

## Short-term Assistance

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### Introduction

1. This chapter is relevant to an individual who has received or is receiving Scottish Adult Disability Living Allowance (Scottish Adult DLA), and who applies for Short-term Assistance (STA).
2. An individual can apply for STA during a re-determination or appeal of a determination that reduced or removed their entitlement to Scottish Adult DLA with the effect that the overall value of their payment is lower.
3. Individuals whose awards transfer to Scottish Adult DLA can apply for STA at review determination stage or any subsequent determinations. This is because the client has had 2 earlier determinations, i.e. the transfer determination made initially and then a review determination, or subsequent determinations. STA is only payable where the value of entitlement at re-determination stage is lower than the value of entitlement at initial determination.
4. Individuals whose awards transfer to Scottish Adult DLA can also apply for STA if they seek a re-determination against their initial award and this re-determination has the effect of lowering their initial award or reducing it to zero, and they then seek an appeal against the re-determination award. In this scenario, the client has also had two determinations (the transfer determination and the re-determination).
5. An individual can apply for STA when a new determination of entitlement by Social Security Scotland results in both:
  - An individual's overall longstanding award (the first award or the award prior to the most recent review) being reduced as a result of entitlement to Scottish Adult DLA either being reduced to a lower rate or ending altogether.
  - the individual asking for a re-determination or appeal.
6. STA is set out in section 36 of the Social Security (Scotland) Act 2018 ("the Act"). Its purpose is that an individual is not discouraged from either:
  - challenging the determination to stop or reduce their ongoing entitlement.

- accessing administrative justice

by having to manage with a reduced income for a period of time.

7. STA is only available once the request for a re-determination or appeal is made. STA is not payable during the period between the:
  - determination being made.
  - individual deciding whether to request a re-determination or appeal.
8. Where a request for a re-determination is made, an individual can apply for STA at any time during the re-determination period up until a re-determination decision is made.
9. Where a request for an appeal is made, an individual can apply for STA at any time during the appeal period up until an appeal decision is made.
10. STA is available until the point that the First-tier Tribunal (FtT) make a final determination. It is not available during any further appeal to the Upper Tribunal or any other higher appellate court. If the initial FtT decision is set aside after a review by the FtT of their own decision, and there is a period of time between that happening and the FtT deciding the appeal again, STA will go back into payment. Social Security Scotland will make a determination without application on the individual's entitlement to STA in this situation.
11. If an individual is unsuccessful in challenging the determination that reduced or stopped their payment they will not normally need to pay anything back. However, if it is later established that the person was overpaid STA because they did not meet its eligibility criteria, or were paid more than they were entitled to, they may be liable to repay. This includes circumstances where the individual claimed the original assistance fraudulently.

## Eligibility

12. An individual becomes entitled to apply for STA when a new determination by Social Security Scotland results in their entitlement to assistance being stopped or reduced<sup>1</sup>.

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 1*

13. An individual needs to make an application for STA. Entitlement to STA begins<sup>1</sup>:
  - Where a request for a re-determination is made, on the day when a re-determination request is accepted by Social Security Scotland<sup>2</sup>
  - Where a request for an appeal is submitted, on the day the individual requested the appeal when an appeal request is accepted by the Scottish Courts & Tribunals Service<sup>3</sup>
  - on the day the First-tier Tribunal sets aside the decision by Social Security Scotland to not accept a late request for re-determination<sup>4</sup>

- on the day the individual submits a late request for permission to appeal to the First-tier Tribunal<sup>5</sup>.
- on the day the Tribunal sets aside their own decision on entitlement in order to make a new determination on entitlement<sup>6</sup>.

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 7*

*2 Scottish Adult DLA Regs, Sch 1, Part 1, para 7(a)*

*3 Scottish Adult DLA Regs, Sch 1, Part 1, para 7(b)*

*4 Scottish Adult DLA Regs, Sch 1, Part 1, para 7(c)*

*5 Scottish Adult DLA Regs, Sch 1, Part 1, para 7(d)*

*6 Scottish Adult DLA Regs, Sch 1, Part 1, para 7(e)*

14. The individual must also continue to meet the residence and presence requirements<sup>1</sup> to be entitled to STA. For more information please refer to the Residence and Presence chapter.
15. The individual is entitled to STA if they have become resident in another part of the United Kingdom and the issue being challenged through re-determination or appeal is the determination for the 13-week period beginning when the individual stops being ordinarily resident in Scotland<sup>2</sup>.

