
STATUTORY INSTRUMENTS

2007 No. 2875

The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007

Amendment of the Social Security (Disability Living Allowance) Regulations 1991

3.—(1) The Disability Living Allowance Regulations shall be amended as follows.

(2) For regulation 9 (persons in certain accommodation other than hospitals) substitute—

“Persons in care homes

9.—(1) Except in the cases specified in paragraphs (3) to (5), and subject to regulation 10, 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 any period where throughout that period he is a resident in a care home in circumstances where any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(2) The specified enactments for the purposes of paragraph (1) are—

- (a) (i) Part III of the National Assistance Act 1948,
- (ii) Part IV of the Social Work (Scotland) Act 1968,
- (iii) the Mental Health (Care and Treatment) (Scotland) Act 2003,
- (iv) the Community Care and Health (Scotland) Act 2002,
- (v) the Mental Health Act 1983; or
- (b) any other enactment relating to persons under disability or to young persons or to education or training.

(3) Paragraph (2)(b) shall not apply in circumstances where any of the costs of the qualifying services provided for him are borne wholly or partly out of public or local funds by virtue of—

- (a) section 485 of the Education Act 1996⁽¹⁾, section 14 of the Education Act 2002⁽²⁾ or section 73 of the Education (Scotland) Act 1980⁽³⁾ (which relate to grants in aid of educational services);
- (b) sections 1, 2 or 3 of the Education Act 1962⁽⁴⁾ (which relate respectively to awards by local education authorities in respect of degree courses and further education and awards by the Secretary of State to persons undergoing teacher training or postgraduate courses) or sections 49 or 73 of the Education (Scotland) Act 1980 (which relate respectively to the power of education authorities to assist persons to

(1) 1996 c. 56.

(2) 2002 c. 32. Section 14 of the 2002 Act was amended by the Children Act 2004 (c. 31), section 59 and the Education Act 2005 (c. 18), section 98, Schedule 14, paragraph 23.

(3) 1980 c. 44. Section 73 of the 1980 Act was amended by the Self-Governing Schools etc (Scotland) Act 1989 (c. 39), the Teaching and Higher Education Act 1998 (c. 30) and the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6).

(4) 1962 c. 12. The 1962 Act was repealed by the Teacher and Higher Education Act 1998 (c. 21), section 44(2), Schedule 4. For transitional and savings provisions see S.I. 1998/3237, articles 3 and 4.

take advantage of educational facilities and the powers of the Secretary of State to make grants to education authorities and others);

- (c) section 65 of the Further and Higher Education Act 1992⁽⁵⁾ or sections 4 or 11 of the Further and Higher Education (Scotland) Act 2005⁽⁶⁾ (which relate respectively to the funding of further education and the administration of funds);
- (d) section 1 of the Education (Student Loans) Act 1990⁽⁷⁾ (which relates to student loans); or
- (e) section 22 of the Teaching and Higher Education Act 1998⁽⁸⁾.

(4) Subject to paragraph (5), paragraphs (1) and (2) shall not apply in the case of a child who—

- (a) has not attained the age of 16 and is being looked after by a local authority; or
- (b) has not attained the age of 18 and to whom—
 - (i) section 17(10)(b) of the Children Act 1989⁽⁹⁾ or section 93(4)(a)(ii) of the Children (Scotland) Act 1995⁽¹⁰⁾ (impairment of health and development) applies because his health is likely to be significantly impaired, or further impaired, without the provision of services for him, or
 - (ii) section 17(10)(c) of the Children Act 1989 (disability) or section 93(4)(a)(iii) of the Children (Scotland) Act 1995 (disability) applies; or
- (c) who is accommodated outside the United Kingdom and the costs of any qualifying services are borne wholly or partly by a local authority pursuant to their powers under section 320 of the Education Act 1996⁽¹¹⁾ or section 25 of the Education (Additional Support for Learning) (Scotland) Act 2004⁽¹²⁾.

(5) Sub-paragraphs (a) and (b) of paragraph (4) shall only apply during any period which the local authority looking after the child place him in a private dwelling with a family, or a relative of his, or some other suitable person.

(6) In this regulation and in regulation 10, references to the costs of any qualifying services shall not include the cost of—

- (a) domiciliary services, including personal care, provided in respect of a person in a private dwelling; or
- (b) improvements made to, or furniture or equipment provided for, a private dwelling on account of the needs of a person under disability; or
- (c) improvements made to, or furniture or equipment provided for, a care home in respect of which a grant or payment has been made out of public or local funds except where the grant or payment is of a regular or repeated nature; or
- (d) social and recreational activities provided outside the care home in respect of which grants or payments are made out of public or local funds; or

(5) 1992 c. 13.

(6) 2005 asp 6.

(7) 1990 c. 6. The 1990 Act was repealed by the Teaching and Further Education Act 1998, section 44(2) and Schedule 4 subject to transitional and saving provisions. For the transitional and saving provisions see S.I. 1998/2004, article 3.

(8) 1998 c. 30. Section 22 of the 1998 Act has been amended by the Learning and Skills Act 2000 (c. 21), section 146(1), (2)(a), the Income Tax (Earnings and Pensions) Act 2003, section 722, Schedule 6, Part 2, paragraph 236(b), the Higher Education Act 2004 (c. 8), sections 42, 43, 50 and Schedules 7 and 11.

(9) 1989 c. 41. Amendments which are not relevant to these Regulations have been made to section 17 of the 1989 Act.

(10) 1995 c. 36. Amendments which are not relevant to these Regulations have been made to section 93 of the 1995 Act.

(11) 1996 c. 56.

(12) 2004 asp 4.

- (e) the purchase or running of a motor vehicle to be used in connection with any qualifying service provided in a care home in respect of which grants or payments are made out of public or local funds; or
 - (f) services provided pursuant to the National Health Service Act 2006, the National Health Service (Wales) Act 2006, or the National Health Service (Scotland) Act 1978.
- (7) For the purposes of paragraph (1), a period during which a person is a resident in a care home in the circumstances set out in that paragraph shall, subject to paragraphs (8) and (9), be deemed—
- (a) to begin on the day after the day on which he enters a care home, and
 - (b) to end on the day before the day on which he leaves a care home.
- (8) Where a person enters a care home from a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to begin on the day he enters that care home.
- (9) Where a person leaves a care home and enters a hospital or similar institution in circumstances in which paragraph (1) of regulation 6 applies, the period during which he is a resident in the care home shall be deemed to end on the day he leaves that care home ”.
- (3) For paragraph (8) of regulation 10 (exemption from regulations 8 and 9) substitute—
- “(8) Regulation 9 shall not apply in any particular case for any period during which the whole costs of all of the qualifying services are met—
- (a) out of the resources of the person for whom the qualifying services are provided, or partly out of his own resources and partly with the assistance from another person or a charity, or
 - (b) on his behalf by another person or a charity.”.