)(ii); SS (DLA) Regs (NI), reg 6(1); SS (C&P) Regs (NI), reg 16; SS (DAWAP) (Conseq Amdts) Order 22; SS (Scot) Act 18 (DA) (Conseq Amdts) Order 25; 4 SS C&B (NI) Act 92, sec 72(2)(b)(i); 5 sec 72(2)(b)(ii); 6 sec 72(4)

61462 The conditions of entitlement satisfied during the retrospective qualifying period (DMG 61461 1.) need not be the same conditions as those which must be satisfied during the prospective test (DMG 61461 2.).

61463 A person may be awarded only one of the rates. If a person

1. has satisfied the disability condition at a lower rate for three months **and**
2. then begins to satisfy the conditions for a higher rate

only the lower rate is payable until the conditions for a higher rate component have been satisfied for three months¹.

1 SS C&B (NI) Act 92, sec 72(4)

Note: Throughout this period a person must satisfy both of the disability conditions. This qualifying period also applies when revising a lower rate to one at a higher rate because of increased care needs.

Example

A woman makes a claim on 6 February. She has satisfied the conditions at the lower rate in the previous three months. She is awarded the lower rate from 6 February. From 6 March her condition deteriorates and she satisfies the condition for a higher rate. She is then awarded the higher rate from 6 June.

61464 – 61465

Mobility component

61466 [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]

For a person to be entitled to the mobility component of Disability Living Allowance, one of the mobility conditions in DMG 61255 or DMG 61256

1. must have been satisfied for three months
 - 1.1 immediately before the date on which the award of the mobility component would begin¹ **or**
 - 1.2 ending on a day when the person was last entitled to the Disability Living Allowance mobility component, the Child Disability Payment or the Scottish Adult Disability Living Allowance. That day cannot be more than two years before the date on which the award of the Disability Living Allowance mobility component would begin² **and**
2. must be likely to continue to be satisfied for
 - 2.1 six months from the date on which the award of the mobility component would begin³ **or**
 - 2.2 a period
 - 2.2.a starting from the date on which the award of the mobility component would begin **and**
 - 2.2.b ending with the person's death if that is expected within six months of the date on which the award would begin.

See DMG 61491 et seq for guidance on people with a terminal illness and DMG 61551 et seq for renewal claims and supersessions from people over 65 years old⁴.

Note: Where **1.2** applies, the previous award of the mobility component must be at least the same as or equivalent to the current award⁵.

1 SS C&B (NI) Act 92, sec 73(9)(a)(i); 2 sec 73(9)(a)(ii); SS (DLA) Regs (NI), reg 11; SS (DAWAP) (Conseq Amdts) Order 22; SS (Scot) Act 18 (DA) (Conseq Amdts) Order 25; SS (C&P) Regs (NI), reg 16; 3 SS C&B (NI) Act 92, sec 73(9)(b)(i); 4 sec 73(9)(b)(ii); 5 sec 73(11)

- 61467 If a person has satisfied the disability conditions at the lower rate for three months, and then begins to satisfy one of the conditions for the higher rate, only the lower rate is payable until one of the conditions for the higher rate have been satisfied for three months¹.

1 SS C&B (NI) Act 92, sec 73(11)

Example

A man makes a claim on 6 February. He has satisfied the conditions at the lower rate in the previous three months. He is awarded the lower rate from 6 February. From 6 March his condition deteriorates and he satisfies the condition for higher rate. He is then awarded the higher rate from 6 June.

The qualifying period and prospective test on or around age 16

- 61468 From 1 October 2007 legislation¹ was changed so that
1. a person age 16 or over submitting a new claim or requesting a supersession of an existing award, will be awarded the benefit providing they satisfy the normal adult entitlement conditions, even if all or part of the qualifying period falls before they attained age 16
 2. where the adult conditions of entitlement have been met for at least three months on attaining age 16, the qualifying period will be satisfied immediately.

The decision maker should look at the prospective test with the additional conditions for children in place up to their 16th birthday and with the adult conditions in place from their 16th birthday.

1 Welfare Reform Act (NI) 2007, sec 48 & sec 49

Example 1

On his 16th birthday Alex submits a claim for the lowest rate of care component by virtue of the cooked main meal test. The evidence indicates this need has existed for several years but the age conditions previously prevented an award of the lowest rate of care component on that basis.

Because Alex claimed at age 16 and he satisfies the adult conditions of entitlement, the decision maker considers the entire 3 month qualifying period under the adult rules and ignores the fact that the qualifying period under consideration falls before Alex attained age 16. The decision maker awards the lowest rate of care component from the 16th birthday.

Example 2

Nick suffers from a global learning disability. On 12th December, two months after attaining age 16, his mother submits a claim on his behalf for the lower rate of mobility component because he requires guidance and supervision. The decision maker considers the conditions of entitlement are met under the adult rules.

Because the claim is made two months after attaining age 16, the decision maker considers the three month qualifying period under the adult conditions of entitlement and ignores the additional entitlement conditions for children for the one month part of the qualifying period that falls before age 16. The decision maker awards lower rate mobility component from 12th December.

Example 3

Four months before attaining age 16, Phil makes a claim for the lower rate of mobility component because the claimant requires guidance and supervision that is substantially in excess of that required by children of the same age and in normal health.

The decision maker considers the conditions of entitlement are satisfied and decides the three month qualifying period prior to the date of claim is also satisfied. The decision maker then considers whether the six month prospective test is met. The decision maker decides the entitlement conditions for children are met from that date of claim for the four months leading up the 16th birthday and from the 16th birthday the adult conditions are met for a further two months so that when combined the six month prospective test is satisfied.

Modifications

61469 The periods in DMG 61461 and DMG 61466 are modified for

1. people who are terminally ill (DMG 61500 - 61510)
2. Invalid Vehicle Scheme beneficiaries aged 65 or over (DMG 61423 et seq)
3. renewal claims and reviews from persons over 65 (DMG 61557 et seq).

61470 – 61490

Special cases

Terminally ill (special rules cases)

Conditions of entitlement

61491 People are considered to be terminally ill if they have a progressive disease from which death may reasonably be expected within twelve months¹.

1 SS C&B (NI) Act 92, sec 66(2)(a)

61492 If death is reasonably expected beyond twelve months, the person is not considered to be terminally ill within the meaning of the Act. The decision maker should consider the reasonable expectation at

1. the date of claim **or**
2. the date of application for revision or supersession.

It is irrelevant that, by the date of the decision maker's decision, the person has lived for twelve months since the diagnosis was made¹.

1 R(A) 1/94

61493 The special rules apply if a person submits evidence that they have been diagnosed as terminally ill

1. after the date of claim **and**
2. before the decision maker's decision is made.

Such a claim may succeed from a date determined in accordance with the evidence.

61494 If, before the decision maker's decision is made, the claimant indicates in writing that it was intended to make a claim under the special rules, see DMG 61497.

61495 The form used by the person's doctor makes no specific reference to terminally ill. The form asks for details of the claimant's condition and any treatment which is being given.

61496 The Department refers all claims made under the special rules direct to a Medical Officer for advice **before** the case is referred to the decision maker. Medical advice is **always** available for the decision maker to decide whether the person is terminally ill.

61497 A claim can only be considered under the special rules if it is made **expressly** because the person is terminally ill¹. Where no claim has been made under the

special rules an application for revision/supersession can only be considered under such rules if it is made expressly on the basis that the person is or was at any time terminally ill.

I SS C&B (NI) Act 92, sec 66(1) & 72(5)

61498 There must be evidence that the claim is being made **specifically** because the disabled person is terminally ill.

61499 Where a claim has **not** been made under the special rules, but written or verbal (e.g. by telephone call) evidence of a terminal illness can be accepted from the claimant or from another person on their behalf. As long as the information is received before the claim has been determined¹ the claim can be amended into a claim made **expressly** because the person is terminally ill.

I SS (C&P) Regs (NI), reg 5(1)

61500 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** The fact that a person is terminally ill is not sufficient for accepting the claim under the special rules. The decision maker should decide cases under the special rules only when the person making the claim has

1. ticked the special rules box in section 1 of the claim pack **or**
2. included with the claim some other expression in writing that the claim is special rules **or**
3. given oral evidence that the claim is made under the special rules.

In cases of doubt the claim should be referred to medical services, who can advise if the information provided is sufficient to treat the claimant as being terminally ill in accordance with DMG 61494.

Qualifying period

Attendance Allowance and Disability Living Allowance care component

61501 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** There is no qualifying period if Attendance Allowance or the care component of Disability Living Allowance is claimed expressly because the person is terminally ill, and the illness is confirmed by Medical Support Services. The conditions of entitlement for

1. Attendance Allowance at the higher rate **or**
2. the care component of Disability Living Allowance at the highest rate

are treated as satisfied from the date of claim or, if later, the first date that the person is terminally ill, whichever is later¹.

1 SS C&B (NI) Act 92, sec 66(1)(b) & 72(5)(b)

Disability Living Allowance mobility component

61502 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** There is no qualifying period if people

1. claim Disability Living Allowance expressly because they are terminally ill **and**
2. satisfy the conditions for entitlement to the mobility component (see DMG 61255 or 61256).

The period for which they are likely to continue to satisfy the conditions may be reduced from six months if they are not expected to live that long (see DMG 61466 2.2)¹. Benefit is payable immediately at the appropriate rate **provided** they are likely to continue to satisfy the conditions for the remainder of their life.

1 SS C&B (NI) Act 92, sec 73(12)

Period of award

61503 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** From January 2000 decision makers have not been required to make awards for life for terminally ill people under the special rules but have the option of making indefinite or fixed period awards¹.

1 Welfare Reform and Pensions (NI) Order 1999 amending SS C&B (NI) Act 92, sec 66(1)(b) & 72(5)(b)

61504 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** Special rules awards of Attendance Allowance and Disability Living Allowance care component should normally be made for an appropriate fixed period. Disability Living Allowance Advisory Board have recommended that three years would normally be an appropriate fixed period. This will enable entitlement to be considered afresh at the end of an award where a person's life expectancy is exceeded.

61505 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** Legislation provides that an award of a care component and a mobility component cannot be made for different fixed periods¹. Where a decision maker finds that a person has claimed Disability Living Allowance under the special rules and also satisfies the entitlement conditions for a mobility component the decision maker must consider whether it is appropriate

1. for the mobility component to be made for the same three year period as the special rules care component award (most likely where the walking difficulties

which give rise to the mobility component entitlement are the result of a progressive disease which gives rise to the special rules care component award) **or**

2. to make the mobility component award for an indefinite period (most likely where the walking difficulties which give rise to the mobility component are not connected to the progressive disease which gives rise to the special rules care component of the award).