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 1(d)(i)*

*2 Scottish Adult DLA Regs, Sch 1, Part 1, para 1(d)(ii)*

16. There are some situations when the value of Scottish Adult DLA is reduced to £0. This happens when the individual is either:
- admitted into a care home for a period of more than 28 days<sup>1</sup>
  - admitted to hospital for a period of more than 28 days<sup>2</sup>
  - held in legal detention for a period of more than 28 days.<sup>3</sup>

*1 Scottish Adult DLA Regs, Reg 22(1)&(2)*

*2 Scottish Adult DLA Regs, Reg 23(1)(2)&(3)*

*3 Scottish Adult DLA Regs, Reg 25(3)*

17. Payment of Scottish Adult DLA resumes when the individual leaves the care home, hospital or legal detention. More information on when payments restart in each circumstance can be found in the .
18. STA is not payable when Scottish Adult DLA has been reduced to £0 in the above circumstances.<sup>1</sup> This is because although the payment is reduced, the individual's entitlement has not changed.

*1 Scottish Adult DLA Regs, Schedule 1, Part 1, (1) (6)*

## Examples of entitlement to STA

### **Example: Decision on a transfer determination of Scottish Adult DLA where a re-determination requested**

An individual's award transfers to Scottish Adult DLA on a like for like basis and is awarded the lowest rate of the care component and lower rate of the mobility component. The individual disagrees with Social Security Scotland's decision and requests a re-determination and applies for STA. The individual would not be entitled to STA in this situation as it is their first Scottish Adult DLA award and therefore there has been no reduction to their award.

### **Example: Decision on a transfer determination of Scottish Adult DLA where an appeal is submitted**

An individual's award transfers to Scottish Adult DLA on a like for like basis and is awarded the higher rate of the mobility component. The individual requests a re-determination and is awarded the lower rate. The individual disagrees with Social Security Scotland's decision and submits an appeal, applying for STA at the same time. The individual would be entitled to STA in this situation as the value of entitlement at re-determination is lower than the value of entitlement originally.

### **Example: Decision to reduce ongoing payment**

After a determination to reduce their ongoing entitlement, an individual requests a re-determination which is accepted. The individual applies for STA 50 days after the re-determination is requested but while the re-determination is still in progress. The individual is entitled to STA in this situation. The payment of STA will be backdated to the date the request for a re-determination was made.

### **Example: Re-determination request made late**

An individual requests a re-determination and applies for STA. They do this more than 42 days after receiving a determination to reduce their Scottish Adult DLA entitlement from the higher rate to the lower rate. This had reduced the total value of their ongoing award. Social Security Scotland take 7 days to decide that the reason for the late request for re-determination is **not** accepted. The individual is not entitled to STA for any period in this situation, as the client is not challenging a reduction to their disability benefit award, as their re-determination was not valid.

## STA given in error

19. Like any other form of assistance there may be circumstances where STA is paid in error and the individual may be liable to repay Social Security Scotland. This includes where the person caused or contributed to the error, or where the error was of the kind an individual could reasonably be expected to notice<sup>1</sup>.

<sup>1</sup> S63 & 64 SS(S) Act 2018

20. For example they:

- misrepresented or omitted relevant information from their STA application
- claimed the original benefit fraudulently and at the time of applying knew they were not entitled to either it or STA<sup>1</sup>.

*1 S63 & 64 SS(S) Act 2018*

21. Where payment of STA continues beyond the date that the individual has died, the estate of the individual is automatically liable to repay Social Security Scotland the value of that assistance<sup>1</sup>.

*1 S69 SS(S) Act 2018*

## **Value of Short-term Assistance**

22. The value of STA payable is the difference between<sup>1</sup>:

- the value of assistance paid under the earlier determination
- and the value paid under the new determination.

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 2*

**Please note the following care component rates are for illustrative purposes only and may not be accurate at time of reading**

## **Examples of calculating STA value**

### **Example: Rate of STA payable – transfer determination at appeal stage**

On initial determination an individual was entitled to Scottish Adult DLA at the:

- highest rate care component of £110.40 per week.

The individual requests a re-determination with the result being that they are entitled to the:

- middle rate care component of £73.90 per week

The individual submits an appeal and applies for STA. STA is payable during the appeal at a rate of £36.50 per week. This is the difference between the value of entitlement at first determination and the value of entitlement at re-determination.

### **Example: Rate of STA payable**

An individual is in receipt of Scottish Adult DLA at the:

- middle rate care component of £73.90 per week.

After a review, a new determination is made and the case manager determines that the individual is no longer entitled to Scottish Adult DLA. They now have no payment of Scottish Adult DLA.

The individual asks for a re-determination and applies for STA. STA is payable at a rate of £73.90 per week. This is the difference between the original total value of award and the value of the nil award.

**Example: STA payable - Decision to increase one component and decrease the other**

An individual requests a re-determination and applies for STA. The individual previously received:

- nil care component and
- higher rate mobility component at £110.40 per week.

Following their re-determination, they are awarded:

- middle rate care component of £73.90 per week
- nil mobility.

