

Decision Making Guidance:

Scottish Adult Disability Living Allowance – 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 Scottish Adult Disability Living Allowance (Scottish Adult DLA). 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 Scottish Adult DLA.
3. Scottish Adult DLA has two components – the care component, which relates to the assistance that a person needs with daily personal care; and the mobility component, which relates to the assistance a person needs moving around. The care component has three rates: lowest, middle and highest. The mobility component has two rates: lower and higher.
4. More information on the rates of Scottish Adult DLA can be found in the Rates and Payment chapter.
5. Case managers must determine whether an individual meets the criteria of entitlement to Scottish Adult DLA. The criteria of entitlement include:
 - 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 Payment chapter
 - the daytime and/or night-time conditions for are which are set out in the Rates and Criteria chapter.

For information about what assumptions are made for the purpose of the case transfer determination, please see the Case Transfer chapter.

6. Individuals entitled to any of the following benefits are not entitled to Scottish Adult DLA¹:
 - Armed Forces Independence Payment

- Attendance Allowance
- Adult Disability Payment
- Disability Living Allowance
- Pension Age Disability Payment
- Personal Independence Payment

1 Scottish Adult DLA regs, reg 5

7. The care component of Scottish Adult DLA also overlaps with Constant Attendance Allowance (CAA)¹. Individuals in receipt of the War Pensions Mobility Supplement (WPMS) will have their mobility supplement reduced to £0. It is possible that someone could receive both Scottish Adult DLA and one of these benefits, e.g. WPMS and Scottish Adult DLA care component only.

1 Scottish Adult DLA regs, reg 28(4), (5)

2 Scottish Adult DLA regs, reg 28(6)

8. Individuals must meet the residence and presence conditions, the age criteria, and have been in receipt of Disability Living Allowance (DLA) administered by the Department for Work and Pensions to be entitled to Scottish Adult DLA.

9. A determination of entitlement to Scottish Adult DLA consists of:

- a decision about whether or not the individual is entitled to Scottish Adult DLA
- if the individual is entitled to Scottish Adult DLA, a decision about:
 - the rates and components of Scottish Adult DLA which they are entitled to
 - when their entitlement to Scottish Adult DLA begins or ends
 - reducing the payment of the weekly rate of Scottish Adult DLA when the individual is resident in alternative accommodation, e.g. hospital, care home, legal detention
 - reducing the payment of the weekly rate of Scottish Adult DLA because of entitlement to other benefits, such as Constant Attendance Allowance.

10. Case managers are required to make determinations of entitlement when they:

- are required to make a determination without application as part of a scheduled or unscheduled review
- an individual requests a re-determination

11. A court or tribunal is required 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 Scottish Adult DLA

12. As well as having been in receipt of DLA administered by the Department for Work and Pensions when their award is moved to Social Security Scotland, individuals must meet the following criteria to be entitled to Scottish Adult DLA:

Age

13. Individuals must be aged 18 or older to be entitled to Scottish Adult DLA¹.

1 Scottish Adult DLA regs, reg 18(1)

14. For full details of the age criteria, see the Scottish Adult DLA Rates and Payment chapter.

15. There are certain rules with regards to qualifying periods (detailed below), which apply to those over the 'relevant age'. The 'relevant age' is defined as:
- pensionable age;
 - or, if higher, 65.

Residence and Presence

16. Individuals must normally meet the following residence and presence criteria to be entitled to Scottish Adult DLA:

- 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 Scottish Adult DLA Regs, Reg 10(1)(a)

2 Scottish Adult DLA Regs, Reg 10(1)(b)

3 Scottish Adult DLA Regs, Reg 10(1)(c)

4 Scottish Adult Regs, Reg 10(1)(d) &(e)

17. 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.

Qualifying Periods

18. Individuals must also satisfy the backwards test to be entitled to Scottish Adult DLA. For full details please see the Qualifying Periods chapter.

19. The qualifying periods help to distinguish short term needs from long term needs for assistance.

20. The qualifying periods for Scottish Adult DLA are the amount of time the individual must have met the criteria of entitlement for a particular rate of Scottish Adult DLA for a period in the past 'the backwards test', and the

amount of time they are anticipated to continue to meet this criteria 'the forwards test'.

21. The length of 'the backwards test' for the **care component** of Scottish Adult DLA is different depending on the individual's age when their needs arose. It is 13 weeks for those who are under the relevant age when their needs arise and 26 weeks for those over relevant age.

1 Scottish Adult DLA Regs, Reg 6(2)(a) & (3)

22. 'The forwards test' for the **care component** is 26 weeks for those under the relevant age when their needs arise. There is no forwards test for those over the relevant age.

1 Scottish Adult DLA Regs, Reg 6(2)(b) & (3)

23. 'The backwards test' for the **mobility component** of Scottish Adult DLA is always 13 weeks, regardless of age. 'The forwards test' is always 26 weeks.¹

1 Scottish Adult DLA Regs, Reg 7(4), & 8(10)

24. A change of circumstances can be reported for Scottish Adult DLA before the individual has met 'the backwards test' qualifying period. However, entitlement to any increased rate of Scottish Adult DLA will not begin until the backwards test has been satisfied.

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

1 Scottish Adult DLA Regs, Reg 20(3)

Rates of Scottish Adult DLA

26. The rate of Scottish Adult DLA that an individual is entitled to is dependent on whether they meet certain criteria set out in the Scottish Adult DLA regulations.

27. Scottish Adult DLA has two components: the care component and the mobility component. The care component has three rates: lowest, middle and higher. The mobility component has two rates: lower and higher.¹

1 Scottish Adult DLA Regs, Reg 29

28. An individual's needs determine what criteria they meet and the rate of Scottish Adult DLA that they are entitled to. For more information on the rates and criteria of Scottish Adult DLA, see the Scottish Adult DLA Rates and Payment chapter.

Determination without Application

29. 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 Scottish Adult DLA Regs, Reg 42

3 Scottish Adult DLA Regs, Reg 43, 44, 45, 46

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

Moving between rates of Scottish Adult DLA

31. Individuals are able to move between rates of the different components of Scottish Adult DLA. 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.

32. There are some limits on moving between rates once a person has reached the 'relevant age':

- An individual over the relevant age cannot increase the amount of the mobility component that they receive where the change happened after they reached the relevant age¹.
- An individual cannot newly qualify for the lowest rate of the care component after reaching the relevant age².

1 Scottish Adult DLA Regs, Reg 7(4)(c), 8(11)(c)

2 Scottish Adult DLA Regs, Reg 6(5)

33. Entitlement to Scottish Adult DLA 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 Scottish Adult DLA

34. Individuals can challenge determinations of entitlement made by case managers¹. This includes determinations made on on-going awards of Scottish Adult DLA. This is a re-determination. For more information, see the Re-determinations chapter.

1 SS Act 2018, s.41