

## Change of circumstances: change in care needs

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- Setting 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

### Introduction

1. This chapter is about one of the events that trigger an unscheduled review. The chapter on 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 or their representative) that there has been a change of circumstance which would either:

- potentially result in an alteration to the amount of Pension Age Disability Payment (PADP) that an individual is entitled to
- make it likely that an individual is no longer entitled to PADP.<sup>1</sup>

*1 PADP regs, reg. 41(a)*

2. This chapter is specifically about change in the individual's care 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 '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.

4. This duty also applies to anyone acting on the individual's behalf, such as 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. Where this chapter mentions "the individual", this also includes someone acting on the individual's behalf.

### Examples of typical changes in 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. This could be due to developing a new condition or disability, or a worsening of their condition or impact of their disability
  - a decrease in care needs due to an improvement in their condition or the impact of the disability
  - the individual receives medical treatment which reduces or stops the individual's needs

This list is not exhaustive.

6. Once the review is complete, the case manager:
- makes a determination on the individual's entitlement to PADP, taking into account the change in circumstances;
  - decides whether or not to set a review date, and what the review date should be; and
  - sends the individual the notice of this new determination.

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

Mark is 75 years old. He lives with his daughter and is living with the effects of dementia. He is currently entitled to the lower rate of PADP for the frequent attention he receives during the day. Mark requires attention when taking a shower, getting dressed and when going to the toilet.

Mark's daughter contacts Social Security Scotland and reports that because there is a slight deterioration in Mark's condition, he now occasionally needs help to settle during the night.

This could possibly change the level of Mark's award. Therefore, Social Security Scotland carry out an unscheduled review as a result of the change of circumstances from Mark's daughter. As the case manager is familiar with Mark's condition and its prognosis, they know that it is more likely than not that Mark would experience more severe symptoms of his condition over time. The case manager therefore does not require any decision-making tools, such as supporting information or a case discussion.

The case manager determines that Mark's award will remain the same. This is because, while Mark now requires occasional help to settle during the night, his daughter has shared that Mark needs this help around once a fortnight. This would mean that although Mark does not satisfy the 'night criterion', he would remain entitled to the lower rate of PADP for his daytime needs. Individuals must meet both the day and night criteria to be entitled to the higher rate of PADP.

7. Case managers can extend the review date of an individual's award as part of their determination if appropriate. 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.
9. For guidance on setting an appropriate review period, reference should be made to the review periods chapter.

**Example: An award rate does not change but the review period is changed**

Zainab is 69 years old and has been experiencing pain and stiffness in her lower back, both hands, and her left knee for about 2 years. The stiffness and pain affect her especially badly in the mornings, meaning she struggles with washing and dressing herself and cooking breakfast. Zainab requires frequent attention throughout the day due to the impact of her condition.

Zainab was awarded the lower rate of PADP, with a review period of 2 years. Zainab's review period was initially set at 2 years because, following a case discussion with a practitioner, it was determined that Zainab's symptoms were relatively new and that her needs will likely change in the near future. After approximately one year she contacts Social Security Scotland to provide a letter from her GP confirming that she has been diagnosed with osteoarthritis and prescribed ibuprofen and paracetamol for pain relief.

The case manager considers the information provided and has a new case discussion with a practitioner, who helps provide more information about osteoarthritis, how it may progress, and the effects of treatment with painkillers.

The case manager determines that Zainab should remain on the lower rate of PADP but the review period should be extended to 5 years, given that her symptoms are most likely to remain stable for several years.

**Example: Reported care needs change to include requiring support during the day and at night**

Evelyn is 89 years old and has Alzheimer's. She was diagnosed four years ago. She had previously been receiving frequent attention and continual supervision from her husband during the day, to ensure that she washed and dressed properly, to ensure her safety when preparing food, and due to her tendency to wander into the local area and get lost.

Evelyn's husband contacts Social Security Scotland because for the past several months, Evelyn has now begun to wake in the night and attempt to leave the house, wandering and becoming lost overnight.

Social Security Scotland carry out an unscheduled review as a result of the change of circumstances. Evelyn's change of circumstances form lacks some details. In order to fully understand Evelyn's new level of need, the case manager decides that speaking to her husband would be the best option. As Evelyn's third-party representative, he is able to provide further information as requested. They call Evelyn's husband and ask some follow-up questions.

Because Evelyn's change of circumstance relates to a condition the case manager is already aware of, they don't require supporting information from a professional to broadly confirm her condition, disability or needs.