1 SS C&B (NI) Act 92, sec 71(3)

61506 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** A special rules care component award will not disturb an existing mobility component award because acquiring the status of a terminally ill person for the purposes of the special rules is not a relevant change of circumstances which gives grounds for reconsidering entitlement to the mobility component. Entitlement to the mobility component may only be reconsidered if there is evidence on the special rules claim form that the claimant's walking difficulties have changed.

61507 **[See DMG Memo Vol 1/124, 4/153, 5/117, 8/102, 9/51, 10/79 & 13/125]** However where the existing mobility component award is for a fixed period the prohibition of the mobility component and care component awards for different fixed periods means that there may be cases in which the period of special rules care component award will need to be adjusted to more or less than three years to fit the period of the mobility award¹.

1 SS C&B (NI) Act 92, sec 71(3)

Example 1

A woman has been diagnosed with a terminal illness and submits a claim under the special rules. Her walking ability is unaffected so the decision maker awards the highest rate of care component for a fixed period of three years. This will enable the claimant's entitlement to be considered afresh at the end of an award where a person's life expectancy is exceeded.

Example 2

A man suffering from a terminal illness submits a claim under the special rules. His walking ability is severely affected by the progressive disease and he is virtually unable to walk. The decision maker awards the highest rate of care component and the higher rate of mobility component for an aligned fixed period of three years. Again, this will allow entitlement to be considered afresh when the award expires.

Example 3

A man suffering from a terminal illness submits a claim under the special rules. He is already in receipt of a fixed period award of mobility component that is unconnected to his progressive disease. The mobility component still has two years to run before expiry. In order to align the two fixed period awards, the decision maker awards the highest rate of care component for two years only.

Example 4

A man suffering from a terminal illness submits a claim under the special rules. He is already in receipt of a five year fixed period award of mobility component that is unconnected to the progressive disease. The mobility component has four years to run before expiry. In order to align two fixed period awards, the decision maker awards the highest rate of care component for four years.

Example 5

A terminally ill woman submits a claim under the special rules. She is already entitled to an indefinite award of mobility component for reasons unconnected to her progressive disease. The decision maker awards the highest rate of care component for a fixed period of three years.

61508 – 61510

Claim on behalf of a terminally ill person made by a third party

- 61511 If somebody makes a claim on behalf of a person who is terminally ill, the terminally ill person is treated as having made the claim. The claim can be made without the terminally ill person's knowledge or authority¹.

1 SS A (NI) Act 92, sec 1(3)(a) & (b)

61512 – 61519

Disability Living Allowance - under 16s

Claim received for a child under 16

61520 Children under 16 qualify for Disability Living Allowance in their own right. If Disability Living Allowance is claimed for someone under 16 the Department appoints another person to receive and deal with the allowance on their behalf¹.

1 SS (C&P) Regs (NI), reg 42

Care component

61521 Children under 16 qualify for the care component if

1. they satisfy at least one of the normal conditions in DMG 61051 **and**
2. they
 - 2.1 require substantially more care from another person than children of their age would normally require¹ **or**
 - 2.2 have substantial requirements that children younger than them in normal physical and mental health may need but a child their age in normal physical and mental health would not require².

Note 1: The "main meal" test (DMG 61081) does not apply to a child under 16 years of age³.

Note 2: See DMG 61468 for guidance on the qualifying period and prospective test on or around age 16.

1 SS C&B (NI) Act 92, sec 72(1A)(b)(i); 2 sec 72(1A)(b)(ii); 3 sec 72(1A)(a)

Renal dialysis

61522 Where a child under 16 satisfies the conditions of entitlement for the middle rate care component because they are undergoing renal dialysis (DMG 61220 et seq), the conditions in DMG 61521 do not have to be satisfied¹.

1 R(A) 1/93

Mobility component

61523 A child under 16 satisfies the "guidance or supervision" condition for the lower rate mobility component if they satisfy the adult conditions in DMG 61256 and they

1. require substantially more guidance or supervision from another person than children of their age in normal physical and mental health would require¹ **or**
2. need guidance or supervision that children of their age in normal physical and mental health would not require¹.

Note 1: Children under three years of age (five years of age before 9.4.01) can never be entitled to the mobility component.

Note 2: See DMG 61468 for guidance on the qualifying period and prospective test on or around age 16.

1 SS C&B (NI) Act 92, sec 73(4A)

Points for consideration

- 61524 The care and mobility needs of healthy children are substantial and must be taken into account when considering the care and mobility needs of a disabled child. Further guidance is available in the Online Medical Guidance.
- 61525 To qualify for Disability Living Allowance the attention, guidance, and supervision required by a disabled child must be substantially in excess of that usually required by a child of the same age or the child must need extra such care requirements that would be common to younger children, but are different from children of their age or would normally have grown out of it. The decision maker should consider the need for attention, guidance and supervision in relation to what is required by the child and not to what is, or is not, actually given. Any attention or guidance that is required, may be constituted by virtue of the time over which it is required, or by virtue of the quality or degree of attention or guidance and supervision that is required.
- 61526 Guidance and supervision needed by children are influenced by the fact that, as they develop physically and mentally, their needs may decrease or increase. Physical development may increase the disabled child's needs. For example children with learning difficulties may require more rather than less supervision as they get older and become more mobile (particularly if they develop dangerous habits which they may have difficulty in controlling).
- 61527 Physical development may also reduce a disabled child's needs. For example physical development of the upper limbs in children with defective lower limbs may enable them to move independently with mechanical aids.
- 61528 Increasing maturity should lead children with diabetes to assume responsibility for the care of their condition and so require less supervision. Education may also have an effect, notably with children who are blind or deaf.

Assessment of care needs

- 61529 The attention given, particularly to infants and the very young children who are disabled, may differ from that given to healthy children of the same age. This does not necessarily mean that the amount of attention given is substantially in excess. The needs and functions of healthy children must be taken into account when assessing the needs of a child with a disability.

Example

Healthy children, especially very young children, may wake up during the night from a variety of reasons and require attention. Likewise young children who are not disabled require attention in relation to bodily functions such as eating, dressing, undressing, washing and using the toilet.

Care substantially in excess

- 61530 There are some children with a disability
1. whose care includes the use of technical procedures **or**
 2. whose clinical condition poses very substantial needs
- so that the attention or supervision/watching-over they require from birth may be **substantially in excess** of that required by a healthy child.
- 61531 These include children
1. requiring regular mechanical suction because they have a tracheostomy or other upper airway problem **or**
 2. being fed by tube into the stomach or a vein **or**
 3. who need oxygen regularly to survive **or**
 4. undergoing the following surgical procedures in which a segment of the stomach or bowel is opened up onto the abdominal wall for feeding or for the elimination of waste
 5. with frequent loss of consciousness usually associated with severe fits secondary to birth asphyxia or rare forms of congenital metabolic disease
 6. with severe impairment of vision and/or hearing.
- 61532 The surgical procedures at DMG 61531 4. are
1. gastrostomy where the stomach has an opening onto the abdominal wall to assist in feeding by tube **and**
 2. ileostomy; jejunostomy; colostomy which are

2.1 connections between a particular part of the bowel and the abdominal wall **and**

2.2 usually constructed to form an exit from the intestine when part of it is blocked or has been destroyed by disease.

61533 The question of what is meant by "substantially in excess" is for the decision maker to determine. This has to be measured against the normal attention or supervision needs of a child of the same age who is not disabled, and **not** what would be needed by the child who is claiming Disability Living Allowance if that child was not physically or mentally disabled.

61534 Children's attention and supervision needs vary considerably. At any age there is a wide range of requirements for attention or supervision. The attention or supervision needed should not be regarded as "substantially in excess" unless it is outside the whole range of attention or supervision that would normally be required by a child of the same age who is not disabled.

Attention or supervision at school

61535 Supervision or guidance received at school can count as attention in connection with a bodily function provided that attention is of a close and personal nature (see DMG 6138 et seq). A special needs helper in the classroom may provide a child with the attention in the classroom that helps the child to focus on the tasks that have been set by the teacher and may therefore amount to attention of a close and personal nature.

Example

Emma has a learning disability and regularly receives attention in the course of her lessons from a special needs helper. She monitors Emma during the course of the lessons and helps her to concentrate on the tasks she has been set by the teacher.

61536 In many instances evidence from the home and the school will be contradictory. This may be due to the child taking medication that only wears off after school. However, it is unlikely that any attention thus arising could amount to attention frequently throughout the day.

Example

Lucy aged ten is suffering from Attention Deficit and Hyperactivity Disorder and is destructive around the home, reckless in dangerous situations such as running out into busy roads and cannot be left alone with her young brother as she frequently loses her temper and punches and scratches him. The mother indicates that Lucy is

on prescribed medication that is effective for up to eight hours and takes the medication before going to school. The evidence from the school indicates that Lucy is well behaved and her educational progress is normal for her age and she does not require any special attention whilst at school. Any attention required after the effects of medication has worn off could not amount to attention frequently **throughout the day**, but may amount to attention required for a significant portion of the day.

Nocturnal Encopresis and Enuresis

- 61537 The decision maker must be satisfied that the claimant has a functional deficiency that is either physical or mental in origin, which the claimant is unable to control, that gives rise to the appropriate care needs. Encopresis or Enuresis are not in themselves a disablement but they may be a symptom of a disablement. A young child's inability to perform functions due to immaturity is however not a disablement. Nonetheless, if the symptoms persist as a child gets older it could indicate the presence of a disablement.
- 61538 Provided the use of pads or nappies preclude attention needs sufficient to qualify, then the claim fails because qualifying attention must be in consequence of the disablement¹.

1 R(DLA) 1/05

Example 1

Philip is seven and has eczema and nocturnal enuresis. He cannot wear incontinence pads due to the eczema and his mother has to get up once a night for 30 minutes to bathe him, re-apply eczema cream, and to change his night clothes and sheets. This can amount to attention for a prolonged period due to the eczema.

Example 2

Ryan is a five year old who has a urinary disease and wets the bed. He refuses to wear nappies/incontinence pads because he considers this as "babyish" and his mother has to get up twice a night for 30 minutes each time to bathe him and to change his night clothes and sheets. In this case the need for attention at night could be avoided by wearing nappies/pads and any claim based upon the child's refusal to wear nappies/pads will fail.

Example 3

Padma is 3 years old and soils the bed during the night due solely to immaturity and would not amount to a disablement.

61539 – 61540

Assessment of mobility needs

- 61541 Guidance and supervision given to children with a disability may differ from that given to healthy children of the same age. This does not necessarily mean that the amount of guidance and supervision is substantially in excess.
- 61542 DMG 61523 should be referred to when considering whether a child with a disability satisfies the condition for the lower rate of mobility component. Many children may need some guidance and supervision whilst walking out of doors. The test is whether the child needs substantially more supervision than a child of the same age or whether they need guidance or supervision that children of their age in normal physical and mental health would not require.

