

Short-term Assistance

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Introduction

1. This chapter is relevant to an Adult Disability Payment (ADP) individual 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 ADP by reducing or removing their entitlement to the mobility and/or daily living component with the effect that the overall value of their payment is lower.
3. Individuals who apply for ADP for the first time can only apply for STA at appeal stage. This is because it is only at that stage that the client has had 2 earlier determinations, i.e the determination made initially and then the determination made at re-determination stage which supersedes the original determination. STA is only payable where the value of entitlement at re-determination stage is lower than the value of entitlement at initial determination.
4. An individual can apply for STA when a new determination of entitlement by Social Security Scotland results in both:
 - an individual's overall entitlement being reduced as a result of entitlement to a component either being reduced to a lower rate or ending altogether
 - the individual asking for a re-determination or appeal.
5. 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.

6. 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.
7. 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.
8. 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.
9. 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.
10. STA will not be repayable. This means that if an individual is unsuccessful in challenging the determination which reduces or stops their payment they will not need to pay anything back, except where it is later established that the individual claimed the original assistance fraudulently. In this case repayment can be pursued.

Eligibility

11. 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.. ¹

¹
ADP Regulations, Schedule 2, Part 1, para 1(1)(a)(i)&(ii)

12. An individual needs to make an application for STA. Entitlement to STA begins ¹:
 - Where a request for a re-determination is made, on the day the request for re-determination is received by Social Security Scotland ²
 - Where a request for an appeal is submitted on the day the request is received by Social Security Scotland ³
 - on the day the First-tier Tribunal sets aside the decision by Social Security Scotland to not accept a late request for re-determination ⁴
 - on the day the individual submits a late request for permission to appeal to the First-tier Tribunal. ⁵
 - on the day the Tribunal sets aside their own decision on entitlement in order to make a new determination on entitlement ⁶

¹

ADP Regulations, Schedule 2, Part 1, para 1(7)
2
ADP Regulations, Schedule 2, Part 1, para 1(7)(a)
3
ADP Regulations, Schedule 2, Part 1, para 1(7)(b)
4
ADP Regulations, Schedule 2, Part 1, para 1(7)(c)
5
ADP Regulations, Schedule 2, Part 1, para 1(7)(d)
6
ADP Regulations, Schedule 2, Part 1, para 1(7)(e)

13. The individual must also continue to meet the residence and presence requirements¹ to be entitled to STA. For more information please refer to the Residence and Presence chapter.
14. 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 Scotland²

ADP Regulations, Schedule 2, Part 1, para 1(1)(c)(i)
1)
2
ADP Regulations, Schedule 2, Part 1, para. 1(1)(c)(ii)

15. There are some situations when the value of the components for ADP is reduced to £0. This happens when the individual:

- is admitted to a care home (which includes a residential educational establishment) for a period of more than 28 days. In this situation the daily living component is reduced to £0¹
- is aged 18 or older² and is admitted into a hospital for a period of more than 28 days. In this situation both components are reduced to £0. This does not apply where the person is under the age of 18 on the day they began the period as an in-patient.³
- is held in legal detention for a period of 28 days. Where the individual is 18 years of age or older both components are reduced to £0. Where the individual is 16 or 17 years of age the daily living component is reduced to⁴

1 ADP Regulations 27(2)
2 ADP Regulations 28(1)
3 ADP Regulations 28(2)
4 ADP Regulations 30(3)

16. Where a person is already resident in a care home (including a residential educational establishment) on the day on which their entitlement to ADP begins, the value of the daily living component will be £0 for as long as the person resides in the care home.¹
17. Where a person is aged 18 or older is already resident in a hospital on the day on which their entitlement to ADP begins, the value of both components are reduced to £0 for as long as the person resides in the hospital.²
18. Where a person is aged 18 or older and is already in legal detention on the day on which their entitlement to ADP begins, the value of both components will be £0 for as long as the person resides in legal detention. If the person is aged 16 or 17, the value of the daily living component will be £0 for as long as the person resides in legal detention.³

1 ADP Regulations 32(2)(a)

2 ADP Regulations 32(2)(b)

3 ADP Regulations 32(2)(c)

19. The relevant component payment resumes when the individual leaves the care home (including residential educational establishment), hospital or legal detention.
20. STA is not payable when the relevant component has been reduced to £0 in the circumstances described above. This is because although the payment is reduced, the individual's entitlement has not changed.

Example: Decision on a first time application for ADP

An individual applies for ADP for the first time and is awarded the standard rate for both components of the benefit. They disagree with Social Security Scotland's decision and request a re-determination and applies for STA. The individual would not be entitled to STA in this situation.

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 40 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 - ADP

An individual requests a re-determination and applies for STA. They do this more than 42 days after receiving a determination to reduce their daily living component entitlement from Enhanced to Standard. 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.

Value of Short-term Assistance

21. The value of STA payable is the difference between¹:

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

1 ADP Regulations, Schedule 2, Part 1, para 2(1)

Example: Rate of STA payable - ADP

An individual is in receipt of ADP made up of the:

- enhanced rate daily living component of £101.75 per week
- enhanced rate mobility component of £71.00 per week.