As STA is based on the overall award being lowered, the individual is eligible for STA. The individual would receive an award of STA at £36.50 per week (topping up the individual to their first award of £110.40 prior to their re-determination) and backdated to the date the request for a re-determination is made. An individual will receive this amount until their appeal concludes.

23. STA is only payable where the total value of the new determination payment is lower than the total value of the earlier determination payment.

**Example: STA not payable - Decision to increase one component and decrease the other**

An individual has a first award of:

- lowest rate mobility component of £29.20 per week
- nil care component.

They request a re-determination and are awarded:

- nil mobility
- middle rate care component of £73.90.

The individual decides to appeal and applies for STA. In this instance, the individual is not entitled to STA as although one component was reduced, the total value of the award has increased. STA is only available where the overall payment of an award has been lowered.

## Deductions

24. Where an individual has liability to Scottish Ministers for a overpayment under section 63 of the 2018 Act, STA may be paid to them in whole or in part, in the form of a deduction from that debt.<sup>1</sup> This means the amount the amount of STA paid and the amount of debt owed will be reduced.
25. Where they have not agreed to repay their debt, Scottish Ministers may put in place an enforced deduction, and will set the amount at a reasonable level, taking into account their financial circumstances.
26. This deduction could be a continuation of deduction that was already in place from the benefit that has been reduced or stopped, or it could be a new voluntary or enforced deduction. To affect the deduction a new determination of entitlement to STA must be made which is subject to re-determination and appeal rights. See *Re-determination and appeal of decision on short-term assistance*.

*1 Scottish Adult DLA Regulations, Sch 1, Part 1, para 4*

## Start date of entitlement

27. STA entitlement begins where the following criteria are both met:

- an individual has a reduction to their longstanding award and
- they are challenging this reduction

Payment will begin on the exact date of the challenge being validated when a request for a re-determination or where a notice of appeal is submitted. It is only once the challenge has been validated that entitlement to STA begins.

### **Example: Re-determination form with application for STA cannot be immediately validated**

A client has an unscheduled review on 5<sup>th</sup> of November which lowers their overall award.

The client requests a re-determination on 11<sup>th</sup> November 2024 and applies for STA. Social Security Scotland is unable to validate the request as the declaration on the re-determination form has not been signed. Social Security Scotland contact the client on 18<sup>th</sup> November 2024 and successfully validate the re-determination request and request for STA.

The client receives STA from the 18<sup>th</sup> of November, the date in which the re-determination form was validated and the challenge began.

### **Example: Late re-determination request and subsequent STA application**

After a scheduled review on 9<sup>th</sup> of August, an individual's award is reduced. The individual does not immediately request a re-determination.

On 25<sup>th</sup> November, they decide to challenge the determination and submit a late re-determination request, providing a good reason for lateness. Their late re-determination form is accepted as valid by Social Security Scotland on the 2<sup>nd</sup> of December.

Subsequently, the client applies for STA on the 16<sup>th</sup> of December. The client is eligible for STA as a decision has not yet been made on their re-determination.

STA can be backdated to when the re-determination request was validated by Social Security Scotland. The client is awarded STA from the 2<sup>nd</sup> of December when their re-determination form was validated and when the challenge began.

### **Example: Start date where STA entitlement is apportioned on first week**

A client has a review which reduces their overall award from £108.55 to £75.75 per week. They request a re-determination and request STA. Social Security Scotland validate the request on Friday 18<sup>th</sup> of October.

The value of STA is calculated as £35.90 which is the difference between the:

- 'old' total value of their ongoing payment (the longstanding award of £108.55)
- 'new' total value of their ongoing payment (the current award of £75.75)

As the request for re-determination was validated on Friday 18<sup>th</sup> October, the weekly rate of STA will be calculated from this date when entitlement began. This means that the rate of STA will be an apportioned entitlement, rather than a full week of entitlement.

## **End of entitlement**

28. An individual's entitlement to STA ends on the day:

- the individual asks for the STA payment to be cancelled<sup>1</sup>
- a determination is made on a re-determination request<sup>2</sup>
- the First-tier Tribunal makes a decision<sup>3</sup>
- the First-tier Tribunal refuses permission to make a late appeal<sup>4</sup>
- the individual withdraws their appeal<sup>5</sup>

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 3(2)(a)*

*2 Scottish Adult DLA Regs, Sch 1, Part 1, para 3(2)(b)*

*3 Scottish Adult DLA Regs, Sch 1, Part 1, para 3(2)(c)*

*4 Scottish Adult DLA Regs, Sch 1, Part 1, para 3(2)(d)*

*5 Scottish Adult DLA Regs, Sch 1, Part 1, para 3(2)(e)*



29. In cases where the decision of the First-tier Tribunal is set aside after a review under section 43(2) of the Tribunals (Scotland) Act 2014, Social Security Scotland will make a determination without application on the individual's entitlement to STA.<sup>1</sup>

*1 Scottish Adult DLA Regs, Sch 1, Part 1, para 1(7)(e)*

**Example: STA start date, end date and value**

After a determination to reduce their total ongoing payment from £101.75 per week to £68.10 per week, on 23 April 2024 an individual both:

- requests a re-determination
- applies for STA.