Quality and quantity of supervision and guidance

- 61543 Supervision or guidance will vary according to the needs of the child. Some children may be relatively safe and need only light control. Others may be more likely to have problems and require tighter control to keep them safe. There is a considerable difference between a five year old who has developed road sense and one who is liable to run into traffic at a whim. Holding hands will be sufficient to keep the former child safe. But to keep the latter safe requires greater physical restraint and more mental alertness.
- 61544 A young child in normal health can be warned and directed by voice from a distance without the need for a supervisor to stay within touching distance or to maintain eye contact with him. He can be allowed to make short journeys on foot on traffic free routes that are familiar to him and overlooked from a distance by adults for example to a neighbours house.

Example 1

Alec is five years old and is profoundly deaf. He needs someone to be in very close proximity to ensure he does not step into the path of dangers from behind, such as an approaching cyclist, other running children or a child on a skateboard who will all be unaware that he cannot hear them. Alec requires close and constant supervision the nature and quality of which may constitute supervision substantially in excess of that required by a normal child.

Example 2

Ellen is ten years old, autistic and has no sense of danger and displays behavioural problems. She frequently runs off without warning. Her mother needs to be extremely vigilant and keep a tight hold of her hand when they are walking near busy roads. Ellen may therefore require a greater physical restraint and more mental alertness from the person accompanying her in order to keep her safe.

61545 People who claim Disability Living Allowance after age 16 need only satisfy the ordinary disability conditions (DMG 61061 - 61065) for a three month qualifying period at DMG 61461.

61546 – 61550

Disability Living Allowance - People of pensionable age

New claims

- 61551 To be entitled to Disability Living Allowance a person must be under pensionable age, except in circumstances set out below.

Note: From 6.12.18¹ the age condition changed from being under age 65 to being under pensionable age². (See DMG Chapter 75 for guidance on pensionable age.)

1 Pensions Act (NI) 08, sec 11; 2 SS C&B (NI) Act 92, sec 75(1)

61552

- 61553 People who claim Disability Living Allowance before reaching pensionable age¹ but
1. the claim was not determined until after they reached pensionable age² **and**
 2. at the time of their claim they did not have an award of Disability Living Allowance for a period ending on or after the day they reached pensionable age³

may be entitled to Disability Living Allowance.

1 SS (DLA) Regs (NI), reg 3(2)(a); 2 reg 3(2)(b); 3 reg 3(2)(b)

- 61554 Provided that the person has satisfied all the conditions for Disability Living Allowance except the qualifying period before they reached pensionable age, the claim is determined without regard to the fact that they are actually aged over pensionable age at the time the claim is determined¹.

1 SS (DLA) Regs (NI), reg 3(3)

- 61555 The three month qualifying period need not have been completed on the day before they reach pensionable age. That day could be the first day of the qualifying period.
- 61556 There is no upper age limit for receiving Disability Living Allowance. The length of an award should not be restricted simply because of age. A person may continue to receive an award beyond pensionable age where the normal conditions of entitlement remain satisfied.

Renewal claims

- 61557 People who are pensionable age or over are not prevented from making a successful renewal claim for Disability Living Allowance solely on the grounds of their age¹.

1 SS (DLA) Regs (NI), reg 3 & Sch 1

61558 [See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]

A renewal claim from such a person can only succeed if

1. it is made within 12 months of the end of the previous award **and**
2. the person was pensionable age before their previous award ended¹.

1 SS (DLA) Regs (NI), reg 3 & Sch 1

61559 If a claim for Disability Living Allowance is made after a break of more than 12 months by a person whose award ended after they reached pensionable age, Attendance Allowance is available to them. The claim for Disability Living Allowance can be treated as a claim for Attendance Allowance (DMG 61611).

61560 – 61564

Revisions or supersessions

61565 The decision maker should note that the guidance on revision or supersession in DMG 61568 et seq **only** applies to revision or supersessions of awards made

1. on or after the date the person reached the pensionable age **or**
2. before the person reached pensionable age where the award is superseded because of a change of circumstances which occurred on or after the date the person reached pensionable age¹.

1 SS (DLA) Regs (NI), Sch 1, para 2

61566 People of pensionable age are not excluded from entitlement to either component of Disability Living Allowance solely because they are of pensionable age when the changed award is made¹ where they

1. have an award of Disability Living Allowance made before pensionable age **and**
2. apply for a revision or supersession **and**
3. the award is changed.

1 SS (DLA) Regs (NI), Sch 1, para 1(1) & (2)

61567 Where the decision is superseded on the grounds of a relevant change of circumstances, the change must have taken place before the person reached pensionable age¹.

1 SS (DLA) Regs (NI), Sch 1, para 1(3)

Disability Living Allowance care component

Highest and middle rate

- 61568 **[See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]**
On revision or supersession or a renewal claim, if the highest or middle rate had been payable, a person may receive either the highest or the middle rate provided that the appropriate disability conditions at DMG 61061 or DMG 61062 are satisfied. The lowest rate is not available even if the conditions for that rate are satisfied. The person must complete a six month qualifying period before becoming entitled to the care component¹ if moving from the middle to the highest rate.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 3(2)(b)

Lowest rate

- 61569 If the lowest rate had been payable on a renewal claim or revision or supersession, a person may still receive
1. that rate **or**
 2. one of the higher rates.

The rate depends on which of the disability conditions they now satisfy¹ after a six month qualifying period.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 3(2)(a)

Effect of these conditions

- 61570 These conditions allow movement between the rates. But note that a person cannot move on to the lowest rate from the highest or middle rates if their condition improves. In these circumstances they lose entitlement to the care component altogether.

61571 – 61580

Disability Living Allowance mobility component

Higher rate

- 61581 **[See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]**
People entitled to the mobility component at the higher rate on their previous claim or before the revision or supersession can still be awarded the higher rate providing that they satisfy one of the conditions at DMG 61255. The condition must be expected to

last six months from the date of claim or from the date of the revised or superseded decision¹.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 5(1) & (2)

- 61582 A person entitled to the mobility component at the higher rate and whose condition improves so that they no longer satisfy the conditions for the higher rate, loses entitlement to the mobility component altogether, even though they otherwise satisfy the conditions for the lower rate¹.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 5(1)

Lower rate

- 61583 **[See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]**

The lower rate can be awarded on a renewal claim or where the decision is revised or superseded only where people were entitled to the mobility component at the lower rate

1. on their previous claim **or**
2. before the revision or supersession.

Even if their condition worsens they do not qualify for the higher rate but may be awarded the lower rate¹.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 6(1)

Mobility component - award of care component

- 61584 **[See DMG Memo Vols 1/130, 4/160, 5/127, 6/99, 8/110, 9/62, 10/87, 13/133 & 14/83]**

People entitled to the mobility component on their previous claim or before the revision or supersession, can be entitled to the care component at the highest or middle rate if they develop care needs and satisfy the care conditions at DMG 61462 and/or DMG 61055. But, they must complete a six month qualifying period before becoming entitled to the care component¹.

1 SS (DLA) Regs (NI), reg 3 and Sch 1, para 7(1) & (2)

- 61585 Subject to the provisions of DMG 61551 et seq, a person cannot be awarded a mobility component on a renewal claim or revision or supersession after they reach pensionable age, even if they are already in receipt of a care component.

61586 – 61600

Determination of claims and awards

Claims and awards

- 61601 Where the guidance on claims and on deciding claims and questions differs from Attendance Allowance to Disability Living Allowance, this will be made evident. Otherwise, the guidance applies to both benefits.

61602

Disability Living Allowance claims with evidence of one component only

- 61603 The decision maker should determine from the evidence on the claim form, or from other sources, whether entitlement exists to one or both components. The claimant may complete Section 2 of the claim pack for one component only. However, the decision maker should determine the claim on the basis of both components.

61604 – 61606

Advance claims and awards

- 61607 A claim for or an award of Attendance Allowance may be made during the six month qualifying period if
1. throughout that period the person is disabled **and**
 2. they are expected to satisfy one or both of the disability conditions in DMG 61053 - 61054¹.

1 SS C&B (NI) Act 92, sec 65(6)

- 61608 An award of Disability Living Allowance may be made during the qualifying period of three months if throughout that period a person is expected to satisfy one or more of the care or mobility conditions in DMG 61051 et seq or DMG 61251 et seq. This includes claims for the mobility component on behalf of children who are approaching five years of age, for the lower rate, and three years of age for the higher rate¹, providing the child's third birthday falls on or after 9.4.01.

1 SS C&B (NI) Act 92, sec 72(2)(a) & sec 73(9)(a); SS (C&P) Regs (NI), reg 13A

61609 – 61610

Interchange of claims

- 61611 The decision maker may treat a claim for Attendance Allowance as a claim for Disability Living Allowance or Constant Attendance Allowance¹. A claim for Disability Living Allowance or Constant Attendance Allowance can also be treated as a claim for Attendance Allowance.

1 SS (C&P) Regs (NI), reg 9(1) & Sch 1

Movement between rates

- 61612 People under the age of 65 may move between rates as their condition changes. A qualifying period has to be completed before a higher rate of benefit becomes payable, but a change to a lower rate takes effect immediately, because the qualifying period has already been satisfied¹. The decision maker should

1. be aware that the condition of people with disabilities can change from day to day **and**
2. take account of the needs over the qualifying period rather than on a particular day.

1 SS C&B (NI) Act 92, sec 65(3), 72(4) & 73(11)

Period of award

Attendance Allowance and Disability Living Allowance

- 61613 The decision maker should fix the period of award on the balance of probabilities, using all the available evidence and sources of advice. The decision maker should make every effort to obtain a prognosis, using the Online Medical Guidance or Medical Officer if necessary. Where this indicates that no change or improvement is likely in the person's needs, an indefinite period is appropriate.
- 61614 In all other cases, a fixed period award is appropriate. Evidence about treatment or likely surgical intervention may mean an award should be restricted, including such factors as local waiting lists and recovery time. An award may also be restricted for a reasonable period where the prognosis is uncertain, or in children where increasing age and maturity may change care or mobility needs. A fixed period award of three years is normally appropriate for a special rules award of Attendance Allowance or Disability Living Allowance care component (see DMG 61502 et seq).

61615 – 61617

Disability Living Allowance only

61618 The decision maker can award either component for a fixed period or for an indefinite period. The minimum period is six months. A person may be awarded

1. both components for an indefinite period **or**
2. one component for an indefinite period and the other for a fixed period **or**
3. both components for the same fixed period **or**
4. only one component for a fixed period or for an indefinite period¹.

1 SS C&B (NI) Act 92, sec 71(3)

61619 Where the decision maker decides that a person would be entitled to both components but for fixed periods of different duration, Disability Living Allowance **must** be awarded for the shorter of the fixed periods¹. For example, if the decision maker decides that a person is entitled to one of the components for three years and the other for five years, Disability Living Allowance must be awarded for three years.

