

---

STATUTORY INSTRUMENTS

---

**1991 No. 2891**

**The Social Security (Introduction of Disability Living Allowance) Regulations 1991**

**PART II**

**ATTENDANCE ALLOWANCE**

**Termination or cancellation of awards of attendance allowance**

**2.—**(1) Any award of attendance allowance to a person to whom paragraph (2) applies for a period—

- (a) part of which falls after 5th April 1992, shall terminate immediately before 6th April 1992; or
- (b) the whole of which falls after 5th April 1992, shall be cancelled.

(2) This paragraph applies to a person who has not attained the age of 65 on 6th April 1992.

**Award of disability living allowance**

**3.—**(1) Subject to the following provisions of this regulation, a person whose award of attendance allowance is terminated under regulation 2 shall be treated as having been awarded the care component for the period commencing on 6th April 1992 and ending on the day the period of the award of attendance allowance would have been ended but for regulation 2.

(2) Subject to the following provisions of this regulation and regulation 4 (claims for, and applications for reviews of decisions relating to, attendance allowance), a person whose award of attendance allowance is cancelled under regulation 2 shall be treated as having been awarded the care component for a period commencing on whichever of the following dates is the latest, namely—

- (a) 6th April 1992, or
- (b) the date which precedes by 3 months the date the awarded the attendance allowance would have commenced but for regulation 2, or
- (c) where on 6th April 1992 the person has an award of the care component under paragraph (1), the day following the day that award ends,

and ending on the date the award of attendance allowance would have ended but for regulation 2.

(3) Where the award of attendance allowance which has been terminated or cancelled under regulation 2 was made to the person in respect of a child who, on the date the award is terminated or cancelled, has not attained the age of 16 years, then that child, and not the person to whom the award was made, shall be treated for the purposes of paragraph (1) or (2) as having been awarded the care component.

(4) The weekly rate of disability living allowance payable by virtue of this regulation shall be—

- (a) in the case of a person to whom attendance allowance was payable, immediately before the award was terminated in accordance with regulation 2, at the higher rate specified in

paragraph 1 of Part III of Schedule 4 to the 1975 Act, the highest of the three weekly rates of care component prescribed in accordance with section 37ZB(3) of the 1975 Act;

- (b) in the case of a person to whom attendance allowance was payable, immediately before the award of attendance allowance was terminated in accordance with regulation 2, at the lower rate specified in paragraph 1 of Part III of Schedule 4 to the 1975 Act, the middle of the three weekly rates of care component prescribed in accordance with section 37ZB(3) of the 1975 Act;
- (c) at the highest of the three weekly rates of care component where the award which was cancelled in accordance with regulation 2 was to be payable at the higher rate of attendance allowance and at the middle of those rates where the award which was cancelled was to be payable at the lower rate.

(5) Where immediately before 6th April 1992 a person had an award of attendance allowance but no benefit was payable under the award by virtue of regulations made under any provision mentioned in paragraph (6), benefit under the award of disability living allowance treated as made under this regulation shall likewise not be payable; but, subject to the following provisions of this regulation, for any parts of the period during which those regulations do not apply in his case, disability living allowance shall be payable—

- (a) at the highest of the three weekly rates of the care component prescribed in accordance with section 37ZB(3) of the 1975 Act if attendance allowance would, immediately before 6th April 1992 have been payable at the higher rate but for those regulations, or
- (b) at the middle of those rates if attendance allowance would immediately before 6th April 1992 have been payable at the lower rate but for those regulations.

(6) The provisions are—

- (a) section 35(6) of the 1975 Act (persons for whom accommodation is provided under certain enactments);
- (b) section 82(5) of the 1975 Act (persons undergoing detention in legal custody);
- (c) section 85(1) of the 1975 Act (overlapping benefits).

(7) For the purposes of determining the weekly rate of disability living allowance payable to a person under the age of 16 such as is mentioned in paragraph (3), paragraphs (4) and (5) shall apply as if he was the person to whom the attendance allowance was payable immediately before the award was terminated or would have been payable if the award had not been cancelled in accordance with regulation 2.

(8) Disability living allowance awarded in accordance with this regulation shall continue for the period of the award only so long as the person to whom the award is treated as made continues to satisfy conditions as to residence and presence prescribed under section 37ZA(6) of the 1975 Act and—

- (a) in the case of a person to whom the care component is payable at the highest rate, also continues to satisfy the conditions mentioned in section 37ZB(1)(b) and (c) of that Act, or
- (b) in the case of a person to whom the care component is payable at the middle of the three rates, also continues to satisfy one or other of the conditions mentioned in section 37ZB(1)(b) or (c) of that Act.

(9) Subject to paragraph (10), paragraph (8) shall apply to a person who—

- (a) before 6th April 1992 was entitled to an attendance allowance by virtue of section 35(1)(b) of the 1975 Act as enacted, and
- (b) is awarded disability living allowance in accordance with this regulation, as if section 37ZB(1)(c)(ii) was modified to read—

“(a) he requires continual supervision in order to avoid substantial danger to himself or others”.

(10) Paragraph (9) shall not apply where the award of disability living allowance is reviewed in accordance with provisions in Part III of the 1975 Act.

