

Short-term Assistance

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Introduction

1. This chapter is relevant to Scottish Adult Disability Living Allowance (Scottish Adult DLA) when an individual 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. 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

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 reduced¹.

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

13. An individual needs to make an application for STA. Entitlement to STA begins¹:
 - Where a request for a re-determination is made, on the day when a re-determination request is accepted by Social Security Scotland²
 - 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 Service³
 - on the day the First-tier Tribunal sets aside the decision by Social Security Scotland to not accept a late request for re-determination⁴
 - on the day the individual submits a late request for permission to appeal to the First-tier Tribunal⁵.
 - on the day the Tribunal sets aside their own decision on entitlement in order to make a new determination on entitlement⁶.

- 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 requirements¹ 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 Scotland².

- 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 days¹
- admitted to hospital for a period of more than 28 days²
- held in legal detention for a period of more than 28 days.³

- 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 relevant chapter.
18. STA is not payable when Scottish Adult DLA has been reduced to £0 in the above circumstances. This is because although the payment is reduced, the individual's entitlement has not changed.

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.

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.

Value of Short-term Assistance

19. 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 Scottish Adult DLA Regs, Sch 1, Part 1, para 2

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 £101.75 per week.

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

- middle rate care component of £68.10 per week

The individual submits an appeal and applies for STA. STA is payable during the appeal at a rate of £33.65 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 £68.10 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 £68.10 per week. This is the difference between the original total value of award and the value of the nil award.

20. 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

An individual receives Scottish Adult DLA at the:

- middle rate of £68.10 per week

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

- highest rate of £101.75 per week

The total value of the Scottish Adult DLA award has increased. In this situation the individual is not eligible for STA.

End of entitlement

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

- the individual asks for the STA payment to be cancelled¹
- a determination is made on a re-determination request²
- the First-tier Tribunal makes a decision³
- the First-tier Tribunal refuses permission to make a late appeal⁴
- the individual withdraws their appeal⁵

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)

18. 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.¹

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
- 'old' total value of their ongoing payment.

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 'old' total value of their ongoing payment.

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 'old' total value of their ongoing payment.

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

20. 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 appeal¹.

1 Social Security (Scotland) Act 2018 s. 41