1 SS C&B (NI) Act 92, sec 71(3)

Awarding higher rate mobility under the severe mentally impaired route for claimants with Attention Deficit Hyperactivity Disorder

61620 If awarding the higher rate mobility component under the severe mentally impaired route for claimants with Attention Deficit Hyperactivity Disorder (see DMG 61359), a shorter award may be appropriate in some cases to allow for a planned review of the claimant's condition. This is particularly pertinent where

1. the claimant has ongoing medical involvement **and**
2. there is uncertainty about the long-term impact of the condition on behaviour or functioning **and**
3. there is evidence that the claimant's needs may change over time.

Note: Where a shorter award is being considered, Customer Case Management award duration guidance for Attention Deficit Hyperactivity Disorder will be a useful reference considering all the individual facts of the case.

61621 – 61650

Hospitals, similar institutions and care homes

General rule on payability for hospitals and similar institutions

61651 Attendance Allowance or Disability Living Allowance is not payable for any period during which a person is maintained free of charge while undergoing treatment as an in-patient in

1. a hospital or similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991¹ **or**
2. a hospital or similar institution maintained or administered by the Defence Council².

1 SS (AA) Regs (NI), reg 6(1)(a); SS (DLA) Regs (NI), reg 8(1)(a) & 12A(1)(a);

2 SS (AA) Regs (NI), reg 6(1)(b); SS (DLA) Regs (NI), reg 8(1)(b) & 12A(1)(b)

61652 Guidance is given in DMG Chapter 18 on the meaning of

1. any period
2. maintained free of charge
3. in-patient
4. hospitals or similar institutions.

Exception to the general rule - first 28 days

61653 Where a person is already entitled to Attendance Allowance or Disability Living Allowance on the day treated as the first day in a hospital or similar institution¹, Attendance Allowance or Disability Living Allowance continues to be payable for

1. the first 28 days **or**
2. periods amounting in total to 28 days. See DMG 61851 et seq.

1 SS (AA) Regs (NI), reg 8(1); SS (DLA) Regs (NI), reg 10(1) & 12B(1)

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

- 61654 Any Disability Living Allowance claimant who has not attained the age of 18 on the day they enter a hospital or similar institution as an in-patient will not have their Disability Living Allowance payment stopped whilst they remain in hospital or similar institution as an in-patient¹.

1 SS (DLA) Regs (NI), reg 8(2B), 12A(3)

Example 1

Peter turned 13 years old on 30.6.16 and subsequently made a claim for Disability Living Allowance. The decision maker decided that Peter was entitled to the middle rate care component of Disability Living Allowance 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 Disability Living Allowance 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

Catherine turned 15 years old on 29.7.16 and was in receipt of the higher rate care component of Disability Living Allowance. She entered hospital as an in-patient on 1.8.16 and remained there until she was discharged on 1.10.20. At the date of discharge she was 19 years old. Catherine is paid the Disability Living Allowance higher rate care component throughout her full stay in hospital as she was under the age of 18 when she was admitted as an in-patient.

The Motability Scheme - exception from the general rule

Before 20.6.16 the general rule on payability was modified¹ for people with a Motability agreement. See also Appendix 5 to this Chapter for people who have been in hospital since before 31.7.96 (including linked periods). For Motability agreements before 20.6.16 see Appendix 6 to this Chapter.

1 SS (DLA) Regs (NI), reg 12B

61656 – 61664

61665 The Motability Scheme allows people to use their higher rate Disability Living Allowance mobility component to buy (through hire purchase) a car or an electric scooter or wheelchair. Cars can also be leased. Motability is a voluntary organisation which helps people buy or lease a vehicle under the scheme. The amount paid under the agreement may be less than the amount of the Disability Living Allowance mobility component, with the balance paid to the claimant.

61666 The decision maker will need evidence on Motability agreements, including details of the

1. date the agreement began
2. period of the agreement
3. weekly amount payable to Motability under the agreement
4. type of vehicle.

61667 **Before 20.6.16** people in hospital with a Motability agreement would generally be able to retain payment of the Disability Living Allowance mobility component despite the general rule in DMG 61651 - 61652. In practice the Department pays the amount of the agreement to Motability Finance Ltd.

61668 The rules about the effect of admission to hospital on Disability Living Allowance are set out at DMG 61651 to 61654. However, as explained in DMG 61655, the rules relating to Disability Living Allowance (mobility component) are modified for claimants with a Motability agreement.

61669 Where on 20.6.16

1. the claimant is maintained free of charge while undergoing treatment as an in-patient¹ in
 - 1.1 a hospital or similar institution under specified legislation² **or**

1.2 a hospital or similar institution maintained or administered by the Defence Council **and**

- 2.** a Motability agreement entered into by or on behalf of the claimant is in force
Disability Living Allowance (mobility component) will continue to be payable until the date determined in accordance with DMG 61670 below.

1 SS (DLA) Regs (NI), reg 12B(7); 2 H&PSS (NI) Order 72; H&PSS (NI) Order 91

61670 Where the conditions in DMG 61669 are satisfied Disability Living Allowance (mobility component) will continue to be payable until whichever is the earliest of the following dates¹

- 1.** the first day after 20.6.16 on which the person ceases to fall within DMG 61669
 - 1.** above (i.e. ceases to be a hospital in-patient) for a period of more than 28 consecutive days **or**
- 2.** the date determined in accordance with DMG 61671 below **or**
- 3.** 20.6.19.

1 SS (DLA) Regs (NI), reg 12B(8)

61671 The date referred to in DMG 61670 **2.** above is whichever of the following dates applies¹

- 1.** in the case of the **hire of a vehicle**, where the vehicle is
 - 1.1** returned to the owner before the expiry of the current term of hire, **the date the vehicle is returned to the owner**
 - 1.2** returned to the owner at the expiration of the current term of hire, **the date the current term of hire expires**
 - 1.3** retained by or on behalf of the claimant with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**
 - 1.4** retained by or on behalf of the claimant otherwise than with the owner's consent after the expiry of the current term of hire, **the date the current term of hire expires**
 - 1.5** retained by or on behalf of the claimant otherwise than with the owner's consent after the date of an early termination of the current term of hire, **the date of that early termination**
- 2.** in the case of a hire purchase agreement
 - 2.1** the date the vehicle is purchased

2.2 where the vehicle is returned to the owner under the terms of the hire purchase agreement before the completion of the purchase, **the date the vehicle is returned to the owner**

2.3 where the vehicle is repossessed by the owner under the terms of the hire purchase agreement, **the date of repossession.**

1 SS (DLA) Regs (NI), reg 12B(8A)

Meaning of “current term of hire”

61672 In DMG 61671 1. above the phrase “current term of hire” means¹ the last term of hire that was agreed on or before 20.6.16 but it does not include any extension of that last term applying after 20.6.16.

1 SS (DLA) Regs (NI), reg 12B(8B)

61673 – 61689

Hospices

Definition of hospice

61690 A hospice is a hospital or other institution, whose primary function is to provide palliative care for residents who have a progressive disease in its final stages¹.

1 SS (AA) Regs (NI), reg 8(5); SS (DLA) Regs (NI), reg 10(7) & 12B(12)

61691 A hospital or other institution is not a hospice 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 2.¹.

1 SS (AA) Regs (NI), reg 8(5); SS (DLA) Regs (NI), reg 10(7) & 12B(12)

Rules on payability for hospices

61692 Attendance Allowance or Disability Living Allowance is payable to a person who is terminally ill (DMG 61491) and living in a hospice, provided that the Department has been informed that the person is terminally ill

1. on a claim for either benefit **or**
2. on an application for revision or supersession of an award **or**
3. in writing in connection with an
 - 3.1 award **or**
 - 3.2 claim **or**
 - 3.3 application for revision or supersession¹.

1 SS (AA) Regs (NI), reg 8(4); SS (DLA) Regs (NI), reg 10(6) & 12B(9A)

61693 DMG 61692 does not apply if the person is not entitled to Attendance Allowance or Disability Living Allowance under the "special rules" (see DMG 61491 - 61499).

61694 Where the person is not entitled to Attendance Allowance or Disability Living Allowance under the "special rules" (see DMG 61491) the decision maker should consider whether the rules on payability apply instead for

1. a hospital or similar institution¹ **or**

2. care homes².

1 SS (AA) Regs (NI), reg 6; SS (DLA) Regs (NI), reg 8 & 12A;

2 SS (AA) Regs (NI), reg 7; SS (DLA) Regs (NI), reg 9

61695 – 61699

Care homes other than hospitals and hospices from 6.10.03

Note: Appendix 5 to this Chapter includes guidance on care homes for periods before 6.10.03.

Definition of a care home

61700 A care home is an establishment that provides accommodation together with nursing or personal care¹.

1 SS C&B (NI) Act 92, sec 67(3) & sec 72(9)

61701 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.
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.

More likely to be a care home	Less likely to be a care home
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.

61702 – 61714

Rules on payability for care homes

61715 Attendance Allowance or Disability Living Allowance (care) is **not** payable

1. if the person is living in accommodation where the costs of any qualifying services are provided under Articles 5, 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972¹ **or**
2. if the person is living in accommodation, the cost of which is met wholly or partly out of public or local funds under the Health and Personal Social Services (Northern Ireland) Order 1972, or under Acts relating to
 - 2.1 persons with disabilities **or**
 - 2.2 in the case of the care component of Disability Living Allowance
 - 2.2.a young persons **or**
 - 2.2.b education **or**
 - 2.2.c training².

¹ SS (AA) Regs (NI), reg 7(2); SS (DLA) Regs (NI), reg 9(2); ² SS (AA) Regs (NI), reg 7(2); SS (DLA) Regs (NI), reg 9(2)

61716 If it was determined that a claimant was in a care home where any of the costs of any qualifying service provided for him are met out of public or local funds in accordance

with DMG 61715 then any Disability Living Allowance care component or Attendance Allowance would not be payable following the first 28 days of their stay¹.

1 SS (DLA) Regs (NI), reg 10(1) & (2) & SS (AA) Regs (NI), reg 8(1)

Qualifying services

61717 Qualifying services¹ for the purposes of DMG 61715 are

1. accommodation **or**
2. board **or**
3. personal care.

