

## Short-term Assistance

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### Introduction

1. This chapter is relevant to a Child Disability Payment (CDP) or 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 CDP or ADP by reducing or removing their entitlement to the mobility and/or care component with the effect that the overall value of their payment is lower.
3. This chapter does not apply to individuals applying for CDP or ADP for the first time who are going through the re-determination and appeal process.
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.

## Eligibility

10. 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 CDP Regulations, Schedule 1, para. 1(1)(a)(i)&(ii)*  
*ADP Regulations, Schedule 2, Part 1, para 1(1)(a)(i)&(ii)*

11. 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 the request for re-determination is received by Social Security Scotland <sup>2</sup>
- Where a request for an appeal is submitted on the day the request is received by Social Security Scotland <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 CDP Regulations, Schedule 1, para. 1(4)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)*  
*2 CDP Regulations, Schedule 1, para. 1(4)(a)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)(a)*  
*3 CDP Regulations, Schedule 1, para 1(4)(b)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)(b)*  
*4 CDP Regulations, Schedule 1, para 1(4)(c)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)(c)*  
*5 CDP Regulations, Schedule 1, para 1(4)(d)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)(d)*  
*6 CDP Amendment Regulations 19(1)(e)*  
*ADP Regulations, Schedule 2, Part 1, para 1(7)(e)*

12. 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.

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

14. There are some situations when the value of the care component for CDP is reduced to £0. This happens when the individual is either:

- admitted into a care home (which includes a residential educational establishment) for a period of more than 28 days<sup>1</sup>
- held in legal detention for a period of more than 28 days<sup>2</sup>

*1 CDP Regulations 17(2)*  
*2 CDP Regulations 18(2)*

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 £0<sup>1</sup>
- is aged 18 or older 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.<sup>2</sup>
- 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 to £0<sup>3</sup>

*1 ADP Regulations 27(2)*  
*2 ADP Regulations 28(2)*  
*3 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.<sup>1</sup>

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.<sup>2</sup>
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.<sup>3</sup>

*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, 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 between<sup>1</sup>:

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

*1 CDP Regulations, Schedule 1, para 2(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 £89.60 per week
- enhanced rate mobility component of £62.55 per week.

The total value of the award is £152.15 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 £60.00 per week
- standard rate mobility component of £23.70 per week.

The total value of the award after the new determination is £83.70 per week.

The individual asks for a re-determination and applies for STA. STA is payable at a rate of £68.45 per week. This is the difference between the original total value of award and the new total value of award of ADP.

22. 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 £89.60 per week
- standard rate mobility component of £23.70 per week

The total value of the award is £113.30 per week.

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

- standard rate daily living component of £60.00 per week
- enhanced rate mobility component of £62.55 per week

The total value of award is £122.55 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

23. 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 application to bring an appeal against the determination of their entitlement <sup>5</sup>

*1 CDP Regulations, Schedule 1, para 3(1)(a)  
ADP Regulations, Schedule 2, Part 1, para 3(2)(a)  
2 CDP Regulations, Schedule 1, para 3(1)(b)  
ADP Regulations, Schedule 2, Part 1 para 3(2)(b)  
3 CDP Regulations, Schedule 1, para 3(1)(c)  
ADP Regulations, Schedule 2, Part 1, para 3(2)(c)  
4 CDP Regulations, Schedule 1, para 3(1)(d)  
ADP Regulations, Schedule 2, Part 1, para 3(2)(d)  
5 CDP Amendment Regulations 19(2)  
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. <sup>1</sup>

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 <sup>2</sup>

*1 CDP Regulations, Schedule 1, para 3(2)  
ADP Regulations, Schedule 3, para 1(3)  
2 CDP Regulations, Schedule 1, Part 1, para (1C)  
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 £113.30 per week to £83.70 per week, on 23 April 2022 an individual both:

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- requests a re-determination
- applies for STA.

The request for STA is accepted and is payable from 23 April 2022. The value of STA is £29.60 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 2022, the determination to reduce the ongoing payment is upheld. The individual is notified and STA stops being paid from 30 May 2022.

The individual submits an appeal on 15 June 2022 and requests STA. The appeal is accepted by the FtT and STA is payable from 15 June 2022. On 20 August 2022, 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 £113.30 per week to £83.70 per week, on 15 February 2022 an individual both:

- requests a re-determination
- applies for STA

The request for STA is accepted and is payable from 15 February 2022. The value of STA is £29.60 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 2022, the determination to reduce the ongoing payment is upheld. The individual is notified and STA stops being paid from 25 March 2022.

The individual both submits an appeal and requests STA on 26 April 2022. The appeal is accepted by the FtT and STA is payable from 26 April 2022. On 2 July 2022 the FtT both:

- overturns the re-determination which reduced the ongoing payment
- confirms entitlement at the original rate of £113.30 per week.

STA stops being paid from 2 July 2022.

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

On 11 August 2022 an individual both:

- submits a late appeal against an earlier determination to reduce an ongoing payment of ADP from £83.70 per week to £60.00 per week
- applies for STA.

The FtT consider the request and accepts the late appeal with payment of STA starting on 11 August 2022 at a rate of £23.70 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 2022 the FtT decide the appeal.

STA is payable for the period between 11 August 2022 and 29 November 2022.

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

On 19 September 2022, an individual both:

- submits a late appeal against earlier determinations to reduce an ongoing payment of ADP from £83.70 per week to £60.00 per week
- requests STA.

On 5 October 2022 the FtT refuse permission for the late appeal.

STA is still payable in this situation for the period between 19 September 2022 and 5 October 2022.

## **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.<sup>1</sup>

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

**[End of chapter]**