

Eligibility According to Age

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Introduction

1. This chapter sets out when an individual is eligible to receive ADP according to their age.
2. It also includes rules relating to the age of the individual which must be considered when making a determination.
3. 'Relevant age' in the ADP regulations means pensionable age or aged 65 if this is higher than an individual's state pension age (SPA).if ¹
¹ADP regs, reg. 22(2)
4. An individual's pension age depends on when they were born:
 - For individuals born before 6 October 1954 their SPA is 65
 - for individuals born between 6 October 1954 and 5 March 1961 their SPA is 66
 - for all individuals born after 5 March 1961 their state pension age is 67[\[Working out an Individual's state pension age/ State Pension age timetable \]](#)
5. When calculating the relevant age of an individual born on 29 February their birthday is taken to fall on 28 February in a year which is not a leap year.¹
¹ADP regs, reg. 22(3)
6. 'Previous award' in this chapter means an earlier award for ADP, Personal Independence payment (PIP) or Disability Living Allowance (DLA).
7. Individuals who are between 16 years and the relevant age are eligible to receive ADP. ¹
¹ADP regs, reg. 22(1)

8. An individual's age has to be considered when determining whether they are entitled to payment of ADP when they are in alternative accommodation.

New Applications for ADP

9. An application for ADP can be treated as made on the day it is received. However, if the individual is likely to meet all of the relevant criteria, including the age criteria within 13 weeks of the date the application is received, a case manager can choose an alternative date within these 13 weeks on which the application is treated as made.¹
10. An individual may apply for Adult Disability Payment up to 13 weeks before their 16th birthday. However the earliest they can be paid is their 16th birthday.
¹ADP regs, reg. 35(1)& 35(2)
11. An individual can make an application for ADP before reaching the relevant age, but a determination may not be completed until after they reach the relevant age. If the only reason not to make an award is that the individual has now reached the relevant age, age eligibility won't apply in these circumstances and an award of either or both components can be made.¹
¹ADP regs, reg. 24(b)

Example – an individual applies before reaching the relevant age but a determination is only made after the individual reaches that age

Margaret was born on 10 September 1956 and as a result the date in which she reached the relevant age was 10 September 2022. Margaret had a stroke on 1 August 2022 and due to the after effects caused by this, she applied for ADP for the first time on 1 September 2022. A determination was made on 25 September 2022 that found Margaret was entitled to the daily living component of ADP at the enhanced rate.

While this determination was made after Margaret reached the relevant age, because she applied prior to this, she was entitled to ADP. Margaret's entitlement for ADP began 13 weeks following her stroke, on 31 October 2022 when she met the backwards test, and it was deemed her condition was likely to meet the forwards test as well.

12. Where an individual is terminally ill and a clinical judgement of this was made prior to the date the individual reached the relevant age, a determination of ADP should still be made even where the application and / or Supporting Information was received after the individual reached the relevant age. This is because their entitlement would in those circumstances, be determined to start on the date of their clinical judgement, and so they will have been found to be entitled to an award before they reached the relevant age.¹

¹ADP regs, reg. 24(a),&26(4)

Eligibility for new applications for individuals older than the relevant age to receive ADP

13. An individual who is over the relevant age is eligible to receive ADP of either or both components, if they were already in receipt of a previous award on the day before they reached the relevant age.¹

¹ ADP regs, reg. 24(a)

If a new application for ADP is received after a person has reached the relevant age, then they may still be able to be eligible for ADP if they have had a previous award which ended no more than a year before the day their new application is made.¹

¹ ADP regs, reg.23 (1) (b)

14. Entitlement under a new application in these circumstances has to result because of the same physical/mental condition(s) that the previous award made, or a new physical/mental condition(s) which developed because of the condition(s) that the previous award made.¹

³ ADP regs, reg. 23(1)(d)

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Example – a new application from an individual over the relevant age who had previously had an ADP award.

Caroline is over the relevant age and applies for ADP in September 2022. She had a previous award of PIP, which ended in June 2021. Caroline is not entitled to ADP because she is the relevant age, and her previous award ended over a year before her new application was submitted.

