

Determinations and Awards

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Introduction

1. This chapter provides an overview of how and when case managers make determinations of entitlement to Pension Age Disability Payment (PADP). 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 PADP.
3. PADP can be paid at two different rates, the lower or higher rate. More information on the rates of PADP can be found in the Rates and Criteria chapter.
4. Case managers must determine whether an individual meets the criteria of entitlement to PADP. The criteria of entitlement refer to:
 - the residence and presence conditions, which are set out in the Residence and Presence chapter
 - the age criteria, which are set out in the Rates and Criteria chapter
 - The daytime and/or night-time conditions for are which are set out in the Rates and Criteria chapter.
5. Individuals entitled to any of the following benefits are not entitled to PADP¹:
 - Armed Forces Independence Payment
 - Attendance Allowance
 - Adult Disability Payment
 - Disability Living Allowance
 - Personal Independence Payment

¹ PADP regs, reg 4

6. Individuals must meet the residence and presence conditions and the age criteria to be entitled to PADP.
7. A determination of entitlement to PADP consists of:
 - a decision about whether or not the individual is entitled to PADP
 - if the individual is entitled to PADP, a decision about:
 - if they are entitled to the lower or higher rate of PADP
 - when they will become entitled to PADP
 - reducing the payment of the weekly rate of PADP to zero when the individual is resident in alternative accommodation for more than 28 days.
 - reducing the payment of the weekly rate of PADP because of entitlement to other benefits, such as Constant Attendance Allowance.
8. This chapter provides an overview of how and when case managers make determinations of entitlement to PADP. More detailed information on the specific aspects of making determinations are provided in linked chapters.
9. Case managers are required to make determinations of entitlement when they:
 - receive an application for PADP
 - are required to make a determination without application as part of a scheduled or unscheduled review
 - an individual requests a re-determination
10. 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 Pension Age Disability Payment

11. Individuals must meet the following criteria to be entitled to PADP.

Age

12. Individuals must be of State Pension age and older to be entitled to PADP¹.
An individual's State Pension age varies depending on when they were born.

1 PADP regs, reg 17(1)

13. For full details of the age criteria, see the PADP Rates and Criteria chapter.

Residence and Presence

14. Individuals must normally meet the following residence and presence criteria to be entitled to PADP:

- 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

1 PADP Regs, Reg 9(1)(a)

2 PADP Regs, Reg 9(1)(b)

3 PADP Regs, Reg 9(1)(c)

4 PADP Regs, Reg 9(1)(d) and (e)

15. 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 test

16. Individuals must also satisfy the backwards test to be entitled to PADP. For full details please see the Backwards Test chapter.

17. The backwards test is the amount of time the individual must have met the criteria of entitlement for a particular rate of PADP. The backwards test for PADP is 26 weeks.¹

1 PADP Regs, Reg 5(6)

18. The backwards test helps to distinguish short term needs from long term needs for assistance.

19. An application can be submitted for PADP 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 test within a period of 26 weeks from when the application was received.

20. However, entitlement to PADP will not begin until the backwards test has been satisfied. This is when case managers will treat the application as being made.¹

1 PADP Regs, Reg 27(2)

21. The backwards test does not apply if the individual applies under special rules for terminal illness.¹ For more information, see the Special Rules for Terminal Illness chapter.

1 PADP Regs, Reg 18(2)

Rates of Pension Age Disability Payment

22. The rate of PADP that an individual is entitled to is dependent on whether they meet the criteria set out in the PADP regulations.
23. PADP has two rates: the lower rate and the higher rate.¹ An individual's needs determine what criteria they meet and the rate of PADP that they are entitled to. For more information on the rates and criteria of PADP, see the PADP Rates and Criteria chapter.

1 PADP regs, reg 6(1)

Determination without Application

24. 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 PADP Regs, Reg 39

3 PADP Regs, Reg 40, 41, 42 and 43

25. When a determination without application is being made due to an official error, reference should be made to the 'When a previous determination is based on an error or made in ignorance of material fact' chapter.

Moving between rates of PADP

26. Individuals are able to move between the lower and higher rates of PADP. 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.
27. The backwards test is applied differently when the needs of individuals entitled to PADP 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 test in these situations, see the 'Applying the backwards test' section of the 'Change of circumstances: change in care needs' chapter.
28. Entitlement to PADP 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. The rules are found in the following chapters:
- the Scheduled Reviews chapter
 - the Unscheduled Reviews chapter

Challenging determinations of entitlement to PADP

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

1 SS Act 2018, s.41

[END OF CHAPTER]