

## Change of circumstances: change in mobility or care needs

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### Introduction

1. This chapter is about one of the events that trigger an unscheduled review. The chapter on [LINK] unscheduled reviews and determinations without application explains what an unscheduled review is. A case manager must make an unscheduled review when they become aware (whether or not notified by the individual) that there has been a change of circumstance which would either:

- possibility result in an alteration to the amount of Child Disability Payment (CDP) that an individual is entitled to
- make it likely that an individual is no longer entitled to CDP.

*1 CDP regs, reg. 31(a)*

2. This chapter is specifically about change in the individual's care or mobility needs as a result of their disability. The chapter on Special Rules for Terminal Illness applies if the change is that an individual is diagnosed with a terminal illness.

3. The 'Individuals tell us about a change' section of the Unscheduled Reviews chapter explains the duty on individuals to inform Social Security Scotland about changes in their circumstances. The notice of determination notifies individuals and their representatives that they are under a duty to tell Social Security Scotland if:

- the individual's condition gets better or worse
- the level of help and care they need changes
- if appropriate, the support they need with their mobility changes.

4. This duty also applies to anyone acting on the individual's behalf, such as a parent or an appointee. The operational guidance on third-party representatives

gives more guidance on applying the rules, in the majority of cases, where the individual is represented by a third-party representative.

## **Examples of typical changes in mobility or care needs**

5. Changes in the level of the individual's need that could lead to an unscheduled review include:
- an increase in care needs due to a worsening of their condition
  - the individual receives medical treatment which decreases or stops the individual's needs
  - the individual continues to require attention or supervision past the age at which a child without a disability would normally require it
  - an individual who requires assistance moving around outdoors reaches the age of 5 and may be entitled to the lower rate of the mobility component
  - an individual who has a severe visual impairment reaches the age of 3 and may be entitled to the higher rate of the mobility component.

This list is not exhaustive.

6. Once the review is complete, the case manager:
- makes a determination on the individual's entitlement to CDP, taking into account the change in circumstances. sends the individual the notice of this new determination.

### **Example: A child's care needs change to include requiring attention during the day and at night**

Hazal is 9 and has a learning disability. She is entitled to the middle rate of the care component of CDP. This is because she requires attention and supervision during the day. Recently, Hazal:

- has been having trouble getting settled for bed in the evening
- requires prolonged attention throughout the night when she wakes up. A specialist determines that Hazal has attention deficit hyperactivity disorder.

Hazal's parents inform Social Security Scotland that Hazal's needs have changed. A case manager carries out an unscheduled review of Hazal's award of CDP. They determine that Hazal is now entitled to the highest rate of the care component of CDP. This is because Hazal requires attention throughout the day and night, satisfying the 'day criterion' and 'night criterion'.

### **Example: A child's care needs do not increase but they need care past an age when other children without a disability usually do not need it**

Taylor has cerebral palsy and is entitled to the lowest rate of the care component of CDP. Taylor has recently turned 10 and still requires attention during the day in relation to his bodily functions. He requires attention:

- when going to the toilet
- taking a shower

- getting dressed.

The case manager carries out an unscheduled review of Taylor's award of CDP. When Taylor was younger, many of his care needs did not qualify for assistance. This was because they were not 'substantially in excess' of what is normally required for a child of the same age without a disability. Taylor is now older but his care needs have not changed.

The case manager determines that Taylor is entitled to the middle rate of the care component of CDP. This is because his care needs are substantially in excess of what is normally required for children his age without a disability.

**Example: A reported increase in needs does not result in an increase in award**

Sammy is 11 and has Down's syndrome. He is entitled to the middle rate of the care component of CDP. This is because he requires attention frequently throughout the day. Sammy's carers contact Social Security Scotland to report that they are spending more time encouraging Sammy to choose healthy activities and exercise.

Social Security Scotland must make an unscheduled review as they have become aware of a change of circumstances. This change could possibly result in an alteration to the level of Sammy's award.

The case manager determines that Sammy's award of CDP will remain the same. This is because, while Sammy requires more frequent attention during the day, he does not require it at night. This means he only meets the day criterion. Individuals must meet the day and night criteria to be entitled to the highest rate of the care component.

7. Case managers can extend the review date of an individual's award if new information is provided. This is true even if an individual's needs have not changed.

8. A case manager should only set an award review date earlier if they receive new information that justifies doing this.

**Example: A child's award rates do not change but the review period is changed**

Gilly is 8 and has been experiencing joint pain and joint dislocations regularly for 2 years. She requires attention throughout the day to relocate her joints when they dislocate. She frequently has days when she can't attend school due to fatigue. She has been entitled to the middle rate of the care component for a year and a half.

The review period was set for 2 years because:

- medical tests are still being done
- it is unclear whether treatment is possible.

The review is set to start on 6 Oct this year. Gilly's parents send an updated piece of supporting information, 7 months before the review date. The supporting information confirmed that Gilly:

- has a diagnosis of Ehlers-Danlos Syndrome
- has symptoms that are expected to remain the same.

