

# Effect of time spent in care homes and residential educational establishments

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In this chapter, references to alternative accommodation refer to both care homes and residential educational establishments. Legal detention is another type of alternative accommodation. This is covered in the Legal Detention chapter.

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## Introduction

1. This chapter is relevant to Child Disability Payment (CDP) individuals who are entitled to the care component<sup>1</sup>. It explains how living in a care home or residential educational establishment affects the individual's entitlement to the care component.

*1 CDP regs, reg. 11(1)*

2. An individual's entitlement for payment of the mobility component of CDP is not affected by time spent in alternative accommodation.

3. An individual entering or leaving alternative accommodation is a change of circumstances.

4. When an individual tells Social Security Scotland about a change of circumstances that would possibly result in an alteration to the component or rate of CDP, a case manager must both:

- carry out an unscheduled review of the case
- make a determination without application.

5. The Unscheduled Reviews and Determinations without Application chapter has more information on

- changes of circumstance
- unscheduled reviews
- determinations without application.

## Definition of care home and residential educational establishment

6. A care home is defined<sup>1,2</sup> as a service which provides accommodation together with any of the following:

- nursing care
- personal care;
- personal support.

*1 CDP regs, reg. 2*

*2 Public Services Reform(Scotland) Act 2010, Schedule 12, para.2*

7. The service should be provided to the individual because of their vulnerability and needs. This definition of care home does not include hospitals or hospices.

8. Entitlement to payment of CDP care and mobility components is unaffected by admission to a hospital or a hospice<sup>1</sup>.

*1 CDP regs, reg. 21*

9. It might not always be clear if the place where the individual is living is a care home. The key to this definition is if the accommodation is linked to the care they receive.

10. Situations such as shared housing are similar but are not defined as care homes. The individual may have a tenancy paid for separately to the care or services they receive.

11. A residential educational establishment is defined as a care home which provides education or training. This does not include establishments where the costs of education or training are wholly or partly covered out of public or local funds<sup>1</sup>.

*1 CDP regs, reg. 2*

## Effect on entitlement of an individual spending time in alternative accommodation

12. An individual who is entitled to the care component is entitled to still be paid it for the first 28 days of their stay in alternative accommodation.

13. The individual stops being paid the care component on the 29<sup>th</sup> day of their time spent in alternative accommodation<sup>1</sup>. This is called non-payment of assistance.

*1 CDP regs, reg. 17(2)*

14. The non-payment of assistance enables an individual entitlement to CDP to continue while they are resident in alternative accommodation.

15. This is because the care component helps to meet the extra costs experienced by individuals with a disability or long-term health condition.

16. In most cases when they are in alternative accommodation, the costs of their care will be paid for by the local authority or other public funds. Non-payment of assistance ensures that a person does not receive support for the costs of their care twice.

17. The exceptions to this rule are discussed in the **Exceptions section** below.

18. The individual who is receiving CDP has a legal duty to inform Social Security Scotland about entering and leaving alternative accommodation<sup>1</sup>. The case manager will then make a determination without application.

*1 SS(S)A 2018, s. 56*

19. They must tell Social Security Scotland about time spent in alternative accommodation as soon as is reasonably practicable.

20. For example, it would be unreasonable for the individual or their representative not to inform Social Security Scotland that they have entered alternative accommodation after a month of being resident.

21. An individual might not inform the case manager immediately after they have entered alternative accommodation. This might result in the case manager making a determination without application after the individual has spent 28 days in alternative accommodation. In this case, the individual would accrue an overpayment before their payment of the care component would be set to nil.

22. There are different rules about applying for CDP when living in alternative accommodation. Please see the section on **Applications while spending time in alternative accommodation** for a full explanation of this rule.

## Calculating the length of stay

23. The days on which the child or young person arrives at and then goes home from alternative accommodation do not count<sup>1</sup> in calculating the length of stay.

*1 CDP regs, reg. 19(1)*

### Example: Calculating the length of stay in alternative accommodation

Julia arrives at a care home on the 3rd of July and leaves on the 1st of August. The days she arrived and left do not count so Julia's length of stay in the care home is 28 days. Julia's payment of the care component is not affected because this does not exceed 28 days.

If a child or young person enters alternative accommodation from either:

- a hospital
- a hospice

- another care home
- a residential educational establishment

the day they enter is counted as part of the length of stay<sup>1</sup>.

*1 CDP regs, reg. 19(4)*

### **Example: Calculating the length of stay when transferring from hospital to a care home**

Stacey transfers from hospital to a care home on the 20<sup>th</sup> of May and leaves the care home on the 18<sup>th</sup> of June. The day she transferred to the care home counts when calculating the relevant period but the day she left does not count. The period of time Stacey spends in the care home is therefore 29 days. As this exceeds 28 days, Stacey cannot receive the care component of her award for the 29<sup>th</sup> day.

### **Temporary periods of leave during a stay in alternative accommodation**

24. Individuals are entitled to payment of the care component during any period that they temporarily go on leave from the alternative accommodation<sup>1</sup>. This time is called the period of leave. However, the individual must inform Social Security Scotland of the leave.

*1 CDP regs, reg. 19(3)*

25. The individual receives a daily rate of one-seventh of the relevant weekly rate for CDP for each day of their period of leave. Once the individual has left alternative accommodation permanently, payment of CDP will revert to being paid every four weeks in arrears.

26. The period of leave includes the days when the person left and returned to alternative accommodation<sup>1</sup>.

*1 CDP regs, reg. 19(2)*

27. The case manager has to make a determination without application for any moves in and out of alternative accommodation that affects the amount paid to the individual.