1 SS C&B (NI) Act 92, sec 67(4) & sec 72(10)

61718 Costs of any qualifying services in DMG 61717 do not include

1. domiciliary services, including personal care, provided in a private dwelling¹ **or**
2. improvements to, or furniture and equipment for
 - 2.1 a private dwelling to meet the needs of a disabled person² **or**
 - 2.2 a care home for which a grant or payment has been made out of public or local funds, unless the grant is regular or repeated³ **or**
3. social and recreational activities provided outside the care home for which grants or payments have been made out of public or local funds⁴ **or**
4. the purchase or running of a motor vehicle used in connection with any qualifying service provided in a care home for which grants or payments are made out of public or local funds⁵
5. **before 20.6.16** services provided under specified legislation⁶
6. **after 19.6.16 services under specified legislation where amended⁷.**

1 SS (AA) Regs (NI), reg 7(5)(a); SS (DLA) Regs (NI), reg 9(6)(a); 2 SS (AA) Regs (NI), reg 7(5)(b); SS (DLA) Regs (NI), reg 9(6)(b); 3 SS (AA) Regs (NI), reg 7(5)(c); SS (DLA) Regs (NI), reg 9(6)(c); 4 SS (AA) Regs (NI), reg 7(5)(d); SS (DLA) Regs (NI), reg 9(6)(d); 5 SS (AA) Regs (NI), reg 7(5)(e); SS (DLA) Regs (NI), reg 9(6)(e); 6 SS (AA) Regs (NI), reg 7(5)(f); SS (DLA) Regs (NI), reg 9(6)(f); 7 SS (DLA, AA & CA) (Amdt) Regs (NI) 16, reg 3(7)(b) & reg 4(7)(c)

61719 – 61734

Direct payments

61735 Health Trusts may make payments for care needs, including residential care, directly to the disabled person¹. 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 household²
2. for periods in residential care exceeding four weeks in twelve months³.

1 Cares and Direct Payments Act (NI) 2002; 2 The Personal Social Services and Children's Services (Direct Payment) Regs (NI) 2004, reg 7(1); 3 reg 8(1)

61736 The four week period in DMG 61735 **3.** may be made up of shorter periods separated by less than four weeks.

61737 Where a person has made their own arrangements to stay in a care home using direct payments, the general rule in DMG 61715 applies. Periods paid for by direct payments should be added to other periods in a care home provided by a Health Trust when calculating the period as in DMG 61853.

61738

Exceptions to the general rule

61739 Where accommodation is funded under legislation relating to education, training or young people the accommodation will usually be a school, college or children's home. However the care component of Disability Living Allowance remains payable

1. for any period during which the Health and Social Services Board, Health and Social Services Trust or Department places a person in a private dwelling with a family, relatives, or suitable person, provided that the person is
 - 1.1 under 16 and is in the care of a Health and Social Services Board, Health and Social Services Trust or the Department¹ **or**
 - 1.2 under 18, and their health or development is likely to be significantly impaired, or further impaired without the provision for them of services by a Health and Social Services Board, Health and Social Services Trust or the Department² (see DMG 61740) **or**
 - 1.3 under 18, and disabled³ (see DMG 61740) **or**
2. where the accommodation is provided outside the UK for a child under 16 (or over 16 if child benefit is in payment in respect of the child) and the cost is, or may be met wholly or partly by an Education and Library Board or the Department of Education under Article 31(3) of the Education and Libraries (Northern Ireland) Order 1986⁴, for example the Higashi School or the Peto Institute.

1 SS (DLA) Regs (NI), reg 9(4)(a); 2 reg 9(4)(b)(i); 3 reg 9(4)(b)(ii); 4 reg 9(4)

61740 The Disability Living Allowance care component is payable if

1. the cost of accommodation is, met wholly or partly out of public or local funds under
 - 1.1 Articles 50 or 51 of the Education and Libraries (Northern Ireland) Order 1986 for persons undergoing teacher training or postgraduate courses¹
or
 - 1.2 Article 3 of the Education (Student Loans) (Northern Ireland) Order 1990² **and**
2. the accommodation is not provided under the powers in DMG 61717 1. or 2..

Note: See DMG 61717 for the meaning of qualifying services.

1 SS (DLA) Regs (NI), reg 9(3)(a); 2 reg 9(3)(b)

61741 – 61748

Self funders

61749 Disability Living Allowance care component and mobility component and Attendance Allowance will be payable for any period where the claimant is a resident in a care home 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 charity¹.

1 SS (DLA) Regs (NI), reg 10(8) & SS (AA) Regs (NI), reg 8(6)

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

61750 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 property are taken into account by the Board/Trust when assessing payment of care home fees.

61751 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 highest rate of the care component and the higher rate of the mobility component of Disability Living Allowance. 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 were at present funding Jim, and there was no indication that there would be any change to this arrangement. Jim's Disability Living Allowance 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 car 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 highest rate of the care component and lower rate of the mobility component of Disability Living Allowance. The care 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 enquiries 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 care 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 highest rate of the care component and higher rate of mobility component of Disability Living Allowance were paid for the first 28 days, and then his care component of Disability Living Allowance was suspended. On enquiries being made it was established that the Board/Trust were paying for Damien's stay and were 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 care 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

- 61752 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 where the claimant is the sole owner of a property.

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

- 61753 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.

- 61754 The value of the property is disregarded by the Board/Trust for the first twelve weeks from when permanent admission commences.

- 61755 For the first twelve weeks of such arrangements the condition in DMG 61753 **2.** will not be satisfied as the Board/Trust will disregard the value of the property as in DMG 61753 and the person will not have to repay the Board/Trust. If the Board/Trust is funding during this period payment of Attendance Allowance or the Disability Living Allowance care component should be removed from the appropriate date in accordance with DMG 61851 - 61862¹.

¹ SS (AA) Regs (NI), reg 7; SS (DLA) Regs (NI), reg 9

61756 For the purposes of DMG 61751, conditions for payment of benefit will be satisfied if 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.

61757 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 DMG 61753 2. is no longer satisfied. In such circumstances the benefit award may be superseded to remove payability.

61758 The effective date of the decision to remove payment of benefit is the date of change (see DMG Chapter 04). 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 DMG 61753. Attendance Allowance or the Disability Living Allowance care component may however remain payable for the first 28 days of Board/Trust funding in accordance with DMG 61851.

61759 – 61800

War pensioners and civilians in relevant accommodation

61801 Attendance Allowance or the care component of Disability Living Allowance may

1. not be payable **or**
2. be payable at a reduced rate

to war pensioners, civil defence volunteers and other civilians who are provided with relevant accommodation¹.

1 SS (AA) Regs (NI), reg 8A(2); SS (DLA) Regs (NI), reg 10A(2)

61802 Relevant accommodation is accommodation

1. in hospital or private nursing homes and provided as a necessary ancillary to nursing care **and**
2. for which the medical expenses involved are paid wholly by the Secretary of State under specific war pensions legislation **and**
3. for people who are
 - 3.1 very severely disabled war pensioners¹ **or**

- 3.2** civil defence volunteers or other civilians injured during the second world war¹.

1 SS (AA) Regs (NI), reg 8A(1); SS (DLA) Regs (NI), reg 10A(1)

61803 Where the weekly cost of the relevant accommodation

1. exceeds the weekly rate of Attendance Allowance or care component of Disability Living Allowance - neither is payable
2. is less than the weekly rate of Attendance Allowance or care component of Disability Living Allowance - the weekly cost should be deducted from Attendance Allowance¹ or Disability Living Allowance².

1 SS (AA) Regs (NI), reg 8A; 2 SS (DLA) Regs (NI), reg 10A

61804 Where a person is in relevant accommodation, no deductions should be made from Attendance Allowance or the care component of Disability Living Allowance for

1. the first 28 days **or**
2. periods amounting to 28 days¹.

1 SS (AA) Regs (NI), reg 8B(1) & (2); SS (DLA) Regs (NI), reg 10B(1) & (2)

61805 Periods in hospital or similar institution or in certain accommodation which occur **before** admission to relevant accommodation link with periods in relevant accommodation if they are separated by 28 days or less¹.

1 SS (AA) Regs (NI), reg 8B(3); SS (DLA) Regs (NI), reg 10B(3)

61806 People who become entitled to Attendance Allowance or care component of Disability Living Allowance during a period in relevant accommodation can benefit from the 28 day rule in DMG 61851 et seq.

61807 – 61819

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

- 61820 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 (DMG 61700), 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 Disability Living Allowance 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 1999 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 Disability Living Allowance but it remains not payable.

- 61821 Following a Court of Appeal case where a Disability Living Allowance or Attendance Allowance claimant lives in a care home decision makers should establish whether

1. the care home employs doctors, qualified nurses or other health care professionals **and**
2. the claimant receives medical or other treatment¹ by or under the direct supervision of a qualified doctor, nurse or nurses at the care home.

Where both 1. and 2. apply decision makers should follow the guidance at DMG 61651.

Where both 1. and 2. do not apply the decision maker should continue to treat the establishment as a care home and the care component or Attendance Allowance would not be payable² in accordance with DMG 61715.

Example 1

James is entitled to the highest rate of the care component and the higher rate mobility component of Disability Living Allowance. 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 Board / Trust. The decision maker makes enquires 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 care and mobility component are not payable after 28 days from the day he entered the care home.