Based on the change of circumstances form and the phone call with Evelyn's husband, the case manager determines that Evelyn now requires:

- frequent attention and continual supervision throughout the day,
- another person to be awake throughout the night to watch over her.

Therefore, Evelyn will now be awarded the higher rate of PADP. As Evelyn's condition is unlikely to improve, the case manager decides that it is appropriate for Evelyn to receive an indefinite award.

### **Example: Someone's needs increase but they already receive the higher rate of PADP**

John has been awarded the higher rate of PADP and has an indefinite award. John's appointee contacts Social Security Scotland to inform us that his care needs have increased as his condition has worsened. John's condition would not be considered a terminal illness; therefore the Special Rules for Terminal Illness are not considered by the case manager.

The case manager is not required to review John's award as there has not been a change of circumstances that would possibly result in a change of award. This is because John is on the highest possible rate of PADP and his award is indefinite. John's appointee is informed that Social Security Scotland will not carry out a review for this reason.

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

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

11. This involves:

- considering how their needs affect their entitlement to PADP
- applying the backwards test (The chapter on the Backwards Test explains the test in more detail)
- working out when the change in entitlement should begin.

### **Applying the backwards test**

12. Individuals must satisfy the backwards test to be entitled to a higher rate of PADP when their award is reviewed.

13. The backwards test requires the individual to have met at least one of the qualifying criteria for an award for 26 weeks immediately preceding the date that the

new award would begin<sup>1</sup>. The qualifying criteria for awards of PADP are set out in the chapter on Eligibility, Rates and Criteria.

*1 PADP regs, reg. 5(6)*

14. To apply the backwards test, the case manager needs to know the date that the entitlement to the new rate 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 test on this date. This chapter explains what to do if the backwards test is not met on this date.

15. If the individual meets the qualifying criteria for the lower or higher rate of PADP, they only need to have met at least one of the qualifying criteria.

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

16. Entitlement to the higher award starts on the date that an individual first meets those requirements, if:

- they report that change to Social Security Scotland within one month of it occurring<sup>1</sup>, or
- they take more than one month but not more than 13 months to report it, and have a good reason<sup>2</sup>.

*1 PADP regs, reg. 37(1)(b)(i)(aa)*

*2 PADP regs, reg. 37(1)(b)(i)(bb)*

17. For a change in circumstances to meet the qualifying criteria for a higher award, this includes satisfying at least one of the relevant qualifying criteria for a period of 26 weeks immediately before that date.

#### **Example: an individual reports a change within 1 month**

Mark, who has dementia, has been receiving the lower rate of PADP. His partner, who has been supporting him, has been aware of Mark's memory worsening and now he requires help with most daily tasks, including personal hygiene, toileting, and getting dressed. He has also begun to wander overnight, sometimes trying to leave the house, and needs to be encouraged to go back to bed most nights. The new level of needs starts on 1 January 2023. Over the next week, Mark's partner realises that Social Security Scotland should be notified of this change.

Social Security Scotland carry out an unscheduled review as a result of the change of circumstances Mark reported. It is determined that Mark should receive the higher rate of PADP, starting from the date he first meets the requirements for the higher award. This means the increase in award will start from the date 26 weeks after the date the increase in needs occurred. This is the 2 June 2023, because he will have satisfied the backwards test at this point.

#### **Example: an individual reports a change after 1 month but within 13 months, with a good reason**

In the scenario above, Mark's partner became unwell and was admitted to hospital before being able to support Mark in notifying Social Security Scotland of the change. When Mark's partner returned home they supported Mark to notify Social Security Scotland but this was on 1 May 2023, several months later. This would be considered a good reason for taking longer than a month to notify, and Mark should receive the higher rate of PADP, starting from the date Mark first meets the requirements for the higher award. As in the above scenario this will be on the 2 June 2023 which is 26 weeks after the date his needs increased.

18. Entitlement to the higher award starts on the date that the individual reports the change if they take longer than:

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

*1 PADP regs, reg. 37(1)(b)(i)(bb)*

**Example: an individual reports a change after 1 month but within 13 months, without a good reason**

Angus has had Parkinson's disease for 4 years. He was initially receiving the lower rate of PADP. He experiences an increase in his symptoms, meaning he requires help with many daily tasks due to the tremor in his hands. This includes assistance using and getting to the toilet, which he now needs to do overnight, so he now requires assistance during both day and night time. These changes are present from 1 January 2023. Angus notifies Social Security Scotland of the changes on 1 July 2023, but gives no reason for the delay, except to say he "didn't get around to it".

