

Effect of time spent in care homes, hospitals or similar institutions

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In this chapter, we cover certain types of alternative accommodation including care homes and hospitals. Legal detention is another type of alternative accommodation. This is covered in the Legal Detention chapter.

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Introduction

1. This chapter is relevant to Adult Disability Payment (ADP) individuals who are entitled to the daily living component and/or the mobility component. It explains how living in a care home, in certain circumstances, will reduce their entitlement to payment of the daily living component to £0. It also covers how admission to a hospital or similar institution, in certain circumstances, will reduce their entitlement to payment of both the daily living and the mobility component to £0.
2. An individual's entitlement to payment of the mobility component of ADP is not affected by time spent in a care home.¹
3. Admission in to hospital reduces entitlement to payment of both the mobility and daily living components of ADP to £0 for individuals aged 18 and over. This is only the case if they exceed 28 days in hospital (This 28 day period may comprise of one or more separate periods, providing there are no more than 28 days between the periods). Refer to the section of this chapter on exceptions for those aged 16 and 17.
4. A young person in this chapter is an individual aged 16 or 17.

1 ADP regs, Reg. 27

5. An individual entering or leaving a care home is regarded as a change of circumstances if it will likely lead to a change in entitlement. A case manager should complete a determination without application in these circumstances to determine an individual's entitlement.

6. An individual being admitted to or discharged from hospital is also regarded as a change of circumstances if it will likely lead to a change in entitlement. A case manager should complete a determination without application in these circumstances to determine an individual's entitlement.

7. When an individual tells Social Security Scotland about a change of circumstances that would possibly result in an alteration to the component(s) or rate(s) of ADP, a case manager must both:

- carry out an unscheduled review of the case
- make a determination without application.

8. The Unscheduled Reviews chapter has more information on

- changes of circumstance
- unscheduled reviews
- determinations without applications.

Definition of care home, hospital, hospice and residential educational establishment

9. A care home is defined as an establishment which provides a care home service^{1,2} A care home service is a service which provides accommodation together with any of the following:

- nursing care
- personal care;
- personal support.

Residential educational establishments fall under the definition of care home³. An individual using Housing Benefit to pay for accommodation means that they are paying for the care home and should not have their Adult Disability Payment reduced to nil after 28 days.

1 ADP regs, Reg. 2

2 Public Services Reform (Scotland) Act 2010, Schedule 12, para. 2

3 Adp regs, Reg 2

10. The service should be provided to the individual because of their vulnerability or needs. This definition of care home does not include hospitals, or public, independent or grant-aided schools.

11. A residential educational establishment is defined as a care home which provides education or training. This does not include establishments where the costs of any qualifying services are wholly or partly covered out of public or local funds through:¹

- section 485 of the Education Act 1996
- section 14 of the Education Act 2002
- section 49 or 73 of the Education (Scotland) Act 1980
- section 65 of the Further and Higher Education Act 1992
- section 39 or 40 of the Higher Education and Research Act 2017
- section 4 or 11 of the Further and Higher Education (Scotland) Act 2005
- section 22 of the Teaching and Higher Education Act 1998

1 ADP regs, Reg 2

12. Qualifying services in this chapter means accommodation, board and personal care .

13. It might not always be clear if the place where the individual is living is a care home. The key to this definition is if the accommodation is linked to the care they receive.

14. Situations such as shared housing are similar but are not defined as care homes. The individual may have a tenancy paid for separately to the care or services they receive.

15. A hospital is an institution or establishment for the care of sick or wounded, or of those who require medical treatment. Any reference to hospital in this chapter refers to similar institutions such as:

- rehabilitation centres
- addiction clinics

It can also include hospices.

16. For only regulation 29, a hospice is a hospital or other institution whose main function is to provide palliative care for people suffering from a progressive disease at the final stages.

1 ADP regs, Reg.29 (2)

17. If an individual is resident or a patient in a care home, hospital, or similar institution outside of the common travel area, it could affect their ability to satisfy the ordinary and habitual residence requirements for ADP. This will depend on the precise facts and how long they will remain in such alternative accommodation for outside the common travel area.¹

1 ADP regs, Reg.15 (d)

18. Case managers should be aware that this temporary absence from the UK could impact upon an individual's entitlement to ADP. They will have to consider the potential impact in all cases involving time periods spent in a care home, hospital or similar institution outside of the common travel area. For more information on this and temporary absences from the common travel area, see the Residence and Presence Chapter.

Effect on entitlement of an individual spending time in care homes, hospitals or hospices

19. An individual who is entitled to the daily living component is entitled to still be paid it for the first 28 days of their stay in a care home. This 28 day period may comprise of one or more separate periods, providing there are no more than 28 days between the periods.