The case manager considers extending the time until the next review of Gilly's award. They take part in a case discussion with a practitioner who provides more information on Ehlers-Danlos Syndrome. The case manager determines that Gilly's award review period should be extended. Her award will now be reviewed in 3 years' time when Gilly is 11.

**Example: A child's needs increase but they already receive the highest rate of the care component and higher rate of the mobility component**

Ana is 12 and is entitled to the highest rate of the care component and higher rate of the mobility component of CDP. Ana's award will not be reviewed before she turns 18. When Ana is 13, her parents inform Social Security Scotland that her care needs have increased because her condition has worsened.

The case manager is not required to review Ana's award because there has not been a change of circumstances that would possibly result in an alternation: Ana is already on the highest possible rate of the care and mobility components. Also, Ana's award cannot be extended. Ana's parents are informed that Social Security Scotland will not carry out a review for this reason.

**Making an unscheduled review because of a change of circumstance**

9. Making an unscheduled review means reviewing the individual's entitlement to CDP, taking account of latest change in circumstances since the last determination.

10. This involves:

- considering how their needs affect their entitlement to mobility and care component
- applying the backwards and forwards test (The chapter on Backwards and Forwards Test explains the tests in more detail)
- working out when the change in entitlement should begin.

**Applying the backwards and forwards tests**

11. Individuals must satisfy the backwards and forwards tests to be entitled to a higher rate of either component of CDP when their award is reviewed.

12. The backwards test requires the individual to have met at least one of the 'qualifying criteria' for an award for 13 weeks immediately preceding the date that the new award would begin. The 'qualifying criteria' for each of the different CDP awards

are set out in the chapter on the Backwards and Forwards Test [Link]. The qualifying criteria for entitlement to the care component of CDP are found in regulation 11(1) of the CDP regulations. The qualifying criteria for the lower rate mobility component of CDP are found in regulation 12(1) of the CDP Regulations. The qualifying criteria for entitlement to the higher rate mobility component of the CDP regulations are found in regulation 13(2) of the CDP regulations.

13. The forwards test requires the individual to be likely to continue to satisfy at least one of the qualifying criteria referred to in the link above. They need to do this for 26 weeks after the date of entitlement.

14. To apply the backwards and forwards test, the case manager needs to know the date that the award would begin. The case manager should work out the date that the award would begin, and then check to make sure that the individual satisfies the backwards and forwards test on this date. This chapter explains what to do if the backwards test is not met on this date but the forwards test is.

15. If the individual meets the qualifying criteria for the middle or higher rate care component, they only need to have met at least one of the qualifying criteria in regulation 11(1) of the CDP regulations throughout the period that the backwards and forwards test applies to.

### **When the change in entitlement should begin if the individual meets the criteria for a higher award**

16. Entitlement to a higher award will begin on the date when the individual first satisfies 'the requirements for a higher award' if either:

- the individual reports 'the change' within one month of the change in their condition occurring<sup>1</sup>
- the individual takes more than one month but not more than 13 months to report the change in their condition. The individual also needs to have good reason for not notifying the change within one month<sup>2</sup>.

*1 CDP regs, reg. 28(1)(b)(ii)*

*2 CDP regs, reg. 28(b)(ii)*

17. The 'change' for the purpose of these rules is the change in the individual's circumstances that they are required to report under section 56 of the 2018 Act.

18. The date when the individual 'first satisfies the requirements for a higher award' means the earliest date when the individual first satisfies the requirements the qualifying criteria for a higher award. This includes:

- satisfying at least one of the relevant qualifying criteria for a period of 13 weeks immediately before that date it being likely that the individual would continue to satisfy at least one of the relevant qualifying criteria for a further 26 weeks after that date.

19. Entitlement to the higher award will begin on the date that the individual reports the change if:

- the individual takes longer than 13 months to report the change<sup>1</sup> or
- the individual takes longer than a month to report the change without having a good reason for not reporting within one month<sup>2</sup>.

*1 CDP regs, reg. 28(1)(b)(iii)*

*2 CDP regs, reg. 28(1)(b)(iii)*

20. If the individual has not yet satisfied the backwards test on the date that the individual reports the change, entitlement begins on the date when the individual first satisfies all of the requirements for entitlement to the higher award.

21. Entitlement to the higher award will begin on the date of the determination resulting from the unscheduled review if:

- the individual does not report the change
- Social Security Scotland become aware of the change through some other means<sup>1</sup>.

*1 CDP regs, reg. 28(1)(d)*

22. If the individual has not yet satisfied the backwards test on the date of the determination resulting from the unscheduled review, entitlement begins on the date when the individual first satisfies all of the requirements for entitlement to the higher award.

## **What is a good reason for not notifying within 1 month**

23. Individuals are expected to notify Social Security Scotland about changes that they are required to report within one month of the change first occurring. If an individual both:

- fails to do this
- does notify within 13 months

then this chapter explains that the date that entitlement begins will depend on whether the individual has ‘a good reason’ for not notifying within a month.

24. Generally speaking, an individual will have a good reason if either:

- it is reasonable to expect the individuals to take as long as they did to notify
- the individual clearly intended to report the change within a reasonable time but somehow did not due to an honest and reasonable mistake.