Social Security Scotland carry out an unscheduled review as a result of the changes Angus has reported. It is determined that Angus should receive the higher rate of PADP. The increase in award can only start from 1 July 2023, when Angus reported the change. The backwards test has already been met on 1 July 2023 as it has been more than 26 weeks since the change happened in January.

19. 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 PADP regs, reg. 37(1)(e)*

20. If the individual has not yet satisfied the backwards test on the date of the determination resulting from the unscheduled review, entitlement starts once the backwards test is satisfied.

21. If the change of circumstances is received as part of a scheduled review please refer to the scheduled reviews chapter for when the change in entitlement should begin

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

22. Individuals should tell Social Security Scotland about changes that they are required to report within one month of the change first occurring. If an individual fails to do this, the date that entitlement begins will depend on whether the individual has a good reason for not notifying within a month.

23. An individual will have a good reason if either:

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

For a non-exhaustive list of examples of good reasons see the 'Good Cause' section in the Gathering Supporting Information DMG chapter.

24. An individual cannot be reasonably expected to notify a change in circumstances within one month if there are special circumstances (e.g. due to hospitalisation) which mean they are unable to promptly report the change.

25. 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 individual to notice the change.

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

26. A case manager may set an earlier start date for an award if they consider it would be unjust not to do so<sup>1</sup>. Case managers should only consider this rule if the change in entitlement would otherwise begin on the date:

- the individual, or anyone acting on their behalf, reports the change
- of the determination resulting from the unscheduled review.

*1 PADP regs, reg. 37(2)*

27. The ability for case managers to apply 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**

28. If the individual notifies about their change in circumstances within 1 month of when they could be expected to notice a change, their entitlement to the lower award starts, or their entitlement stops, on the date of the determination from the unscheduled review.

**For example:** Edith has been receiving the lower rate of PADP due to osteoarthritis in her right shoulder. She has an operation on the shoulder, and after her recovery from the operation goes well, she notices she is able to do much more for herself than she could before. She notifies Social Security Scotland.

The case manager undertakes an unscheduled review and finds Edith is no longer entitled to PADP. Her entitlement to PADP stops when the case manager makes this determination.

29. If the individual knowingly fails to notify a change, their entitlement to the lower award starts, or their entitlement stops, on the date that they should have notified us.

30. The case manager must decide if an individual has knowingly failed to notify Social Security Scotland about the change.

31. An individual knowingly fails to notify Social Security Scotland about a change if they are<sup>1</sup>:

- under a duty to inform of changes in accordance with their notice of determination
- know that their condition has changed, and
- have deliberately not told, or have delayed telling Social Security Scotland.

*1 PADP regs, reg. 38(b)(i)*

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

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

33. 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.



34. An individual cannot knowingly fail to report a change if the change is one that a person in their position cannot be reasonably expected to notice.

35. Case managers can set a later start date if they consider that it would be unjust not to apply a later start date for either:

- the lower rate of award, or
- no award

to begin.

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

- begin for a lower award
- cease.

### **Setting 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**

37. A case manager may set 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 set a later start date for the change in entitlement to begin.<sup>1</sup>

*1 PADP regs, reg. 38(2)*

38. Case managers should only consider setting a later start date if entitlement would otherwise begin on the date that the individual should have reported the change.

39. 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 could reasonably be expected to notice<sup>1</sup>

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

40. An error is the fault of the individual if it was caused by them:

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

*1 S. 64(2) of the Social Security (Scotland) 2018 Act*

**For example:** Edith has been receiving the lower rate of PADP due to osteoarthritis in her right shoulder. She has an operation, and after her recovery from the

operation goes well, she notices she is able to do a lot more of her daily activities independently than she could before. She decides not to notify Social Security Scotland.

When a case manager undertakes a scheduled review of Edith after 6 months, her entitlement to PADP would stop on the date Edith ought to have notified Social Security Scotland of the change. This is the date by which it is reasonable to expect that Edith was aware of the change. This means Edith has been overpaid and may be liable to repay this.

41. It will only be in exceptional circumstances that fairness would require the case manager to set a later award. This would be where (even though the individual knowingly failed to report the change): exceptional circumstances meant that they were unable to report the change.

**For example:** 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.

**[END OF CHAPTER]**