### **Claims for, and applications for reviews of decisions relating to, attendance allowance**

4.—(1) Subject to paragraph (4), the replacement of attendance allowance by disability living allowance shall be disregarded in a case to which paragraph (2) or paragraph (3) applies.

(2) This paragraph applies in a case where a person—

- (a) is under the age of 65 on 6th April 1992;
- (b) has an award of attendance allowance which expires after 5th April 1992; and
- (c) makes a claim for attendance allowance for a period commencing immediately after that award expires.

(3) This paragraph applies in a case where—

- (a) a person is under the age of 65 on 6th April 1992;
- (b) that person has an award of attendance allowance or is the subject of a decision given on a claim or application either not to award benefit or that conditions of entitlement to attendance allowance were not satisfied;
- (c) an application is made either—
  - (i) to the adjudication officer in accordance with section 104(2) of the 1975 Act for the decision to award, or as the case may be, not to award benefit to be reviewed, or
  - (ii) to the Attendance Allowance Board in accordance with regulation 38(2) of the Social Security (Adjudication) Regulations 1986 <sup>M1</sup> for a decision of theirs given in accordance with section 105(3) or section 106(1) of the 1975 Act (matters for determination by the Attendance Allowance Board), to be reviewed.

(4) Any award of attendance allowance made pursuant to this regulation shall be subject to the provisions of regulations 2 and 3 (termination or cancellation of awards of attendance allowance and award of disability living allowance as from 6th April 1992).

#### **Marginal Citations**

**M1** [S.I. 1986/2218](#).

### **Claim for care component treated as having been made**

5.—(1) Paragraph (2) applies where—

- (a) a person who—
  - (i) does not have an award of attendance allowance, or
  - (ii) does have an award of attendance allowance, but that award is due to expire before 6th April 1992,

makes a claim for attendance allowance, or an application in writing is made in accordance with section 104(2) of the 1975 Act for the decision to award or, as the case may be, not to award attendance allowance to him to be reviewed;

- (b) the claim or application is made after 2nd February 1992 or is made before 3rd February 1992 but has not been determined by that date; and

- (c) at the time the claim, or as the case may be, the application is determined the person to whom the claim or application relates has not made a claim for disability living allowance.
- (2) Where the adjudication officer who is determining the claim or application such as is mentioned in paragraph (1) is satisfied that—
- (a) the person does not satisfy the conditions of entitlement to attendance allowance, but
  - (b) solely on the evidence before him and apart from the requirement that he makes a claim for disability living allowance in the manner and within the time prescribed, the person would as from 6th April 1992 or from such later date as the adjudication officer may in any particular case determine, satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or higher, rate of that component,
- a claim for the care component only shall be treated as having been made on 3rd February 1992, and an adjudication officer shall determine it.

(3) Where a person has before 3rd February 1992 applied to the Attendance Allowance Board for a decision given pursuant to section 105(3) or 106(1) of the 1975 Act to be reviewed, and the question arising thereon has not been determined by 3rd February 1992, then—

- (a) if the Secretary of State is notified that the question is determined against that person, and
- (b) at the time he is notified, the person has not made a claim for disability living allowance, but
- (c) the Secretary of State is satisfied solely on the evidence before him and apart from any requirement that he makes a claim for disability living allowance in the manner and within the time prescribed, that the person may nonetheless satisfy the conditions of entitlement to the care component which qualify him for the lowest, but not the middle or higher rate, of that component,

a claim for care component only shall be treated as having been made on 3rd February 1992 and the Secretary of State shall refer that claim to an adjudication officer for his determination.

### **Termination of awards of attendance allowance when beneficiary aged 65 or over**

6.—(1) This regulation applies where a person—

- (a) has attained the age of 65 but not the age of 66, on 6th April 1992;
- (b) makes a claim for the mobility component by virtue of Parts IV or V of these Regulations or of any regulation made under section 37ZD of the 1975 Act (persons aged 65 or over); and
- (c) is entitled to attendance allowance on the day the claim is made.

(2) Where in connection with a claim such as is mentioned in paragraph (1)(b) an adjudicating authority makes an award of the mobility component, the person's award of attendance allowance shall, if it has not already been terminated, terminate as from the day which immediately precedes the day the period of the award of the mobility component commences.

(3) Where a person whose award of attendance allowance has been terminated in accordance with paragraph (2) also has a further award of attendance allowance due to commence on the day following the day the first award would have ended but for paragraph (2), the further award shall be cancelled.

(4) A person whose award of attendance allowance has been terminated in accordance with paragraph (2) or cancelled in accordance with paragraph (3) shall be treated as having been awarded the care component for the period specified in paragraph (5).

(5) The period the award commences is the day immediately following the day the award of attendance allowance is terminated in accordance with paragraph (2) and the award ends—

- (a) except in a case to which sub-paragraph (b) applies, on the day the award of attendance allowance mentioned in paragraph (1)(c) would have ended but for paragraph (2), or
  - (b) where the person also had an award of attendance allowance to which paragraph (3) applies, on the day that award of attendance allowance would have ended but for paragraph (3).
- (6) Paragraphs (4), (5), (6), (8), (9) and (10) of regulation 3 shall apply to awards of the care component having effect under this regulation as they apply to awards having effect under that regulation but as if references to 6th April 1992 were references to the date the period of the award of the care component commenced.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Introduction of Disability Living Allowance) Regulations 1991, PART II.