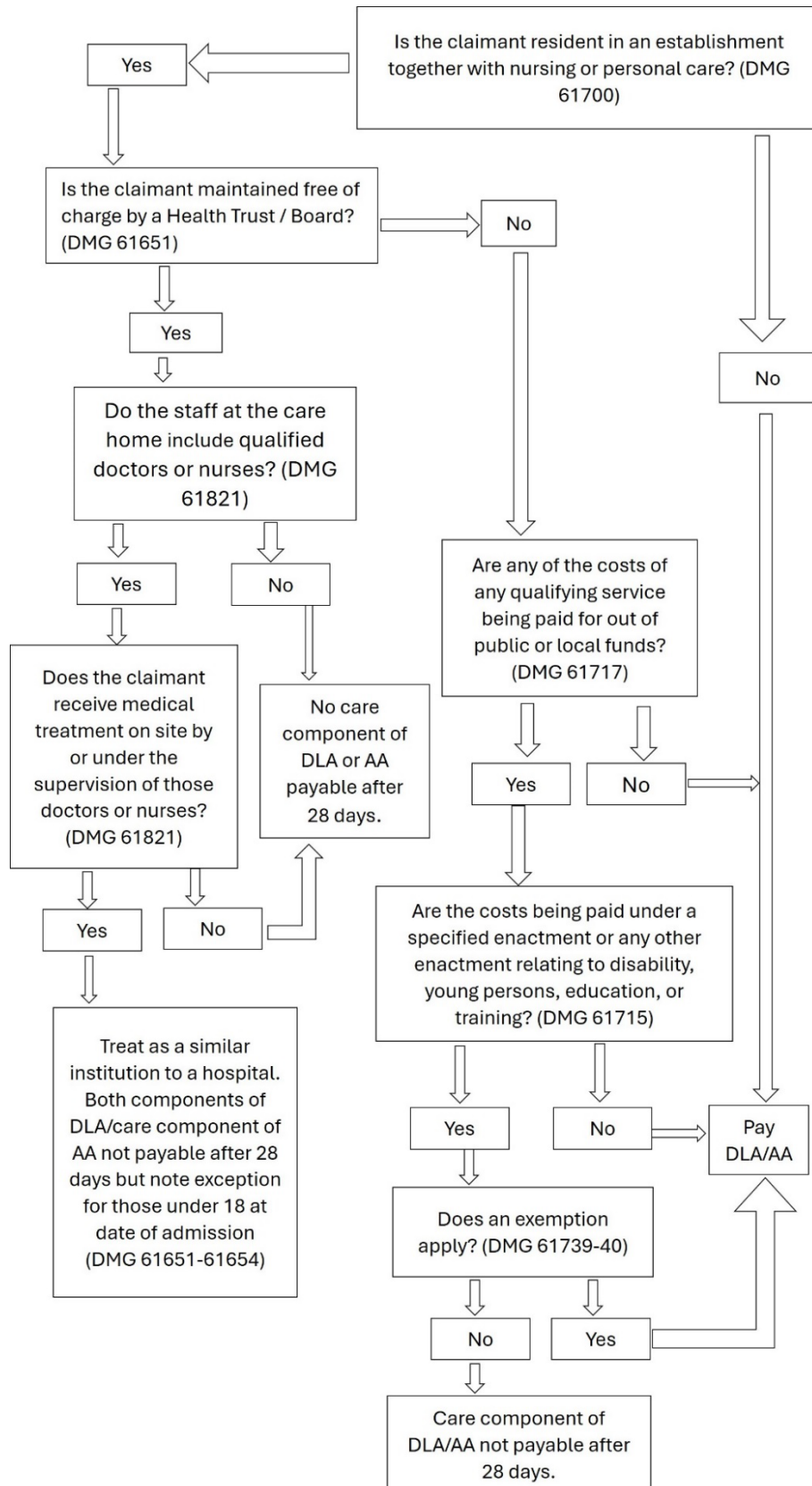
Example 2

Jasmine is entitled to the middle rate of the care component and the lower rate of the mobility component of Disability Living Allowance. 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 Board / Trust. After making further enquiries the decision maker established that there are no medical professionals employed by the care home and care workers provide daily care for Jasmine and her GP 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 the care component of Disability Living Allowance is not payable from 30.6.16. The mobility component remains payable whilst she is a resident in the care home.

1 SSWP v Slavin [2011] EWCA Civ 1515; SS (AA) Regs (NI), reg 6(1); SS (DLA) Regs (NI), reg 8(1);

2 SS (DLA) Regs (NI), reg 9(2)(b) & SS (AA) Regs (NI), reg 7(2)(b)

61822 Care home payability flow chart



Example 1

Simon is a resident at ABC House. He has his own room within the establishment and has access to communal areas including a living room, activity room and kitchen. Enquiries indicate that ABC House employs on-site care assistants who help Simon with personal care tasks such as washing, dressing and feeding himself at meal times. ABC House is registered to provide “accommodation for persons who require nursing or personal care”. Simon does not pay anything towards the costs of his stay. The decision maker decides, taking into account all factors, that ABC House is an establishment that provides accommodation together with nursing or personal care and therefore Simon is a resident in a care home. Further enquiries undertaken by the decision maker indicate that Simon’s stay in the care home is funded by the local Board/Trust. As this is a specified enactment for the purposes of DMG 61715 Simon’s care component of Disability Living Allowance is not payable after 28 days residence at ABC House. Simon continues to be paid the mobility component of Disability Living Allowance during his stay at ABC House.

Example 2

Jade is in receipt of the care component of Disability Living Allowance. On 1.8.16 Jade informs the decision maker that she has moved out of her parent’s home and is now resident in XYZ Place. XYZ Place is a large semi detached house owned by the local Board/Trust which is converted into 3 separate flats occupied by Jade and 2 other people. Jade holds a tenancy agreement for her flat which details how much rent should be paid per month and what responsibilities she has for the property. Jade is in receipt of Housing Benefit which she uses to fund the monthly rent and the Local Board/Trust has also arranged for a domiciliary care agency to provide a carer for Jade on a morning and evening to help her get washed and dressed/undressed each day. The Local Board/Trust is responsible for the funding of the carer. Having looked at all of the available evidence the decision maker decides that XYZ Place should not be treated as an establishment that provides accommodation together with nursing or personal care in accordance with DMG 61700. Therefore Jade’s care component of Disability Living Allowance can continue to be paid.

Example 3

Grant turned 17 years old on 16.6.16 and has been in hospital since 30.6.16. He is entitled to the highest rate care component and higher rate mobility component and this remains payable whilst in hospital as an in-patient due to Grant being under 18 years old at the date of admission. Grant notifies the decision maker on 1.9.16 that he will move to YYZZ House on 5.9.16 and enquires indicate that this establishment is registered to provide “accommodation for persons who require nursing or personal

care” and is described as a “care home”. The decision maker establishes that the Board/Trust will fund Grant’s stay and further enquiries indicate that there is a doctor and nurse employed on site who will administer a series of daily injections to Grant for the next 6 months. Although YZZZ House can be described as an establishment that provides accommodation together with nursing or personal care, in accordance with DMG 61700 the decision maker decides that the care home should be treated as a similar institution to a hospital. Grant’s Disability Living Allowance therefore remains payable as he is under 18 at the date of admission to YZZZ House.

61823 – 61850

Calculation of the period

61851 In calculating the period when Attendance Allowance or Disability Living Allowance is payable¹, the decision maker should add together periods in hospital or, for Attendance Allowance and the care component of Disability Living Allowance, periods in a care home

1. for which a person is prevented from receiving Attendance Allowance or Disability Living Allowance **and**
2. which are separated by 28 days or less.

Note: Periods before entitlement begins do not link with periods occurring after entitlement begins (DMG 61860 - 61862)².

1 SS (AA) Regs (NI), reg 8(2); SS (DLA) Regs (NI), reg 10(5) & 12B(3); 2 R(A) 4/83

Days of admission and discharge

Hospitals

61852 Attendance Allowance or Disability Living Allowance is not payable after the first 28 days for any day on which people receive medical or other treatment as an in-patient. A period of free in-patient treatment ends on the day before the day on which the claimant leaves the hospital or similar institution. Neither the day of admission nor the day of discharge are treated as days of free in-patient treatment¹.

1 SS (AA) Regs (NI), reg 6(2A); SS (DLA) Regs (NI), reg 8(2A) & 12A(3)

61853 Where entitlement begins on the day after the day of admission to hospital, benefit is not payable until the day of discharge.

Care homes

- 61854 Days of admission and discharge and leaving and returning from leave or holiday are not days in a care home¹. These days should not be treated as days in a care home when calculating the 28 day linking period (see DMG 61851).

1 SS (AA) Regs (NI), reg 7(4)(a) & (b); SS (DLA) Regs (NI), reg 9(7)(a) & (b)

- 61855 Where entitlement begins on the day of admission to a care home, benefit is payable for the first 28 days.

Days of transfer

- 61856 If a person is transferred between hospitals, the day of transfer counts as a day in hospital, however, where a person is transferred between a hospital and a care home or vice versa or between care homes, the day of transfer counts as a day in a care home¹.

1 SS (AA) Regs (NI), reg 7(5); SS (DLA) Regs (NI), reg 9(8)

Entitlement begins during period in hospital or a care home

- 61857 The 28 day rule (see DMG 61851 - 61852) cannot benefit people who become entitled to Attendance Allowance or Disability Living Allowance whilst

1. undergoing medical or other treatment in hospital (see DMG 61651 et seq) **or**
2. living in a care home and none of the exceptions apply (see DMG 61700 et seq).

Attendance Allowance or Disability Living Allowance is only payable from the first pay day on or after the day of discharge, if the claimant is in a hospital or similar institution, or is in a care home. If they are readmitted, the 28 day rule applies. Benefit is payable for the first 28 days **even if** they are readmitted within 28 days of the day before the day of discharge¹. This is because the periods do not link. Any subsequent discharge and readmission is dealt with in DMG 61860 - 61862.

1 SS (AA) Regs (NI), reg 8(3); SS (DLA) Regs (NI), reg 10(3) & 12B(2)

Example

A man who is admitted to hospital on 2.8.01 claims and becomes entitled to Attendance Allowance on 15.8.01. But benefit does not become payable until 20.8.01 following his discharge on 17.8.01. On 27.8.01 he is readmitted to hospital. Attendance Allowance remains in payment for the first 28 days, and is not payable from 1.10.01.

61858 – 61859

Entitlement begins before admission - payability on re-admission

61860 Attendance Allowance or Disability Living Allowance is payable for the first 28 days of any readmission if there are **more** than 28 days between the two periods.

61861 If there are 28 days or less between discharge and re-admission the person can only be paid any balance of days up to 28 days on re-admission¹. Periods in hospital that occur before entitlement begins do not link with any periods occurring after payability begins².

1 SS (AA) Regs (NI), reg 8(2); SS (DLA) Regs (NI), reg 10(5) & 12B(3); 2 R(A) 4/83

Example

A woman is awarded Disability Living Allowance. She is later admitted to hospital and discharged after ten days. Benefit remains in payment. A week later she is readmitted. A balancing payment is due for a further 18 days.

61862 If, after receiving 28 days on admission, a person is readmitted within 28 days or less, no further benefit is payable until discharge.

61863 – 61879

Payment at daily rate

61880 Although payable weekly there are circumstances in which Attendance Allowance or Disability Living Allowance can be paid at a daily rate (which is one-seventh of the weekly rate). These are where

1. there is a change of pay day, for example if Attendance Allowance or Disability Living Allowance is linked with another benefit and using its pay day¹ **or**
2. Attendance Allowance or Disability Living Allowance becomes payable for a period of absence from hospital or a care home².

Note: Payability of the mobility component of Disability Living Allowance is not affected by periods in certain accommodation.

1 SS (C&P) Regs (NI), reg 22(3) & Sch 6; 2 reg 25

Conditions for payment at daily rate

61881 For intervals between 2 periods in hospital or a care home, Attendance Allowance or Disability Living Allowance is payable at the daily rate if

1. immediately before the period of absence the person was living in a hospital or care home **and**
2. **on the day of discharge** they are expected to return to hospital or care home within 28 days¹.

1 SS (C&P) Regs (NI), reg 25(2); SS (AA) Regs (NI), reg 6, 7 & 8; SS (DLA) Regs (NI), regs 8, 9, 10 & 12A

Period payable at daily rate

61882 The period for which the Attendance Allowance or Disability Living Allowance is payable at the daily rate runs from the day of leaving hospital or care home and ends¹ where

1. the day of leaving is a payday - at midnight on the day before the fourth payday following discharge² **or**
2. the day of leaving is **not** a payday - at midnight on the day before the fifth payday following discharge³ **or**
3. a person returns to hospital or care home on the day in **1.** or **2.** above - on the day they are next admitted to hospital or care home⁴.

1 SS (C&P) Regs (NI), reg 25; 2 reg 25(2)(b)(i); 3 reg 25(2)(b)(ii); 4 reg 25(2)(b)(iii)

Absence more than 28 days

- 61883 If the absence is **expected** to last more than 28 days from the outset, the normal rules of payment apply¹.

