

## Determinations and Awards- Overview chapter

### Index

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

### Introduction

1. This chapter provides an overview of how and when case managers make determinations of entitlement to Adult Disability Payment (ADP). 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 ADP.
3. ADP has two components. Each component is payable at different rates.
4. The components and rates of ADP are:
  - the daily living component (standard or enhanced rate)
  - the mobility component (standard or enhanced rate).
5. Case managers must determine whether an individual meets the eligibility criteria for entitlement to ADP. The eligibility criteria refer to:
  - the residence and presence conditions, which are set out in the Residence and Presence chapter
  - age criteria, which are set out below
  - daily living criteria, which are set out in the daily living component introduction chapter
  - mobility component criteria, as set out in the mobility component introduction chapter
6. Individuals entitled to any of the following benefits are not entitled to ADP<sup>1</sup>
  - Disability Living Allowance
  - Personal Independence Payment
  - Attendance Allowance
  - Child Disability Payment
  - Armed Forces Independence Payment.

<sup>1</sup> ADP regs, reg 4

7. Individuals must meet the residence and presence conditions and the age criteria to be entitled to ADP.
8. The daily living component scoring criteria only apply to entitlement to the daily living component of ADP. The mobility component scoring criteria only apply to entitlement to the mobility component of ADP. This means that individuals do not need to meet the daily living component criteria to be entitled to the mobility component and vice versa.

An individual with a terminal illness should be considered to satisfy the conditions for the enhanced rate of the daily living component and the enhanced rate of the mobility component of ADP.<sup>1</sup>

*1 ADP regs, reg. 26*

9. A determination of entitlement to ADP consists of:
  - a decision about whether or not the individual is entitled to either or both the daily living and mobility components of ADP
  - if the individual is entitled to ADP, a decision about:
    - the weekly rate of both the daily living component and the mobility component of ADP they are entitled to
    - when they will become entitled to ADP
    - reducing the payment of the weekly rate of components to zero in certain circumstances. For example, when the individual is resident in alternative accommodation for more than 28 days.
    - Reducing the payment of the weekly rate because of entitlement to other benefits such as Constant Attendance Allowance.
10. This chapter provides an overview of how and when case managers make determinations of entitlement to ADP. 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 ADP
  - 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 entitlement<sup>1</sup>. This chapter will focus on determinations of entitlement made by case managers.

*1 SS Act 2018, s25*

## **Entitlement to ADP**

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

### **Age**

14. Generally individuals must :

- be 16 years old or over to be entitled to either component of ADP<sup>1</sup>
- be under pensionable age, or if higher 65 to be entitled to either component<sup>2</sup>

Pensionable age, or if higher 65, is referred to as the relevant age. In relation to the relevant age, there are exceptions to this rule. These are covered in detail in the 'Eligibility according to age' chapter.

*1 ADP regs, reg 22(1)(a)  
2 ADP regs, reg 22(1)(b)*

15. Individuals must be under the relevant age on the date that their entitlement to ADP begins. Individuals over the relevant age are still entitled to ADP if they made an application prior to the relevant birthday and the determination isn't made until after they have reached the relevant age. Furthermore, individuals over pensionable age will also be entitled if they are transferring from Personal Independence Payment to ADP.<sup>1</sup>

*1 ADP regs, reg 23 & 24*

Where an individual has reached the relevant age and then makes an application for ADP, they may be entitled to ADP if they were entitled to the same component as covered in the new application as part of a previous award of Adult Disability Payment, Personal Independence Payment or Disability Living Allowance which ended not more than one year before the day the new application is made. Under these circumstances a case manager should not apply the relevant age rule.<sup>1</sup>

*1 ADP regs, reg 23*

16. Individuals over pensionable age who do not meet the age criteria or the exceptions covered in the Age Criteria DMG chapter can apply for Attendance Allowance ( And in the future they will be able to apply for Pension Age Disability Payment).

17. 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 year<sup>1</sup>.

*1 ADP regs, reg 22(3)*

### **Residence and Presence**

18. Individuals must normally meet the following residence and presence criteria to be entitled to ADP:

- be ordinarily resident in Scotland<sup>1</sup>
- be habitually resident in the Common Travel Area<sup>2</sup>
- not be subject to immigration control<sup>3</sup>

- be present in the common travel area and has been present for at least 26 weeks in total out of the previous 52 weeks<sup>4</sup>.

1 ADP regs, reg 15(1)(a)  
2 ADP regs, reg 15(1)(b)  
3 ADP regs, reg 15(1)(c)  
4 ADP regs, reg 15(1)(d) and (e)

19. 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**

Individuals must also satisfy the required period to be entitled to ADP. The required period is made up of the backwards and forwards tests.

20. The backwards test is the amount of time the individual must have met the criteria of entitlement for ADP. The backwards test for ADP is 13 weeks.

1 ADP regs, reg 10(3)

21. The forwards test is the amount of time the individual is likely to meet the criteria of entitlement for ADP. The forwards test for ADP is 39 weeks.

1 ADP regs, reg 10(3)

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

23. An application can be submitted for ADP 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.

24. However, entitlement to ADP will not begin until the backwards test has been satisfied. This is when case managers will treat the application as being made<sup>1</sup>.

1 ADP regs, reg.35(2)

25. 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.<sup>1</sup>

1 ADP regs, reg. 26

## Components of ADP

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

27. 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:

- Daily Living Component Introduction chapter
- Mobility Component Introduction chapter

### **Example: an individual who is entitled to the daily living and mobility components of ADP**

James is 18 years old and has learning difficulties. From his application and supporting information, the case manager concludes that James is unable to plan the route of a journey. He also needs:

- supervision or assistance to prepare a simple meal
- communication support to be able to express or understand complex verbal information
- prompting to be able to read or understand basic written information
- social support to be able to engage socially with other people
- prompting or assistance to make simple budgeting decisions

The case manager determines that James scores 8 on the mobility activities and 20 on the daily living activities. He is therefore entitled to:

- the enhanced rate of the daily living component
- the standard rate of the mobility component.

### **Example: an individual is entitled to the mobility component of ADP but not the daily living component of ADP**

Caroline is 58 and is currently recovering from a stroke. From her application and supporting information, the case manager concludes that Caroline can stand then move more than 50 metres but no more than 200 metres, either aided or unaided. Caroline also:

- needs an aid or appliance to be able to prepare or cook a simple meal
- needs to use an aid or appliance to be able to wash or bathe
- needs to use an aid or appliance to be able to manage toilet needs

The case manager determines that Caroline scores 8 on the mobility activities and 6 on the daily living activities, and is therefore entitled to the standard rate of the mobility component. She is not entitled to either rate of the daily living component as she scored below 8 in the daily living activities.

## Determination without Application

28. A determination without application<sup>1</sup> 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 award<sup>2</sup>
- an unscheduled review of the individual's award<sup>3</sup>

*1 SS Act 2018, s.52*

*2 ADP regs, reg. 47*

*3 ADP regs, reg. 48, 49, 50 and 51*

## Moving between rates of ADP

29. Individuals are able to move between rates of both components of ADP. 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.

30. The backwards and forwards tests are applied differently when the needs of individuals entitled to ADP change. This depends on whether the individual is entitled to an enhanced, standard 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.

31. Entitlement to ADP 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 ADP

32. Individuals can challenge determinations of entitlement made by case managers<sup>1</sup>. This includes determinations made on applications and on-going awards of ADP. This is a re-determination. For more information, see the Re-determinations chapter.

*1 SS 2018 Act, s41*

[End of chapter]