Eligibility for new applications, for individuals over the relevant age after an interval, that includes the mobility component

16. There are further rules on awards which include a mobility component for individuals over the relevant age, when they make a new application for ADP within one year of a previous award ending. These are as follows:

- When it's determined the individual has a severely limited ability to carry out mobility activities
 - the individual will be entitled to the enhanced rate only if they were entitled to that rate under their previous award.¹

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- If the individual was not entitled to the enhanced rate of the mobility component, they will be entitled to the standard rate in this instance only if they were entitled to the standard rate of that component under the previous award.²
- When it's determined the individual has limited ability to carry out mobility activities, they will be entitled to the standard rate of the mobility component only if they were entitled to either rate of mobility component under the previous award.³

¹ ADP regs, reg.23(5)(a)

² ADP regs, reg. 23(5)(b)

³ ADP regs, reg. 23 (6)

- If there is no entitlement to mobility in the previous award, then an individual will not be entitled to receive payment for either rate of the mobility component.
- The only exception to this is if there is medical evidence provided in the form of a clinical judgement advising the individual was terminally ill prior to them reaching the relevant age. In instances like these, the individual applying would be entitled to the mobility component at the enhanced rate.¹

¹ ADP regs, reg.25(5)

Example – an application for ADP award within 1 year of the previous award ending where the previous award did not include the mobility component.

Anna is over the relevant age and was previously entitled to the daily living component at the standard rate. Her award ceased at the end of May, and in the following April, Anna submitted a new ADP application. It was determined that Anna wasn't entitled to the daily living component at either rate.

The determination also found that Anna had a limited ability to carry out mobility activities because of her condition. However Anna wasn't entitled to receive the mobility component at the standard rate either.

Anna isn't entitled to the mobility component in this instance because she is over the relevant age, and her previous award didn't have an entitlement to the mobility component.

Example – an application for ADP award within 1 year of the previous award ending where the previous award included standard rate mobility

Gary is over the relevant age and had a previous award for both the mobility and daily living components at the standard rate. His award ended in July and he submitted a new application in November. It was determined that Gary was entitled to receive the daily living component at the enhanced rate and the mobility component at the standard rate.

The determination found Gary had severely limited ability to carry out mobility activities. It also found that Gary's entitlement was because of the same condition that his previous award was. However Gary isn't entitled to receive the mobility component at the enhanced rate because he hadn't received the enhanced rate as part of his previous award. Gary is awarded the mobility component at the standard rate because he received this rate in his previous award.

The case manager firstly confirmed Gary met the criteria in the 'ADP after an interval' guidance.

The case manager checked that Gary met the exception for those over the relevant age and that he had a previous award which ended less than a year ago. Because this was the case, the case manager could make an award.

Case transfer and the Age Criteria

17. Individuals are entitled to payment of ADP when their awards are transferred from Personal Independence Payment to ADP. This includes for people, who are over the relevant age on the date that they transfer.¹ Case managers should make a determination without application for anyone whose case is being transferred to determine their entitlement to ADP.

¹ ADP regs, reg. 24(c)& Sch 2, part 3, Para(9)(1)

18. When an individual is:

- aged 16 or 17 on the date of transfer
- was in legal detention directly before the date of transfer
- was entitled to the mobility component of personal independence payment directly before the date of transfer

their entitlement to the mobility component will begin before the date of the determination without application, but not before 13 June 2022.¹

¹ ADP regs, Sch 2, part 3, para(13)(1)&(2)

Determination of an ongoing award after the individual has reached the relevant age

19. This section refers to individuals who are already in receipt of ADP as opposed to applying through a new application.

20. Individuals who are in receipt of ADP and reach the relevant age will still be able to continue to receive ADP. Reaching the relevant age will not mean they are no longer eligible for ADP.¹

¹ ADP regs, reg. 24(a)

21. Where a change of circumstances occurs when an individual is over the relevant age, case managers must carry out a determination without application.

22. A determination without application also has to be conducted by case managers when medical evidence has been received that shows a change of circumstance for an individual over state pension age.¹ This evidence can be provided by:

- a healthcare professional
- another person approved by Scottish Ministers

¹ADP regs, reg.25(2)(b)&48(a)

23. Case managers must also carry out a determination without application when they become aware of a material fact after an individual reaches the relevant age.¹

¹ADP regs, reg.25 (2) (b) & 48 (a)

24. Where medical evidence received after an individual reaches the relevant age is a clinical judgment that the individual has become terminally ill which is dated before the individual reached the relevant age, then the restrictions relating to the mobility component over the relevant age do not apply.¹

¹ADP regs, reg.25 (5)

Exceptions for a new determination that includes the mobility component for those above the relevant age

25. This section refers to individuals who are already in receipt of ADP as opposed to applying through a new application.