20. The individual stops being paid the daily living component on the 29th day of their time spent in a care home¹. This is called non-payment of assistance.

1 ADP regs, Reg 27(2)

21. The non-payment of assistance enables an individual's entitlement to ADP to continue while they are resident in a care home.

22. This is because the daily living component is intended to meet the extra costs experienced by individuals with a disability or long-term health conditions.

23. In most cases, when they are in a care home, the costs of their care will be paid for by the local authority or other public funds.

24. In Scotland, Free Personal and Nursing Care (FPNC) Franks Law offers free personal care for people –

- Of all ages
- Whose local authority decides they need this service after assessment

Please see the following operational guidance which details how to Ask for information about alternative accommodation .

25. Non-payment of the daily living component of ADP ensures that a person does not receive support for the costs of their care twice.

26. Non-payment of ADP applies to hospital admissions for individuals aged 18 and over as well. On the 29th day of a period in hospital, an individual stops being paid the daily living and mobility components of ADP.¹

1 ADP regs, Reg 28(2)

27. For this to be the case, an individual aged 18 or over also:

- has to be undergoing medical or other treatment as an in-patient at a hospital or similar institution
- has to have any of the costs of the treatment, accommodation and any other related services borne out of public funds.¹

28. Borne out of public funds means the cost of treatment accommodation and any other related service is paid if the individuals is undergoing medical or other treatment in:

- A hospital or similar institution under

- The National Health Service Act 2006
- The National Health Service (Wales) Act 2006
- The National Health Service (Scotland) Act 1978
- A hospital or similar institution maintained or administered by the Defence Council.²

1 ADP regs, Reg 28(1)

2 ADP regs, Reg 28(4)

29. Entitlement to payment of the enhanced rates of ADP daily living and/or mobility component(s) is unaffected by residence in a hospice where the individual has a terminal illness ¹. However if admission is a result of an individual becoming terminally ill, they may be entitled to further assistance if they aren't already in receipt of the enhanced daily living and mobility component of ADP.²

1 ADP regs, Reg.29

2 ADP regs, Reg.26

30. The above Paragraph refers only to a "Hospice", meaning a 'hospital or other institution whose primary function is to provide palliative care for persons resident there who are suffering from a progressive disease in its final stages.'¹ However a hospice can also be a facility, ward or similar within a care home or a hospital. Where a palliative care unit has been established as a part of a hospital or a care home the same rules apply if the individual is resident there and not terminally ill. In a care home the individual will stop being paid the daily living component of ADP after 28 days, and in a hospital an individual will stop being paid both the mobility and the daily living component after 28 days.² This 28 day period may comprise of one or more separate periods, providing there are no more than 28 days between the periods.

1 ADP regs, Reg 29(2)

2 ADP regs, Reg 27(2)&28(2)

31. The exceptions to these rules in this section are discussed in the Exceptions section .

32. The individual who is receiving ADP has a legal duty to inform Social Security Scotland about entering and leaving a care home or being admitted and discharged from hospital,¹ if this change is likely to affect their payments. The case manager will then make a determination without application.

1 SS(S)A 2018, s. 56

33. They must tell Social Security Scotland about time spent in a care home and time spent in hospital as soon as is reasonably practicable.

34. An individual might not inform Social Security Scotland immediately after they have entered a care home or a hospital. This might result in the case manager making a determination without application after the individual has spent 28 days in a care home or a hospital. In this case, the individual may accrue an overpayment before their payment of the daily living and/or mobility component has been stopped. This would happen in instances where the individual failed to notify the change as soon as was reasonably practical.

35. There are different rules about applying for ADP when living in alternative accommodation. Please see the section on Applications while spending time in alternative accommodation for a full explanation of this rule.

Calculating the length of stay

36. The days in which an adult or young person arrive at and then go home from a care home, or a hospital do not count¹ in calculating the length of stay.

1 ADP regs, Reg. 31(2)

Example: Calculating the length of stay in a care home

Harvey arrives at a care home on 3 August and leaves on 1 September. The days she arrived and left do not count so her length of stay in the care home is 28 days. Harvey's payment of the daily living component is not affected because this does not exceed 28 days.

If an adult or young person enters a care home or hospital from another care home, hospital or from legal detention, the day they enter that second care home or hospital is counted as part of the length of stay.¹

1 ADP regs, Reg. 31(5)

Example: Calculating the length of stay when transferring from a hospital to a care home

Natalie is 17 and transfers from a hospital to a care home on 2 June and leaves the care home on 2 July. The day she transferred to the care home counts when calculating the relevant period but the day she left does not count. The period of time she spends in the care home is therefore 30 days. As this exceeds 28 days, Natalie cannot receive the daily living component of her award for the 29th or the 30th day.