25. An individual cannot be reasonably expected to notify a change in their circumstances within one month if there are special circumstances which justify the individual being unable to promptly report the change.

26. There may be cases where the change in the level of needs is either:

- gradual,
- fluctuating.

In these cases, it may take longer than a month for the individuals to notice the change.

### **Fixing an earlier start date for entitlement when a change in an individual's needs leads to a higher award**

27. A case manager may fix an earlier start date for an award if they consider it would be unjust not to do so. Case managers should only consider this rule if the change in entitlement would otherwise begin on the date:

- the individual reports the change
- of the determination resulting from the unscheduled review.

28. To recap, entitlement will only start on these dates if:

- the individual took longer than one month, but less than 13 months to notify the change without having a good reason
- the individual took longer than 13 months to notify Social Security Scotland
- neither the individual nor anyone acting on their behalf reported the change - Social Security Scotland became aware of the change through some other means.

29. Individuals must tell Social Security Scotland about changes that they are required to report within one month of the change occurring. Whether or not fairness requires an earlier date to be fixed will depend on the circumstances of each case.

30. The ability for case managers to fix an earlier date exists so that individuals are not unduly disadvantaged because:

- of circumstances beyond their control
- of genuine and reasonable mistakes made by the individual
- they reported the change as soon as they reasonably could be expected under the circumstances
- they would have reported the change on time, but someone else made Social Security Scotland aware of the change.

### **When the change in entitlement should begin if the individual meets the criteria for a lower or no award**

31. Entitlement to a lower rate of either component begins, or entitlement stops, on the date that the individual 'should have notified Social Security Scotland' if the individual 'knowingly fails' to notify a change that they were required to notify<sup>1</sup>

*1 CDP regs, reg. 29(1)(b)(i)*

32. The date that the individual 'should have notified Social Security Scotland' is the date when the change first occurred so long as the individual is required to tell Social Security Scotland about the change as soon as it first occurred. If the individual is required to notify Social Security Scotland within a specified period of

time after the change first occurring, then the date that the individual should have notified Social Security Scotland is the latest date that the individual can notify Social Security Scotland about the change.

33. Entitlement to the lower award begins, or entitlement stops, on the date of the determination resulting from the unscheduled review if:

- the individual did not 'knowingly fail' to notify the change.

1 CDP regs, reg. 29(1)(b)(ii)

34. On the balance of probabilities, an individual knowingly fails to notify Social Security Scotland about a change if

- they do not notify Social Security Scotland about the change at the time when the notice of determination requires them to do so
- they are aware of this fact.

35. An individual also knowingly fails to notify Social Security Scotland about a change if it is reasonable to expect the individual to be aware of the fact-

- a change has occurred
- they are required to notify the change as soon as it occurred.

36. In most cases, it may take a period of time after the change occurs for the individual to actually notice it. This is especially true where the change in the individual's condition:

- is gradual
- fluctuates.

37. An individual cannot knowingly fail to report a change if the change is one that an individual in the individual's position cannot be reasonably expected to notice.

38. Case managers can fix a later start date if they consider, *in all the circumstances*, that it would be unjust not to fix a later start date for either:

- the lower rate of either component
- no award

to begin.

39. However, the case manager must first decide if an individual has knowingly failed to notify Social Security Scotland about the change.

40. The section below contains guidance on when it may be unjust not to fix a later date for entitlement to either:

- begin for a lower award
- cease.

## **Fixing a later start date to entitlement when a change in an individual's condition and needs leads to a lower award or the end of the award**

41. A case manager may fix a later start date for the change in entitlement to begin if they consider it would be unjust not to do so. The case manager may fix a later start date for the change in entitlement to begin<sup>1</sup>

*1 CDP regs, reg. 29(2)*

42. Case managers should only consider fixing a later start date if entitlement would otherwise begin on the date that the individual 'should have reported the change'. This is because the individual has knowingly failed to report the change to Social Security Scotland.

43. In such cases, the individual will have been overpaid. Case managers need to consider whether the individual is actually liable to repay the overpayment. Individuals are only liable to repay overpayments if the error either:

- was the 'individual's fault' or
- was one that an individual in the individual's position could 'reasonably be expected to notice'<sup>1</sup>

*1 S. 63(1) and S. 64(1) of the 2018 Act*

44. An error is the individual's fault if it was caused by the individual:

- failing to report a change of circumstances that they were required to report or causing another person to do this<sup>1</sup>.

*S. 64(2) of the 2018 Act*

45. Therefore any individual who knowingly fails to report a change of circumstances leading to a lower or no award is liable to repay the overpayment. This is unless case managers decide to fix a later start date, starting from the date of the determination.

46. It will only be in exceptional circumstances that fairness would require the case manager to fix a later award. This would be where (even though individual knowingly failed to report the change): exceptional circumstances meant that the individual was unable to report the change. An example of this could be where a person takes advantage of a vulnerable individual by:

- benefitting from the individual's award
- telling the individual not to tell Social Security Scotland about a change of circumstances so that the person would continue to benefit from a higher award.

47. Case managers should seek advice if they are considering fixing a later date.