26. When an individual is over the relevant age and a new determination is being made, there are restrictions on awards which include a mobility component. These are as follows:

- When the original mobility component award was for the standard rate
 - the individual can only be awarded the standard rate mobility component, even when they would otherwise be entitled to the enhanced rate if they were under the relevant age.¹
 - And
 - the individual can only be awarded the standard rate mobility component where the entitlement occurred due to the same condition/conditions on which the original award for mobility was made.²
- When the original mobility component award was for the enhanced rate
 - the individual can only be awarded the enhanced rate mobility component where the entitlement occurred due to the same

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condition/conditions on which the original award for mobility was made.³

¹ ADP regs, Reg. 25 (3) (a) (i)
² ADP regs, Reg. 25 (3) (a) (ii)
³ ADP regs, 25(3) (b)

27. If a determination without application is being made for an individual over the relevant age and there is no mobility component in the original award, then the determination cannot include an award for the mobility component. The only exception to this rule is in instances where medical evidence received after an individual reaches the relevant age is a clinical judgement that an individual has become terminally ill, and is dated before the individual reached the relevant age.
28. If the original award has no mobility component, a previous award of ADP or Personal Independence Payment with mobility components can be used when Scottish ministers make a determination without application for an individual over the relevant age.
29. This previous award must have ended no more than one year before the new determination begins. The previous award would be regarded as the original award in these circumstances and it would be subject to the restrictions in paragraph 25 above.¹

Example – a determination without application due to a change in circumstances where the individual is over the relevant age and the original award included a mobility component at the enhanced rate

Rashid is over the relevant age and has muscular dystrophy. He is currently in receipt of an ADP award which comprises of:

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

The case manager receives notification that Rashid's circumstances have changed, and he may be entitled to further support. Increased muscle stiffness has led to further muscle restriction and as a result Rashid has been diagnosed with depression, which has impacted his score when undertaking daily living activities.

A determination without application found that Rashid was entitled to the enhanced rate of the daily living component due to the change in his condition, and that he remained entitled to the enhanced rate for mobility.

Rashid remains entitled to the enhanced rate for mobility in this instance because both the following are true:

- he received the enhanced rate of mobility in his original award
- his entitlement was due to the same condition (muscular dystrophy) on which the original award was made.

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Example – a determination without application due to a change in circumstances where the individual is over the relevant age and the original award included a mobility component at the standard rate

Jakub is over the relevant age and received the standard rate of both the daily living and mobility components in his original award, due to arthritis.

The case manager receives notification that Jakub's condition has changed and makes a determination without application.

The determination found that Jakub is entitled to the daily living component at the standard rate due to his arthritis. It also found that Jakub would have been entitled to the mobility component at the enhanced rate. However, Jakub is over the relevant age, and his original award was for the standard rate of mobility. As a result, he was awarded the standard rate of mobility.

Example – a determination without application due to a change in circumstances because of medical evidence received, after the individual reaches the relevant age

Paul is over the relevant age and received the daily living component at the standard rate and the mobility component at the enhanced rate due to Multiple Sclerosis.

The case manager receives medical evidence from a healthcare professional to suggest that Paul's condition has worsened and makes a determination without application.

The determination found that he is entitled to the daily living and mobility component at the enhanced rate due to Multiple Sclerosis.

Paul is entitled to continue receiving the enhanced rate of mobility because both these statements are true:

- he was entitled to the enhanced rate of mobility for ADP in his original award
- the determination found the entitlement to be the result of the same condition that his original award was based on.

Example – a determination without application due to a change in circumstances where the individual is over the relevant age and a previous award is less than 1 year old is used to consider the mobility component

Jim is over the relevant age and received the standard rate of daily living component following a determination without application on 1 September 2020. Prior to 1 September 2020, Jim was receiving the standard rate ADP components for both daily living and mobility.

The case manager received evidence that Jim's condition had worsened and carried out a determination without application in May 2021. The determination found that he had a limited ability to carry out mobility and daily living activities.

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As the mobility component isn't part of Jim's current award, the case manager used the earlier award from before 1 September 2020 as his current award. The case manager found that Jim's entitlement to the mobility component was because of the same condition that he was receiving the standard rate for, prior to September 2020.

The case manager completes the determination and concludes that Jim is entitled to both the standard rate of mobility and daily living components of ADP.

[End of chapter]