

# Death of an Individual

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## Introduction

- 1 This chapter looks at what a case manager should do if an individual entitled to Adult Disability Payment (ADP) dies.
- 2 This chapter relates to the unscheduled reviews chapter which explains both:
  - when an unscheduled review should take place
  - what a determination without application is

## Death of an Individual

- 3 Case managers must carry out an unscheduled review and make a determination without application when they are notified that an individual entitled to ADP has died<sup>1</sup>, once the date of death has been verified.

*1 ADP regs, reg. 48(b)*

## Verification of death

4. Verification may be received by different means. The most common ways are:
  - A task will be automatically created if the client was receiving any benefits from the Department for Work and Pensions and the next of kin has notified the Tell Us Once bereavement service. Once DWP have verified and input the date of death, the information will be sent via the CIS system which will notify SPM
  - A client's next of kin notifies Social Security Scotland directly. They may be asked to provide a certificate usually signed by a registrar where they registered the death

## Overpayments of ADP after the death of an individual

- 4 Social Security Scotland will not always be informed of the death of an individual immediately. This could potentially result in an overpayment.
- 5 An individual's estate is liable to Scottish Ministers for any sums paid after death because this assistance was given in error<sup>1</sup>. The value of the overpayment is the difference between the assistance given<sup>2</sup> and the value that should have been given if the overpayment had not happened<sup>3</sup>.

*1 SS Act 2018, s69(1)*

*2 SS Act 2018, s63(2)(a)*

*3 SS Act 2018, s63(2)(b)*

- 6 There may also be occasions when a delay in informing Social Security Scotland of a client's death is potentially due to fraudulent intent. If there is any suspicion of this, the case should be passed to the Fraud team who will investigate and direct enquiries.

### **Example: Social Security Scotland is notified of an individual's death on time**

Arlo has been receiving Adult Disability Payment at the enhanced rate for both components under the Special Rules for Terminal Illness. He dies on 1 July.

Social Security Scotland is informed of Arlo's death on 5 July by the executor of their estate. The client adviser or case manager inputs the date of death into SPM. This will prevent any further payments or notifications being issued. The case manager makes a determination without application that Arlo is no longer entitled to Adult Disability Payment from and including 2 July, the day after their death.

Payment has already been made to Arlo, covering the period from 1 July to 7 July. Payment was made weekly in advance as it was under Special Rules. The case manager determines that an overpayment has occurred from 2 July to 7 July. They will calculate the overpayment and decide whether it should be recovered.

It is unlikely that in a SRTI scenario any overpayment would be recovered unless the overpayment is substantial, however given the requirement to register a death in Scotland within 8 days, any notification would trigger action to stop payment.

Overpayments of £65 or under will be classified as a 'small overpayment' and will not be recovered.

### **Example: Social Security Scotland is notified of an individual's death 8 weeks later**

Bram was receiving the enhanced rate of daily living component and standard rate of mobility component. He dies on 24 June.

Social Security Scotland are not notified of Bram's death until 19 August. The case manager carries out an unscheduled review and determines that:

- Bram is not entitled to Adult Disability Payment from and including 25 June, the day after death

- any benefit paid to Bram covering any period after that date is overpaid.

Social Security Scotland will make enquiries to establish whether Bram has a representative or next of kin, to ask them to repay any money overpaid.

The Debt Management team will undertake all necessary action to recover overpayments, taking into account both financial and personal circumstances of the person that is deemed to have liability when agreeing how/when the overpayment will be paid back.

Overpayments of £65 or under will be classified as a 'small overpayment' and will not be pursued.

### **Death arrears**

5. Sometimes an individual may die without having received all benefits due. This is most likely to happen where an individual has made a new application or waiting for a change of circumstances to be processed and a determination has not yet been made.
6. In such a situation, if it is determined that an individual was (or would have been) entitled to benefit in the period before they died, there may be arrears due. Social Security Scotland must make enquiries to establish if there is an executor of estate, next of kin or other representative (usually a family member) who can decide whether to proceed with the determination of the application and to whom the arrears, if any are due, can be paid.

### **Example: Individual dies before receiving benefit due**

Caroline applies for Adult Disability Payment on 10 June. The case manager is unable to reach a determination on the application immediately, and seeks supporting information. This takes some time, and in the meantime Social Security Scotland is notified on 21 July that Caroline died on 19 July.