### **Example: Calculating leave periods**

Jack leaves his residential school to return home on the 25<sup>th</sup> of April. He returns to residential school on the 5<sup>th</sup> of May. Jack is entitled to the care component from the 25<sup>th</sup> of April until the 6<sup>th</sup> of May and therefore receives payment for 11 days.

### **Linked periods**

28. When calculating the length of stay in alternative accommodation, individual periods shorter than 28 days can be added together to form one 28 day period. However, only periods with fewer than 28 days between them can be linked together in this way<sup>1</sup>.

*1 CDP regs, reg. 17(3)*

29. When an individual takes a temporary period of leave shorter than 28 days, their entitlement to be paid the care component will stop when they return to alternative accommodation. This is because a temporary period of leave of 28 days or fewer does not break any linked periods.

30. However, if the individual takes a period of leave for 29 days or more before returning to alternative accommodation, the two periods in alternative accommodation are not linked and they will be paid the care component for the first 28 days of their stay<sup>1</sup>.

*1 CDP regs, reg. 17(3)*

### **Example: linked periods**

Sorcha ordinarily lives at home with her parents and has periodic stays in respite care, which meets the definition of a care home. She started receiving CDP six months ago.

Sorcha entered respite care on the 25<sup>th</sup> of March and left the 10<sup>th</sup> of April. The day she entered alternative accommodation and the day she leaves are not taken into account, so this period of residence is 15 days.

Sorcha is at home from 10<sup>th</sup> of April and enters respite again on the 30<sup>th</sup> of April. The day she left and the day she returned to respite are not taken into account so the period Sorcha was living at home is 19 days.

From the 30<sup>th</sup> of April Sorcha resides in respite care until returning home on the 16<sup>th</sup> of May. Neither the 30<sup>th</sup> of April nor the 16<sup>th</sup> of May are included in the calculation so the period Sorcha was residing in alternative accommodation for is 15 days.

As there are fewer than 28 days between the two periods during which Sorcha is in respite care, they are linked to form one 30 day period.

Sorcha will therefore receive the care component of CDP for the first 28 days of her stay but will not be paid for days 29 and 30.

### **Example: linked periods**

Imri has been entitled to the care component of CDP for 3 years. They regularly spend short periods of time living in the accommodation provided by their school and live in their own home with their flat mate the rest of the time. Over the period of 3 months, Imri's routine is:

- Residing at school: 1<sup>st</sup> of October to 7<sup>th</sup> October. This period of residence is 5 days.
- Living at home: 7<sup>th</sup> of October to 2<sup>nd</sup> of November. This period living at home is 25 days.
- Residing at school: 2<sup>nd</sup> of November to 10<sup>th</sup> of November. This period of residence is 7 days.

There are only 25 days between the 5 day period and the 7 day period residing at school. These two periods are linked to form one 12 day period. Imri is entitled to the care component for this 12-day period.

Imri then stays at home from 10<sup>th</sup> of November to 11<sup>th</sup> of December. As this is more than 28 days the clock is re-set. Therefore, the 12 days of residence at their school are not taken into consideration in calculating any future length of stay at the school.

## Exceptions

### Children who are 'looked after' by a local authority

31. Local authorities have a duty to safeguard and promote the welfare of children in their area who are in need. A child may be considered 'in need' because they have a disability<sup>1</sup>.

*1 Children (Scotland) Act 1995 s. 93(4)(a)(iii)*

32. Children may be "looked after" by a local authority in a number of ways. These include providing accommodation for a child or young person who lives in that local authority area and either:

- has no one who has responsible for them
- is lost or has been abandoned
- has someone who is responsible for them but who cannot provide them with suitable accommodation, either permanently or temporarily<sup>1</sup>.

*1 Children (Scotland) Act 1995 s. 25*

33. Local authorities also have a duty to make such services available for children who are cared for by their own family, that the local authority thinks are reasonable<sup>1</sup>.

*1 Children (Scotland) Act 1995 s. 17(1)(b)*

34. The care component of CDP can continue to be paid when a local authority places a child or young person in a private home with another family, relative or another person if either:

- the individual is under 16 and is looked after by the local authority

- the individual is under 18 and their health or development is likely to be significantly affected unless the local authority provides services
- the individual is under 18 and is disabled.

35. The care component of CDP can also continue to be paid if both

- the child or young person is placed in a care home outside of the UK
- the cost is met either in full or in part by the local authority in the UK<sup>1</sup>.

*1 Education (Additional Support for Learning) (Scotland) Act 2004 s.25*

### **Self-funding placements in alternative accommodation**

36. Individuals are entitled to be paid the care component of CDP for the full period they are living in alternative accommodation if the full cost of the:

- qualifying services
- accommodation
- board
- personal care<sup>1</sup>

is privately funded.

*1 CDP regs, reg. 17(4)*

37. This means that they are paid for either:

- entirely by the child or young person
- partly by the child or young person and partly by another person such as a parent or guardian. This does not include a local authority in the UK.
- by another person or paid for by a charity, which doesn't include a local authority anywhere in the UK).

### **Applications made while residing in alternative accommodation**

38. If an individual is living in alternative accommodation on the day the application for CDP is treated as being made, their entitlement to the care component can begin but the amount is reduced to nil until the day after they leave alternative accommodation. The exceptions above (LINK to **Exceptions** above) apply<sup>1</sup>.

*1 CDP regs, reg. 20(1) and (2)*

39. If the individual later returns to alternative accommodation, their entitlement to payment of the care component is affected in the same way as described above.