
STATUTORY INSTRUMENTS

1991 No. 1712

The Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991

Disability living allowance

Introduction of disability living allowance

3.—(1) After subsection (1)(c) of section 34 (descriptions of non-contributory benefits) of the principal Act there shall be inserted the following paragraph—

“(ca) disability living allowance;”.

(2) After section 37 of the principal Act there shall be inserted the following sections—

“Disability living allowance.

37ZA.—(1) Disability living allowance shall consist of a care component and a mobility component.

(2) A person’s entitlement to a disability living allowance may be an entitlement to either component or to both of them.

(3) A person may be awarded either component for a fixed period or for life, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.

(4) The weekly rate of a person’s disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.

(5) The weekly rate of a person’s disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.

(6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Northern Ireland.

The care component.

37ZB.—(1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—

(a) he is so severely disabled physically or mentally that—

(i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods), or

(ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or

(b) he is so severely disabled physically or mentally that, by day, he requires from another person—

- (i) frequent attention throughout the day in connection with his bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
 - (c) he is so severely disabled physically or mentally that, at night,—
 - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or
 - (ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.
- (2) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—
- (a) throughout-
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
 - (ii) such other period of 3 months as may be prescribed,he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and
 - (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) a period of 6 months beginning with that date, or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
 - (3) Three weekly rates of the care component shall be prescribed.
- (4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;
 - (b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and
 - (c) the lowest rate in any other case.
- (5) For the purposes of this section, a person who is terminally ill, as defined in section 35(2C) above, and makes a claim expressly on the ground that he is such a person, shall be taken—
- (a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and
 - (b) to satisfy or to be likely to satisfy those conditions for the remainder of his life beginning with that date.
- (6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—
- (a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and

(b) neither the condition mentioned in sub-paragraph (i) of subsection (1)(a) above nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—

(i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age, or

(ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.

(7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.

(8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—

(a) in pursuance of Article 5, 7, 15 or 36 of the Health and Personal Social Services (Northern Ireland) Order 1972; or

(b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

The mobility component.

37ZC.—(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—

(a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

(b) he falls within subsection (2) below; or

(c) he falls within subsection (3) below; or

(d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

(2) A person falls within this subsection if—

(a) he is both blind and deaf; and

(b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if—

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 37ZB(1)(b) and (c) above.

(4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—

(a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or

- (b) persons of his age in normal physical and mental health would not require such guidance or supervision.
- (5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.
- (6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.
- (7) A person who is to be taken for the purposes of section 37ZB above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.
- (8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.
- (9) A person shall not be entitled to the mobility component of a disability living allowance unless—
- (a) throughout—
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin, or
 - (ii) such other period of 3 months as may be prescribed,
 he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and
 - (b) he is likely to continue to satisfy one or other of those conditions throughout—
 - (i) a period of 6 months beginning with that date, or
 - (ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.
- (10) Two weekly rates of the mobility component shall be prescribed.
- (11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—
- (a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and
 - (b) the lower rate in any other case.
- (12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 35(2C) above, and who makes a claim expressly on the ground that he is such a person—
- (a) subsection (9)(a) above shall be omitted; and
 - (b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.
- (13) Regulations may prescribe cases in which a person who has the use—
- (a) of an invalid carriage or other vehicle provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972 or provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978; or

- (b) of any prescribed description of appliance supplied under that Order being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.

(14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

Persons 65 or over.

37ZD.—(1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains the age of 65 otherwise than by virtue of an award made before he attains that age.

(2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, so far as it so relates, and any provision of Part VII of the Social Security (Northern Ireland) Order 1986 which is relevant to disability living allowance—

- (a) shall have effect subject to modifications, additions or amendments; or
- (b) shall not have effect.

Disability living allowance— supplementary.

37ZE.—(1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.

(2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.

(3) For the purposes of sections 37ZB(5) and 37ZC(12) above, where—

- (a) a person purports to make a claim for a disability living allowance on behalf of another; and
- (b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,

that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority. ”.