Temporary periods of leave during a stay in a care home or hospital

37. Individuals are entitled to receive payment of the daily living component during any period that they temporarily go on leave from a care home¹. This time is called the period of leave. However, the individual must inform Social Security Scotland of the leave.

1 ADP regs. Reg 31(4)

38. A period of leave also applies to temporary leave from a hospital. Individuals are entitled to payment of both the daily living and mobility components again in these circumstances. However, the individual must inform Social Security Scotland of the leave if it will likely impact their award.

39. The period of leave includes the days when the person left and returned to a hospital or care home¹.

1 ADP regs, Reg 31(3)

The case manager has to make a determination without application for any moves in and out of a care home or hospital that affects the amount paid to the individual.

Example: Calculating leave periods

Aleksandra attends a residential school and is entitled to the daily living component and mobility components of ADP at the standard rate. Aleksandra leaves her residential school to return home on 14 April. She returns to residential school on 28 April. This means she is entitled to receive payment of the the daily living component from 14 April until 28 April and therefore receives payment for 15 days. Her entitlement to receive payment of the mobility component is unaffected throughout this period.

Linked periods

40. When calculating the length of stay in care homes and hospitals, individual periods shorter than 28 days can be added together to form one 28 day period. However, only periods with 28 days or less between them can be linked together in this way¹.

1 ADP regs, Regs,27(3)& 28(3)

41. When an individual takes a temporary period of leave shorter than 28 days, their entitlement to be paid the daily living component will stop when they return to a care home. If an individual is over 18 and discharged for shorter than 28 days and then re-admitted to a hospital, an individual's entitlement to be paid the daily living and mobility components will stop. This is because a temporary period of leave of 28 days or fewer does not break any linked periods.

42. However, if the individual takes a period of leave or is discharged for 29 days or more before returning to a care home, the two periods are not linked. In these circumstances, the individual would be paid the daily living component for the first 28 days of their stay in a care home, but any entitlement to payment of the mobility component would be unaffected.

43. If the individual takes a period of leave or is discharged for 29 days or more before returning to a hospital, the two periods are not linked. In these circumstances, the individual over 18 will have any payment of either component stopped after 28 days. However there will be no affect to payments for anyone entering hospital before their 18th birthday.¹

1 ADP regs, Regs.27(3)& 28(3)

Example: linked periods that have an effect on payment

Anika who is 20 years old usually lives at home but has periodic stays in respite care, which meets the definition of a care home. She started receiving the standard rate of the ADP daily living component eight months ago.

Anika entered respite care on 1 April and left on 19 April. The day she entered the care home and the day she leaves are not taken into account, so this period of residence is 17 days.

Anika is at home from 19 April and enters respite again on 5 May. The day she left and the day she returned to respite are counted as days of leave, so the period Anika was living at home is 17 days.

From 5 May Anika resides in respite care until returning home on 18 May. Neither 5 May nor 18 May are included in the calculation so the period Anika was residing in the care home for is 12 days.

As there are no more than 28 days between the two periods during which Anika is in respite care, they are linked to form one 29 day period.

She will therefore receive the daily living component for the first 28 days of her stay but will not be paid for day 29.

Example: linked periods that have no effect on payment

Jorge has been entitled to the daily living component of ADP for 6 months. He regularly spend short periods of time living in the accommodation provided by his school and lives in his own home the rest of the time. Over the period of 3 months, Jorge's routine is:

- residing at school: 1 August to 12 August. This period of residence is 10 days.
- living at home: 12 August to 7 September. This period living at home is 27 days.

- residing at school: 7 September to 17 September. This period of residence is 9 days.

There are only 27 days between the 10 day period and the 9 day period residing at school. These two periods are linked to form one 19-day period. Jorge is entitled to the daily living component for this 19-day period.

Jorge then stays at home from 17 September to 24 October. As this is more than 28 days the clock is re-set. Therefore, the 19 days of residence at his school is not taken into consideration in calculating any future length of stay at the school. If there are any future stays, Jorge would be entitled to receive ADP for 28 days all over again.

Exceptions

Young people who are ‘looked after’ by a local authority

44. A young person for purposes of this chapter is an individual under the age of 18

45. Local authorities have a duty to safeguard and promote the welfare of young people in their area who are in need. A young person may be considered ‘in need’ because they have a disability¹.

1 Children (Scotland) Act 1995 s. 93(4)(a)(iii)

46. Young people may be “looked after” by a local authority. This means providing accommodation for a young person who lives in that local authority area and either:

- has no one who is responsible for them
- is lost or has been abandoned
- has someone who is responsible for them but who cannot provide them with suitable accommodation, either permanently or temporarily¹.