1 SS (C&P) Regs (NI), reg 25(2)

Application of daily rate provisions

- 61884 The daily rate provisions cannot be considered in isolation from the provisions for pay days and those for hospital and care homes.

- 61885 The daily rate is only payable if

1. the person was living in hospital or care home immediately before the period of absence¹ **and**
2. they are **expected** to return to hospital, or care home within a period of 28 days from the day **immediately following** their day of discharge².

1 SS (C&P) Regs (NI), reg 25(2)(a); 2 reg 25(2)

Discharge before 28 day period ends

- 61886 Attendance Allowance or Disability Living Allowance cannot be paid at the daily rate if a person is **discharged** from hospital or care home **before** the end of the 28 day period for which benefit is payable. This is because they have already been paid up to their next payday¹.

1 SS (C&P) Regs (NI), reg 16(2)

Discharge after 28 day period ends

- 61887 Attendance Allowance or Disability Living Allowance cannot be paid at the daily rate if a person is **discharged** from hospital or care home after the end of the 28 day period but **before** the next payday. This is because they have already been paid up to that payday¹.

1 SS (C&P) Regs (NI), reg 16(2)

- 61888 Attendance Allowance or Disability Living Allowance **can** be paid at the daily rate as in DMG 61882 1. or 2. if a person is discharged **after** the payday following the end of the 28 day period¹.

1 SS (C&P) Regs (NI), reg 25

61889 Payment at the daily rate is not appropriate if **on the day of discharge**

1. there is no history of admissions or discharges during the previous 28 days **and**
2. the decision maker is not aware of any expectations of future admission within 28 days.

Other restrictions on payability and exclusions

61890 Attendance Allowance or Disability Living Allowance is not payable to a person who is

1. in prison or detained in legal custody¹ **or**
2. receiving an overlapping benefit².

1 SS C&B (NI) Act 92, sec 113(1)(b); 2 sec 104; SS (OB) Regs (NI), Sch 1

Imprisonment or detention in legal custody

61891 Guidance on imprisonment, detention in legal custody and special hospitals is given in DMG Chapter 12. People who are

1. in special hospitals **and**
2. not subject to a custodial sentence

are not disqualified from receiving Attendance Allowance or Disability Living Allowance under the general imprisonment disqualification. In such cases, although there may be **entitlement** to Attendance Allowance or Disability Living Allowance, the benefit may not be **payable** because the person is in hospital (DMG 61651 et seq).

Note: When a claimant moves from a care home or hospital to prison and back again a further 28 days is not applicable.

Overlapping benefits

Attendance Allowance and the care component of Disability Living Allowance

61892 Attendance Allowance or the care component of Disability Living Allowance is not payable or is payable at a reduced rate, for any period a person receives Attendance Allowance¹ or a benefit, based on the need for attendance payable under

1. Constant Attendance Allowance¹ **or**
2. any of the following
 - 2.1 Pneumoconiosis and Byssinosis Benefit Scheme
 - 2.2 Personal Injuries Scheme
 - 2.3 Service Pensions Instrument

2.4 1914-1918 War Injuries Scheme².

1 SS C&B (NI) Act 92, sec 104; 2 SS (OVB) Regs (NI), Sch 1

Disability Living Allowance mobility component

61893 The mobility component is not payable for any period

1. during which the person has the use of an invalid carriage or other vehicle provided by the Department¹ **unless**

1.1 the Department is notified that the person no longer wishes to use it **and**

1.2 the person signs an undertaking that it will not be used whilst awaiting its removal² **or**

1.3 the Department has issued an overlap certificate so that the mobility component can continue to be paid for up to 6 months whilst the person learns to drive³ **or**

2. for which the person has received, or is receiving

2.1 a grant towards the costs of running a private car⁴ **or**

2.2 a mobility supplement under a Service Pensions Instrument or a Personal Injuries (Civilians) Scheme⁵ **or**

2.3 any similar payment out of public funds as the Department may decide.

1 HPSS (NI) Order 72, art 30; 2 SS (C&P) Regs (NI), reg 41(1)(a) & (2); 3 reg 41(4); 4 reg 41(1)(b)(i); HPSS (NI) Order 72, art 30; 5 SS (C&P) Regs (NI), reg 41(1)(b)(ii)

Adjustment of benefit

61894 Attendance Allowance or Disability Living Allowance, as the case may be, is not payable if the benefit in DMG 61892 - 61893 is equal to or greater than the rate of Attendance Allowance or Disability Living Allowance. If the other benefit is lower than Attendance Allowance or Disability Living Allowance, then Attendance Allowance or Disability Living Allowance, as the case may be, is payable for the difference¹.

1 SS (OB) Regs (NI), reg 6(1)

61895 Further guidance on overlapping benefits is in DMG Chapter 17, including definitions of "Service Pensions Instrument" and "1914-1918 War Injuries Scheme".

Split payments of Disability Living Allowance

61896 Split payments of Disability Living Allowance should only be considered in **exceptional circumstances**. Where a request for split payments is received, the decision maker should refer the request to a senior manager who will consider

whether split payments are necessary in order to protect the interests of the Disability Living Allowance beneficiary¹.

1 SS (C&P) Regs (NI), reg 42

61897 – 61999

Appendix 1

Acts relating to people with disabilities

Act	Sections
National Assistance Act 1948	s 21, 24 & 26
Health Services and Public Health Act 1968	s 44
Social Work (Scotland) Act 1968	s 12, 12A, 12B, 12C, 13A, 13B, 59 & 59A
Health and Personal Social Services (Northern Ireland) Order 1972	Article 5, 7, 15 & 36
National Health Service (Scotland) Act 1978	s 36 & 37
Mental Health Act 1983	s 117
Mental Health (Scotland) Act 1984	s 7 & 8
National Health Service and Community Care Act 1990	Sch 9 para 10(7)
Community Care (Direct Payments) Act 1996	s 1
Social Security Act 1998	
Community Care and Health (Scotland) Act 2002	
Mental Health (Care and Treatment) (Scotland) Act 2003	s 25 & Sch 4 para 1(6)
National Health Service Act 2006	
National Health Service (Wales) Act 2006	
Public Services Reform (Scotland) Act 2010	
Health and Social Care Act 2001	s 57

This list is not exhaustive¹.

1 R(DLA) 6/04

Acts relating to young people, education or training

Act	Sections
Disabled Persons Employment Act 1944	s 15
Children and Young Persons Act 1969	s 23
Employment and Training Act 1973	s 2
Criminal Procedure (Scotland) Act 1975	s 14(1), 24(1), 206(1), 296(3), 297(1), 323(1) & 413
Education (Scotland) Act 1980	s 1 & 2, s 73
Children Act 1989	s 20, 21, 22A, 24 & Sch 2(5)
Enterprise and New Towns (Scotland) Act 1990	s 2(3)
Further and Higher Education Act 1992	s 65
Education Act 1996	s 320 & s 485
Teaching and Higher Education Act 1998	s 22
Education Act 2002	s 14
Education (Additional Support for Learning) (Scotland) Act 2004	s 25
Further and Higher Education (Scotland) Act 2005	s 4 or 11
The Apprenticeships, Skills, Children and Learning Act 2009	Parts 2 & 3

This list is not exhaustive¹.

1 R(DLA) 6/04

Appendix 2

Assessment of the % degree of disablement

(Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (NI) 1986
Schedule 3 Part II)

Average of hearing losses (dB) due to all causes at 1, 2 and 3 kHz frequencies	Degree of disablement per cent
50-53 dB	20
54-60 dB	30
61-66 dB	40
67-72 dB	50
73-79 dB	60
80-86 dB	70
87-95 dB	80
96-105 dB	90
106 dB or more	100

Appendix 3

Rates of benefit (Attendance Allowance)

	Higher	Lower
	£	£
6.4.92	43.35	28.95
12.4.93	44.90	30.00
11.4.94	45.70	30.55
10.4.95	46.70	31.20
8.4.96	48.50	32.40
7.4.97	49.50	33.10
6.4.98	51.30	34.30
12.4.99	52.95	35.40
10.4.00	53.55	35.80
11.4.01	55.30	37.00
9.4.02	56.25	37.65
7.4.03	57.20	38.30
5.4.04	58.80	39.35
11.4.05	60.60	40.55
10.4.06	62.25	41.65
9.4.07	64.50	43.15
7.4.08	67.00	44.85
6.4.09	70.35	47.10
12.4.10	71.40	47.80
11.4.11	73.60	49.30

9.4.12	77.45	51.85
8.4.13	79.15	53.00
7.4.14	81.30	54.45
6.4.15	82.30	55.10
10.4.17	83.10	55.65
9.4.18	85.60	57.30
8.4.19	87.65	58.70
6.4.20	89.15	59.70
12.4.21	89.60	60.00
11.4.22	92.40	61.85
11.4.23	101.75	68.10

Appendix 4

Rates of benefit (Disability Living Allowance)

	Care component			Mobility component	
	Highest	Middle	Lowest	Higher	Lower
	£	£	£	£	£
6.4.92	43.35	28.95	11.55	30.30	11.55
12.4.93	44.90	30.00	11.95	31.40	11.95
11.4.94	45.70	30.55	12.15	31.95	12.15
10.4.95	46.70	31.20	12.40	32.65	12.40
8.4.96	48.50	32.40	12.90	33.90	12.90
7.4.97	49.50	33.10	13.15	34.60	13.15
6.4.98	51.30	34.30	13.60	35.85	13.60
12.4.99	52.95	35.40	14.05	37.00	14.05
10.4.00	53.55	35.80	14.20	37.40	14.20
11.4.01	55.30	37.00	14.65	38.65	14.65
9.4.02	56.25	37.65	14.90	39.30	14.90
7.4.03	57.20	38.30	15.15	39.95	15.15
5.4.04	58.80	39.35	15.55	41.05	15.55
11.4.05	60.60	40.55	16.05	42.30	16.05
10.4.06	62.25	41.65	16.50	43.45	16.50
9.4.07	64.50	43.15	17.10	45.00	17.10
7.4.08	67.00	44.85	17.75	46.75	17.75
6.4.09	70.35	47.10	18.65	49.10	18.65

12.4.10	71.40	47.80	18.95	49.85	18.95
11.4.11	73.60	49.30	19.55	51.40	19.55
9.4.12	77.45	51.85	20.55	54.05	20.55
8.4.13	79.15	53.00	21.00	55.25	21.00
7.4.14	81.30	54.45	21.55	56.75	21.55
6.4.15	82.30	55.10	21.80	57.45	21.80
10.4.17	83.10	55.65	22.00	58.00	22.00
9.4.18	85.80	57.30	22.65	59.75	22.65
8.4.19	87.65	58.70	23.20	61.20	23.20
6.4.20	89.15	59.70	23.60	62.25	23.60
12.4.21	89.60	60.00	23.70	62.55	23.70
11.4.22	92.40	61.85	24.45	64.50	24.45
11.4.23	101.75	68.10	26.90	71.00	26.90

Appendix 5

Application of the general rule for people in hospital on or before 31.7.96

- 1 Periods in hospital on or before 31.7.96, including any linked periods, count towards the 28(84) day exemption period in DMG 61653 - 61654. People who had been in hospital for more than 28 days on 31.7.96 lost payability from that date, unless they had been in hospital for 365 days on or before 31.7.96¹.

