

Determinations and Awards- Overview chapter

Index

This chapter covers the following:

- Introduction
- What a determination of entitlement is
- Entitlement to CDP
- Components of CDP
- Determination Without Application

Introduction

1. This chapter provides an overview of how and when case managers make determinations of entitlement to Child Disability Payment (CDP). More detailed information on the specific aspects of making determinations are provided in linked chapters.

What a determination of entitlement is

2. Case managers are responsible for determining whether or not an individual is entitled to CDP.
3. CDP has two components. Each component is payable at different rates.
4. The components and rates of CDP are:
 - the care component (lowest, middle or highest rate)
 - the mobility component (lower or higher rate).
5. Case managers must determine whether an individual meets the criteria of entitlement to CDP. The criteria of entitlement refer to:
 - the residence and presence conditions, which are set out in the Residence and Presence chapter
 - age criteria, which are set out below
 - care component criteria, which are set out in the CDP Care Component - Rates and Criteria chapter
 - mobility component criteria, as set out in the CDP Mobility Criteria – lower rate and the CDP Mobility Criteria – higher rate chapters
6. Individuals entitled to any of the following benefits are not entitled to CDP¹
 - Disability Living Allowance
 - Personal Independence Payment
 - Armed Forces Independence Payment.

1 CDP regs, reg 10

7. Individuals must meet the residence and presence conditions and the age criteria to be entitled to CDP.
8. The care component criteria only apply to entitlement to the care component of CDP. The mobility component criteria only apply to entitlement to the mobility component of CDP. This means that individuals do not need to meet the care component criteria to be entitled to the mobility component and vice versa.
9. A determination of entitlement to CDP consists of:
 - a decision about whether or not the individual is entitled to either or both the care and mobility components of CDP
 - if the individual is entitled to CDP, a decision about:
 - the weekly rate of CDP they are entitled to
 - when they will become entitled to CDP
 - reducing the payment of the weekly rate of the care component to zero when the individual is resident in alternative accommodation for more than 28 days.
10. This chapter provides an overview of how and when case managers make determinations of entitlement to CDP. More detailed information on the specific aspects of making determinations are provided in linked chapters.
11. Case managers are required to make determinations of entitlement when they:
 - receive an application for CDP
 - are required to make a determination without application as part of a scheduled or unscheduled review
 - an individual requests a re-determination.
12. The rules also require a court or tribunal to make determinations of entitlement if an individual makes an appeal regarding a determination of entitlement¹. This chapter will focus on determinations of entitlement made by case managers.

1 SS Act 2018, s25

Entitlement to CDP

13. Individuals must meet the following criteria to be entitled to CDP.

Age

14. Individuals must be at least:
 - 13 weeks old to be entitled to the care component of CDP¹
 - 3 years old to be entitled to the higher rate of the mobility component of CDP²
 - 5 years old to be entitled to the lower rate of the mobility component of CDP³.

1 CDP regs, reg 4(1), reg 11(3)(a)

2 CDP regs, reg 13(1) and reg 15(1)(b)

3 CDP regs, reg 12(1)

15. Where the Special Rules for Terminal illness apply, the lower age limit does not apply to the care component¹.

1 CDP regs, reg 4(1A)

16. Where an individual was born on 29 February, their birthday should be taken to fall on 28 February in a year which is not a leap year¹.

1 CDP regs, reg 4(3)

17. Individuals must be under 16 years of age on the date that their entitlement to CDP begins¹. Individuals aged 16 on the date their application is received by Social Security Scotland are entitled to CDP if entitlement begins from a date before they turned 16. This is set out in more detail in the Applying for CDP chapter.

1 CDP regs, reg 4(2)

18. Individuals who meet the age criteria can continue to be paid CDP until they reach 18 years of age¹. However, CDP can be paid until the age of 19 where one of the following applies²:

- The individual is awaiting a determination on their application for Adult Disability Payment;
- They have been in receipt of Disability Living Allowance in another part of the United Kingdom immediately before moving to Scotland;
- Their case has been transferred to Social Security Scotland from the Department for Work and Pensions³.

*1 CDP regs, reg 4(1) 2 CDP regs, reg 4(1B)(b)
3 CDP regs, Sch 1, Part 3*

19. Individuals aged 16 and over who do not meet the age criteria can apply for Personal Independence Payment (PIP).

Residence and Presence

20. Individuals must normally meet the following residence and presence criteria to be entitled to CDP:

- be ordinarily resident in Scotland¹
- be habitually resident in the Common Travel Area²
- not be subject to immigration control³
- be present in the common travel area and has been present for at least 26 weeks in total out of the previous 52 weeks⁴.
- For individuals under 6 months old, has been present in the common travel area for at least 13 weeks⁵.