On the same day, 21 July, information from Caroline's GP is received. On 22 July the case manager determines that on the basis of this information, Caroline was entitled to the enhanced rate of both components of Adult Disability Payment from 10 June (the date of application) until 19 July (the date she died).

There are therefore arrears of benefit and enquiries are made to confirm who should receive these arrears on Caroline's behalf. As previously stated, this will usually be either an executor if the individual left a will (who may be a solicitor or family member), or a next of kin (again usually a family member).

### **Establishing next of kin / representative details for someone who has died**

7. Where there is no Executor Social Security Scotland will have to decide who to appoint. The Agency should make enquires with the Sheriff Court to confirm who has been appointed as Executor and to obtain an inventory of any estate.

8. If the Sherriff Court is unable to confirm an Executor, the agency can make contact with known relatives of the deceased (details of which the deceased may have provided in their application e.g. next of kin) in order to establish who is to be appointed Executor.
9. In circumstances where no Executor has been appointed (for a variety of reasons which may include the small size of an estate), the Social Security (Scotland) 2018 Act allows for appointees to be put in place to act on behalf of the entitled person in connection with their entitlement to assistance. This specifically provides for situations where the entitled person is deceased. These appointees are able to receive payments on behalf of the entitled person and it is assumed the appointee places the funds with the deceased's estate.

### **How does Social Security Scotland decide who to appoint or pay**

10. Where there is an existing Executor or Executor-dative they will automatically be able to act for the deceased client and will also be the Death Arrears Payee (DAP).
11. If Social Security Scotland successfully make contact with an individual who says they are the Executor for the deceased client, then that person should have a document called a Grant of Confirmation. This is the legal document issued by the Sheriff Court which gives the Executor legal authority to act. Without the Grant of Confirmation, the Executor has no legal authority to handle or deal with the deceased's estate.
12. Where there is no Executor, Social Security Scotland will have to decide who to appoint. The Agency should make enquires with the Sheriff Court to confirm who has been appointed as Executor and to obtain an inventory of any estate.
13. Appointees are not allowed in all circumstances e.g. they cannot be appointed in connection with entitlement to Carer's Allowance Supplement (CAS).
14. The only legal requirement in terms of appointment for a deceased client is that there is no Executor already appointed on the individual's estate. An assessment of an individual to be appointed is not an issue the way it would be with a living client. This is because appointees for adults with incapacity and child appointees in death have no human rights and safeguarding elements at risk.

A living client could be open to:

- financial exploitation
- coercion
- other abuse

In view of this when appointing an appointee, it is simpler to mirror existing rules of intestacy, as follows:

**1 Spouse/civil partner**

**2 Children** – or their direct descendants

### **3 Parents**

**4 Full siblings** – or their direct descendants (nieces and nephews)

**5 Half-siblings**– or their direct descendants (half nieces and nephews)

### **6 Grandparents**

**7 Aunts & Uncles** – or their direct descendants (cousins)

**8 Half Aunts & Uncles** – or their direct descendants (half cousins)

15. A signed declaration will be required by Social Security Scotland, confirming the individual being appointed is not aware of another individual who takes precedence over them when agreeing this appointment.

16. In cases of multiple beneficiaries, it is expected individuals will agree the most suitable person to be appointed. In the event of any outstanding arrears of assistance, the Appointee pays the sum to the client's estate and apportions accordingly.

### **When Social Security Scotland are unable to identify an individual to act or receive any assistance that is due**

17. Where Social Security Scotland cannot find someone to act, we must process the claim to its conclusion, using the information that is available. This may mean that Social Security Scotland have partial information or insufficient evidence. For example, in the event of the death of a client in receipt of disability benefits, medical records are sent back to the health board after death. This means Social Security Scotland may not be able to write to the executor or appointee of the deceased or their GP. Social Security Scotland must also be mindful of the time period that dispute rights remain valid – re-determination and appeal requests can be made up to a year after the original determination.

18. Where the determination results in a payment and Social Security Scotland are not able to find a beneficiary, arrears will be paid to the Office of Queen's and Lord Treasurer's Remembrancer (QLTR) via the National Ultimus Haeres Unit. If there has been a death and there is apparently no spouse, civil partner or blood relatives, we might expect it to have been reported already to the Ultimus Haeres Unit by the relevant authority. The Unit investigates to identify a beneficiary for a person's estate and takes the relevant actions to do so.

19. Social Security Scotland will be expected to have taken all reasonable steps, as set out above, to determine a beneficiary prior to referring to QLTR.

### **END OF CHAPTER**