1 SS (DLA) Regs (NI), reg 12B(1)

Example 1

A person who was awarded the mobility component from 1.6.96 for life went into hospital on 9.6.96. The mobility component is not payable from 7.8.96.

Example 2

A person was awarded the mobility component for the period 6.4.92 to 5.4.97. He was admitted to hospital on 10.7.96 and discharged on 24.7.96. On 12.8.96 he is readmitted to hospital. The mobility component is not payable from 28.8.96.

- 2 Where a person was in hospital on the day entitlement to the mobility component began, and was still in hospital on 31.7.96, payment of the mobility component stopped from 31.7.96¹.

1 SS (DLA) Regs (NI), reg 12B(2)

Example

A person went into hospital on 1.7.96 and claimed Disability Living Allowance on 15.7.96. Care and mobility were awarded from the date of claim, but the care component was not payable. On 31.7.96 the claimant was still in hospital, and the mobility component was not payable from that date.

People in hospital for 365 days

- 3 Where a person
 1. on 30.7.96 had been for a continuous period of not less than 365 days
 - 1.1 in receipt of the mobility component **and**
 - 1.2 an in-patient in a hospital or similar institution **and**
 2. is such an in-patient other than under specified legislation¹ on 31.7.96

the general payability rule does not apply until the person is first discharged from hospital². See paragraph 6 for guidance on discharge.

1 MH (NI) Order 86, Parts II or III; 2 SS (DLA) Regs (NI), reg 12B(4)(a) & (5)

- 4 There will be people who were temporarily absent from hospital on 31.7.96, and return within 28 days of a previous discharge, but would otherwise satisfy the conditions in DMG 61658. If the person is not an in-patient on 31.7.96 and

1. on a day not more than 28 days before 31.7.96 had been for a continuous period of not less than 365 days

- 1.1 in receipt of the mobility component **and**

- 1.2 an in-patient in a hospital or similar institution **and**

2. becomes such an in-patient other than under specified legislation¹ within 28 days of the previous discharge from hospital

the general payability rule does not apply until the person is first discharged from hospital².

1 MH (NI) Order 86, Parts II or III; 2 SS (DLA) Regs (NI), reg 12B(4)(b) & 5

- 5 Where any of the 365 day period falls before 6.4.92, receipt of Mobility Allowance is treated as receipt of the mobility component¹.

1 SS (DLA) Regs (NI), reg 12B(11)

Discharge and readmission

- 6 Where paragraphs 3 or 4 applies to allow payability of the mobility component to continue, and the person is discharged from hospital and readmitted within 28 days, payability is not affected. The general payability rule applies to any readmission more than 28 days after discharge¹.

1 SS (DLA) Regs (NI), reg 12B(4)

- 7 Periods in hospital with a break of 28 days or less can count towards the 365 day period in paragraphs 3 or 4. The breaks do **not** count towards the 365 day period¹. For guidance on calculating periods in hospital, see DMG.

1 SS (DLA) Regs (NI), reg 12B(3)

- 8 Periods in hospitals under specified legislation can only count towards the 365 day period provided that the person is no longer an in-patient under specified legislation on or after 31.7.96¹.

1 SS (DLA) Regs (NI), reg 12B(5); MH (NI) Order 86, Parts II or III

- 9 People who have retained payability as set out in paragraphs 3 or 4 cannot benefit from any of the exemptions from the general payability rule while in hospital or on readmission if they

1. become in-patients under specified legislation after 31.7.96¹ **or**
2. lose entitlement to the mobility component².

1 SS (DLA) Regs (NI), reg 12B(6)(a); MH (NI) Order 86, Parts II or III;

2 SS (DLA) Regs (NI), reg 12B(6)(b)

Rate of benefit payable

Where

1. paragraph 3 or 4 applies **and**
2. the person is in receipt of the higher rate of the mobility component

the mobility component is payable at an amount equivalent to the lower rate on or after 31.7.96¹.

1 SS (DLA) Regs (NI), reg 12C(1)

Where paragraph 3 or 4 **and** DMG 61668 or 61672 apply, benefit is payable at

1. an amount equivalent to the lower rate **or**
2. the amount of the agreement

whichever is greater. The amount payable cannot be less than the lower rate. Where the amount of the agreement is less than the lower rate of the mobility component, the balance will still be payable to the claimant¹.

1 SS (DLA) Regs (NI), reg 12C(3)

The “may be” provision

England and Wales

- 10 The “may be” provision dealt with situations where Local Authorities had, but did not use existing powers to provide or meet the cost of accommodation. This provision was repealed on 6.10.03.
- 11 The “may be” provision was dealt with in case law¹ which held that Local Authorities had wide-ranging legal powers to provide residential care for people suffering from mental illness². The Local Authorities could provide accommodation for anyone having a mental disability who satisfied the disability conditions of entitlement to Attendance Allowance or the care component of Disability Living Allowance.

However, the case law is no longer relevant in England and Wales as the legislation giving those powers is no longer to have effect from 1.4.93³.

1 R(A) 3/83, Appendix; 2 NHS Act 77, s 21 & Sch 8, para 2; 3 NHS Act 90, Sch 9

- 12 The “may be” provision had no effect, in England and Wales, from 1.4.93. Where the person had arranged admission to the accommodation without the assistance of the Local Authority, the Local Authority had no power to provide the cost of the accommodation¹. This was because the Local Authority’s power is now one of last resort.

1 NA Act 48, s 21(1)(a)

- 13 Between 1.4.93 and 5.10.03 Attendance Allowance or the care component of Disability Living Allowance was payable in most cases where

1. the claimant went into certain accommodation for the first time after 31.3.93 **and**
2. the Local Authority was not financially involved in the placement.

This applied even if Income Support, income-based Jobseeker’s Allowance or Housing Benefit was in payment (see DMG 61735).

Scotland

- 14 In Scotland, prior to 6.10.03, Local Authorities had the power to provide or make financial provision for the accommodation of any person who

1. needed accommodation **and**
2. satisfied the conditions of entitlement for Attendance Allowance or the care component of Disability Living Allowance¹.

The ‘may be’ provision was removed with effect from 6.10.93. It can only be considered in Scotland for periods up to 5.10.93 where the care component of Disability Living Allowance or Attendance Allowance would not be payable to someone in a care home if they were entitled to Income Support, Housing Benefit or income-based Jobseeker’s Allowance even if the Local Authority did not own or fund the accommodation.

1 SW (Scotland) Act 68, s 12 & 59(1); MH (Scotland) Act 84, s 7; R(A) 3/83, Appendix

- 15 The “may be” provision applied in cases where the Local Authority had powers and

1. had not funded or refused to fund the accommodation **or**
2. withdrew funding.

Exceptions to the “may be” provision

- 16 The “may be” provision did apply if the person
1. was homeless and the Local Authority has made accommodation available under specific legislation¹ **or**
 2. lives in a private dwelling (see DMG 61760)², unless
 - 2.1 the cost of the previous accommodation was met wholly or partly out of local or public funds and the body which met the cost prompted a move to a residential care home³ **or**
 - 2.2 it was a residential care home⁴ **or**
 3. lived in accommodation as a privately fostered child (see DMG 61771⁵).

1 SS (DLA) Regs (NI), reg 7(3)(a); 2 SS (AA) Regs (NI), reg 7(3)(c); SS (DLA) Regs (NI), reg 9(6)(b);

3 reg 7(4)(a); 4 reg 7(4)(b) & (4A); 5 SS (DLA) Regs (NI), reg 9(4)(a)

Appendix 6

Motability agreements before 20th June 2016

Motability agreements

The Motability Scheme

00001 The Motability Scheme allows people to use their higher rate Disability Living Allowance mobility component to buy (through hire purchase) a car or an electric scooter or wheelchair. Cars can also be leased. Motability is a voluntary organisation which helps people buy or lease a vehicle under the scheme. The amount paid under the agreement may be less than the amount of the Disability Living Allowance mobility component, with the balance paid to the claimant.

00002 The decision maker will need evidence on Motability agreements, including details of the

1. date the agreement began
2. period of the agreement
3. weekly amount payable to Motability under the agreement
4. type of vehicle.

Exemption from general rule

00003 **Before 20th June 2016** people in hospital with a Motability agreement would generally be able to retain payment of the Disability Living Allowance mobility component despite the general rule in DMG 61651 - 61652. In practice the Department pays the amount of the agreement to Motability Finance Ltd.

00004 Where a person

1. is a party to a Motability agreement¹ **and**
2. is or becomes an in-patient in a hospital or similar institution

payment of the Disability Living Allowance mobility component may continue after the first 28 days (84 days for a child under 16)².

1 SS (C&P) Regs (NI), reg 43(1); 2 SS (DLA) Regs (NI), reg 12B(7)

00005 For payment to continue, the Motability agreement must have been signed before the person became an in-patient.

- 00006 Benefit can remain in payment for the period of the agreement while a person is in hospital¹. The period can be extended for agreements made under the Wheelchair Scheme.

1 SS (DLA) Regs (NI), reg 12B(8)

- 00007 Where the person enters into any further agreements for vehicles other than under the Wheelchair Scheme whilst in hospital, the Disability Living Allowance mobility component is not payable from the day after the first agreement ended. However, if the person is discharged from hospital, they may sign a new agreement for a Motability vehicle. Even if the person is then re-admitted to hospital after a short absence, benefit will remain in payment until the end of the agreement (see DMG 61670).

Agreements under the Wheelchair Scheme

- 00008 Where

1. the Motability agreement was made under the Wheelchair Scheme **and**
2. a new agreement starts on the day after it finishes **and**
3. the person is an in-patient on that day

the Disability Living Allowance mobility component can remain in payment until the new agreement finishes¹.

1 SS (DLA) Regs (NI), reg 12B

- 00009 If the person takes out an agreement for a vehicle other than under the Wheelchair Scheme whilst an in-patient, the Disability Living Allowance mobility component is not payable from the day after the last Wheelchair Scheme agreement ended.

- 00010 Where there is a break of a day or more between wheelchair agreements under the Wheelchair Scheme, the Disability Living Allowance mobility component is not payable from the day after the first agreement finishes.

Rate of benefit payable

- 00011 Where

1. DMG Appendix 6 para 00004 applies **and**
2. the amount payable under the agreement is less than the amount of the Disability Living Allowance mobility component awarded

benefit is reduced so that it is payable at the amount of the relevant agreement after 28(84) days¹.

1 SS (DLA) Regs (NI), reg 12C(2)