The total value of the award is £172.75 per week.

After a review, a new determination is made, and the individual's rates change. They now receive the:

- standard rate daily living component of £68.10 per week
- standard rate mobility component of £26.90 per week.

The total value of the award after the new determination is £95.00 per week.

The individual asks for a re-determination and applies for STA. STA is payable at a rate of £77.75 per week. This is the difference between the original total value of award and the new total value of award of ADP.

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 - ADP

An individual receives ADP made up of the:

- enhanced rate daily living component of £101.75 per week
- standard rate mobility component of £26.90 per week

The total value of the award is £128.65 per week.

After a review, the individual's rates change, and they now receive the:

- standard rate daily living component of £68.10 per week
- enhanced rate mobility component of £71.00 per week

The total value of award is £139.10 per week.

Although one component was reduced, the total value of the award increased. In this situation the individual is not eligible for STA.

End of entitlement

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

- the individual asks for the STA payment to be cancelled ¹
- a determination is made on a re-determination request ²
- the First-tier Tribunal makes a decision ³
- the First-tier Tribunal refuses permission to make a late appeal ⁴
- the individual withdraws their application to bring an appeal against the determination of their entitlement ⁵

1 ADP Regulations, Schedule 2, Part 1, para 3(2)(a)

2 ADP Regulations, Schedule 2, Part 1 para 3(2)(b)

3 ADP Regulations, Schedule 2, Part 1, para 3(2)(c)

4 ADP Regulations, Schedule 2, Part 1, para 3(2)(d)

5 ADP Regulations, Schedule 2, Part 1, para 3(2)(e)

21. 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, and the individual has previously been awarded STA, Social Security Scotland will make a determination without application on the individual's entitlement to STA. ¹

22. In cases where the First-tier Tribunal set aside a decision by Social Security Scotland not to accept a request for a re-determination, and Social Security Scotland had also decided that the individual was not entitled to STA, Social Security Scotland will make a determination without application on the individuals entitlement to STA ²

1 ADP Regulations, Schedule 3, para 1(3)

2) ADP Regulations, Schedule 2, Part 1, para 1(4)

Example: STA start date, end date and value

After a determination to reduce their total ongoing payment from £128.65 per week to £95.00 per week, on 23 April 2023 an individual both:

- requests a re-determination

- applies for STA.

The request for STA is accepted and is payable from 23 April 2023. The value of STA is £33.65 which is the difference between the:

- 'new' total value of their ongoing payment
- 'old' total value of their ongoing payment

At re-determination on 30 May 2023, the determination to reduce the ongoing payment is upheld. The individual is notified, and STA stops being paid from 30 May 2023.

The individual submits an appeal on 15 June 2023 and requests STA. The appeal is accepted by the FtT and STA is payable from 15 June 2023. On 20 August 2023, 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 £128.65 per week to £95.00 per week, on 15 February 2023 an individual both:

- requests a re-determination
- applies for STA

The request for STA is accepted and is payable from 15 February 2023. The value of STA is £33.65, which is the difference between the:

- 'new' total value of their ongoing payment
- the 'old' total value of their ongoing payment.

At re-determination on 25 March 2023, the determination to reduce the ongoing payment is upheld. The individual is notified, and STA stops being paid from 25 March 2023.

The individual both submits an appeal and requests STA on 26 April 2023. The appeal is accepted by the FtT and STA is payable from 26 April 2023. On 2 July 2023, the FtT both:

- overturns the re-determination which reduced the ongoing payment
- confirms entitlement at the original rate of £128.65 per week.

STA stops being paid from 2 July 2023.

Example: STA start and end dates when late appeal accepted

On 11 August 2023, an individual both:

- submits a late appeal against an earlier determination to reduce an ongoing payment of ADP from £95.00 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 2023 at a rate of £26.90 per week which is the difference between the:

- 'new' total value of their ongoing payment
- the 'old' total value of their ongoing payment.

On 29 November 2023, the FtT decide the appeal.

STA is payable for the period between 11 August 2023 and 29 November 2023.

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

On 19 September 2023, an individual both:

- submits a late appeal against earlier determinations to reduce an ongoing payment of ADP from £95.00 per week to £68.10 per week
- requests STA.

On 5 October 2023 the FtT refuse permission for the late appeal.

STA is still payable in this situation for the period between 19 September 2023 and 5 October 2023.

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

23. 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 Adult Disability Payment. A client has 42 calendar days to request a re-determination and 31 days to submit an appeal. ¹

1 Social Security (Scotland) Act 2018 s. 41

Case Transfer

25. Case transfer is the process of moving an individual's existing benefit award from the United Kingdom social security system to the new Scottish social security system.

26. If an individual disagrees with the entitlement determination made when their case is transferred they can request a re-determination. If they remain dissatisfied at the outcome of the re-determination they can submit an appeal to the FtT.

27. An individual is not entitled to STA if they request a re-determination of the initial determination made when their case was transferred. An application for STA can be made if the client submits an appeal after the determination at re-determination stage has been made. STA is only payable where the value of entitlement at re-determination stage is lower than the value of entitlement at initial determination.

[End of chapter]