*1 CDP regs, reg 5(1)(a)
2 CDP regs, reg 5(1)(b)
3 CDP regs, reg 5(1)(c)*

4 CDP regs, reg 5(1)(d) and (e)
5 CDP regs, reg 5(2)

21. There are a number of special circumstances in which an individual will be treated as if they have met some or all of the residence and presence conditions. For more information, see the Residence and Presence Chapter .

The backwards and forwards tests

22. Individuals must also satisfy the backwards and forwards tests to be entitled to CDP.

23. The backwards test is the amount of time the individual must have met the criteria of entitlement for a particular component, or rate of CDP. The backwards test for CDP is 13 weeks.

1 CDP regs, reg 11(3)(a), 12(6)(a) and 13(10)(a)

24. The forwards test is the amount of time the individual is likely to meet the criteria of entitlement for a particular component, or rate of CDP. The forwards test for CDP is 26 weeks.

1 CDP regs, reg 11(3)(a), 12(6)(b) and 13(10)(b)

25. An individual needs to satisfy both criteria to be entitled to CDP. This helps to distinguish short-term from long-term needs for assistance.

26. An application can be submitted for CDP before the backwards test has been satisfied. If this happens, a case manager can make a determination that the individual is likely to satisfy the backwards and forwards tests.

27. However, entitlement to CDP will not begin until the backwards test has been satisfied. This is when case managers will treat the application as being made¹.

1 CDP regs, reg.24(2)

28. There are no backwards or forwards tests to apply if an individual applies under special rules for terminal illness. For more information, see the Special Rules for Terminal Illness chapter.

1 CDP regs, reg. 15(2)(a)

Components of CDP

29. The rates and components an individual is entitled to is dependent on whether they meet the criteria set out in the regulations for CDP for each component.

30. Case managers must consider entitlement to each component independently when making a determination. This is because an individual may be entitled to one, both or neither of the components. For more information, please see:

- Care component – rates and criteria chapter
- Care component – definitions chapter
- Lower rate mobility component chapter
- Higher rate mobility component chapter

Example: an individual who is entitled to the care and mobility components of CDP

Mira is 10 years old and has a visual disability. In her application and supporting information her visual disability is noted as 'severe'.

The case manager concludes that Mira requires frequent attention throughout the day in relation to her bodily functions. For example, she requires attention when getting dressed and washing in the mornings and in the evenings, as well as during meal times. At times her need for support is greater as she cannot easily use the bathroom by herself if she is in unfamiliar surroundings. She also needs support communicating as reading and writing can be very difficult for her. Her needs and the amount of time the attention is required during the day vary. The case manager concludes that although Mira's needs can vary day to day depending on her surroundings, looking at the whole of the relevant period Mira can fairly be described as requiring frequent attention throughout the day. The attention required is also substantially in excess of what is normally required for children her age.

The case manager also concludes that Mira is able to move around outdoors but requires guidance and supervision most of the time, and therefore that she can be considered to need continual supervision throughout the day.

The case manager determines that Mira is entitled to the middle rate of the care component. They also determine that Mira is entitled to the higher rate of the mobility component.

Example: an individual is entitled to the care component but not the mobility component of CDP

Briar is 8 and experiences nocturnal enuresis. Her parents often have to check on her during the night. They are working on behavioural therapy with her during the day to help reduce the chances of bed wetting. Briar only has trouble with her bladder while asleep and does not have any other disabilities or health conditions which require attention or supervision.

The case manager determines that Briar is entitled to the middle rate of the care component of CDP. Briar is not entitled to any rate of the mobility component. This is because she does not need guidance or supervision while outdoors beyond what is normal for someone her age without a disability.

Determination without Application

31. A determination without application¹ is a new determination of entitlement that replaces an earlier determination. Case managers must make determinations without applications when there is either:

- a scheduled review of the individual's award²
- an unscheduled review of the individual's award³

1 SS Act 2018, s.52

2 CDP regs, reg. 30

3 CDP regs, reg. 31

Moving between rates of CDP

32. Individuals are able to move between rates of both components of CDP. This will result from a new determination made during a scheduled or unscheduled review. This is because individual's needs can change over time. This will affect the level of assistance they are entitled to.

33. The backwards and forwards tests are applied differently when the needs of individuals entitled to CDP change. This depends on whether the individual is entitled to a higher, lower or no award as a result of the change. For information on how to apply the backwards and forwards tests in these situations, see the 'Change to Impact of the Condition or Level of Need' chapter.

34. Entitlement to CDP is not affected until the case manager has made a new determination. Case managers must follow the rules on when changes in entitlement take effect. These rules are found in the following chapters:

- the Scheduled Reviews chapter
- the Unscheduled Reviews chapter.

Challenging Determinations of entitlement to CDP

35. Individuals can challenge determinations of entitlement made by case managers¹. This includes determinations made on applications and on-going awards of CDP. This is a re-determination. For more information, see the Re-determinations chapter.

1 SS 2018 Act, s41