The request for STA is accepted and is payable from 23 April 2024. The value of STA is £33.65 which is the difference between the:

- 'new' total value of their ongoing payment (the current award)
- 'old' total value of their ongoing payment. (the longstanding award)

At re-determination on 30 May 2024, the determination to reduce the ongoing payment is upheld. The individual is notified and STA stops being paid from 30 May 2024.

The individual submits an appeal on 15 June 2024 and requests STA. The appeal is accepted by the FtT and STA is payable from 15 June 2024. On 20 August 2024, the FtT upholds the re-determination which reduced the ongoing payment. STA stops being paid from the same date.

**Example: STA start date, end date and value**

After a determination to reduce their total ongoing payment from £101.75 per week to £68.10 per week, on 15 February 2024 an individual both:

- requests a re-determination
- applies for STA

The request for STA is accepted and is payable from 15 February 2024. The value of STA is £33.65 which is the difference between the:

- 'new' total value of their ongoing payment (the current award)
- the 'old' total value of their ongoing payment. (the longstanding award)

At re-determination on 25 March 2024, the determination to reduce the ongoing payment is upheld. The individual is notified and STA stops being paid from 25 March 2024.

The individual both submits an appeal and requests STA on 26 April 2024. The appeal is accepted by the FtT and STA is payable from 26 April 2024. On 2 July 2024 the FtT both:

- overturns the re-determination which reduced the ongoing payment
- confirms entitlement at the original rate of £101.75 per week.

STA stops being paid from 2 July 2024.

### **Example: STA start and end dates when late appeal accepted**

On 11 August 2024 an individual both:

- submits a late appeal against an earlier determination to reduce an ongoing payment of Scottish Adult DLA from £101.75 per week to £68.10 per week
- applies for STA.

The FtT consider the request and accepts the late appeal with payment of STA starting on 11 August 2024 at a rate of £33.65 per week which is the difference between the:

- 'new' total value of their ongoing payment (the current award)
- the 'old' total value of their ongoing payment (the longstanding award)

On 29 November 2024 the FtT decide the appeal.

STA is payable for the period between 11 August 2024 and 29 November 2024.

### **Example: STA start and end dates when late appeal not accepted**

On 19 September 2024, an individual both:

- submits a late appeal against earlier determinations to reduce an ongoing payment of Scottish Adult DLA from £101.75 per week to £68.10 per week
- requests STA.

On 5 October 2024 the FtT refuse permission for the late appeal.

STA is still payable in this situation for the period between 19 September 2024 and 5 October 2024.

## **Re-determination & Appeal of decision on Short-term Assistance**

30. Determinations made in respect of payment of STA are subject to re-determination and appeal rights. The timeframes in respect of requesting a re-determination or appeal of an STA determination are the same as that which apply to Scottish Adult Disability Living Allowance. A client has 42 calendar days to request a re-determination and 31 days to submit an appeal<sup>1</sup>

31. If a request for a re-determination is made after the period of 42 calendar days it is considered late. If Social Security Scotland consider that there is a good reason for a late request, they can accept the request for a re-determination. This can be up to a maximum of one year from when the individual was informed of the determination that they want to be re-determined<sup>2</sup>.

*1 Social Security (Scotland) Act 2018 s. 41*

*2 Social Security (Scotland) Act 2018 s.41(4)(b)*

32. Social Security Scotland may only consider late re-determination requests if both<sup>1</sup>

*1 Social Security (Scotland) Act 2018 s.41(4)(b)*

- the individual has good reason for not requesting a re-determination sooner
- the request is made before the end of the day that falls one year after the day the individual was notified of the determination. If the request is made after one year, it can only be accepted where the good reason is related to coronavirus<sup>2</sup>

*1 Social Security (Scotland) Act 2018 s. 41*

*2 Social Security (Scotland) Act 2018,  
Section 52A (1)*

33. Social Security Scotland must complete a STA re-determination within 56 calendar days. [LINK TO RE-DETERMINATIONS GUIDANCE]

34. If Social Security Scotland does not make the re-determination within 56 calendar days, they must inform the individual that:

- the re-determination has not been completed within the timescales allowed by the regulations
- they have the immediate right of appeal to the First-tier Tribunal for Scotland against the determination made under section 37 of the Act which resulted in the request for a re-determination
- provide the individual with an appeal form<sup>1</sup>

*1 Social Security (Scotland) Act 2018 s. 45(1)*

35. There is no provision in the regulations or the 2018 Act that allows for an individual to withdraw a request for a re-determination.