1 Children (Scotland) Act 1995 s. 25

47. Local authorities also have a duty to make such services available for young people who are cared for by their own family, that the local authority thinks are reasonable¹.

1 Children (Scotland) Act 1995 s. 17(1)(b)

48. An individual is not considered resident in a care home, and therefore entitled to continue to receive payment of ADP as normal when a local authority places them temporarily in a private home with another family, relative or another person if either:

- the individual is aged under 18 and their health or development is likely to be significantly affected unless the local authority provides services
- the individual is under 18 and is disabled.

49. An individual is also not considered a resident in a care home, and therefore entitled to continue to receive payment of ADP as normal if both:

- the individual is placed in a care home outside of the UK
- the cost of any qualifying services are met either in full or in part by the local authority in the UK under section 25 of the Education(Additional Support for Learning) (Scotland (Act) 2004.¹

1 Education (Additional Support for Learning) (Scotland) Act 2004 s.25

Self-funding placements in hospital

50. Individuals aged 18 and over are entitled to be paid the daily living and mobility components of ADP for the full period they are living in hospital if the full cost of the qualifying services are privately funded.¹

1 ADP regs, Reg.28(1)(b) & 28

Self-funding placements in a care home

51. Individuals are entitled to the daily living component for the full period they are living in a care home if the full cost of the qualifying services are paid for either:

- entirely by the adult or young person
- partly by the adult or young person and partly by another person such as a parent, guardian or a charity. This does not include a local authority in the UK.
- by another person or paid for by a charity, which doesn't include a local authority anywhere in the UK.¹

1 ADP regs, Reg 27 (4)

Individuals in receipt of low-income benefits

52. Low-income support should be considered a part of an individual's private income when determining if their place in a care home is publicly funded.¹ E.g: if they are paying for a place in a care home, hospice or similar institution, using a Universal Credit award or Housing Benefits, and the cost of their stay is not also partly paid for by public funds, the individual is still entitled to their ADP benefit after the first 29 days have passed.

1 ADP regs, Reg 27 (4)

Under 18 in hospitals

53. Individuals who are under 18, on the day on which they are admitted to a hospital or similar institution, are entitled to be paid the daily living and/or mobility component(s) of ADP for the full period of their hospital admission. This applies in instances where an individual is in a hospice, which is considered a hospital, but they aren't terminally ill.¹

1 ADP regs, Reg. 28(5)

Applications made while residing in a care home or hospital

54. If an individual is living in a care home their entitlement to ADP can begin while they remain resident there. However, while they are entitled to receive payment for the mobility component of ADP, entitlement to receive payment for the daily living component won't begin until the day they leave the care home. The exceptions described in the Exceptions section apply in this circumstance¹.

1 ADP regs, Reg.32 (1) and (2)

55. If an individual aged 18 or over is in hospital on the day entitlement to ADP begins, their eligibility can begin, but the eligibility to receive payment of either component won't begin until the day after they are discharged from hospital. The exceptions described in the Exceptions section apply in this circumstance.¹

1 ADP regs, Reg.32 (1) and (2)

56. If the individual returns to a care home or hospital after 28 days from their previous period ending, their entitlement to payment of the daily living component and mobility component is affected in the same way as described in the section Effect on entitlement of an individual spending time in care homes, hospitals or hospices .

Care homes, hospital or similar institutions and short- term assistance

57. Short-term assistance is a payment available to individuals challenging a determination on an ongoing award of assistance. This includes re-determinations and appeals

58. The value of short term assistance is the difference between the value of assistance before the determination and the current rate. Payment of short-term assistance lasts for the duration of the re-determination or appeal.

59. An individual whose daily living or mobility components have been reduced to £nil because they are in a care home, a hospital or similar institution is not entitled to short-term assistance.¹

1 ADP Regs, Schedule 2, Part 1, Paragraph 1(6)

Impact on transferring individuals from UK benefits when entitlement to ADP begins while they are in a care home or hospital

60. If an individual is in a care home, they will no longer receive payment of the daily living component of ADP on and after the day on which they have been entitled to ADP for 28 days.¹

1 ADP regs, Reg.32 (1) and (2)(a)& sch2,part3, para 14 (a)

61. If an individual is in a hospital:

- aged 18 and over
- undergoing medical or other treatment as an in-patient
- and any cost of the treatment, accommodation or related services provided are borne out of public funds

they will no longer receive payment of the daily living or mobility component of ADP on and after the day on which they have been entitled to ADP for 28 days. Payments are unaffected for those in hospital who these three points don't apply to.

1 ADP regs, Reg.32 (1) and (2)(b)& sch2,part3, para 14 (a)

62. For more information on this, refer to the case transfer Decision Making Guidance.

End of chapter