

BENEFITS IN HOSPITAL AND RESPITE CARE



GLOSSARY

AA – Attendance Allowance

CPAG – Child Poverty Action Group

CA – Carer’s Allowance

CTC – Child Tax Credit

DLA – Disability Living Allowance

ESA – Employment and Support Allowance

JSA(IB) – Income-based Jobseeker’s Allowance

NIHE – Northern Ireland Housing Executive

PIP – Personal Independence Payment

RCA – Rates Collection Agency

SDA – Severe Disablement Allowance

SSP – Statutory Sick Pay

WTC – Working Tax Credit



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INTRODUCTION

These notes cover a number of circumstances within community care which give rise to difficulties with social security benefits. The impact on social security benefits (including help with housing costs) is considered when a person goes into hospital or respite care or moves from permanent care back home for a temporary period.

There is a myriad of situations including a single person, a lone parent, one or both members of a couple or a child going into hospital. The stay could be for a short or prolonged period or entail a number of short stays. Equally, with respite care different types of respite may occur.

The notes attempt to cover the impact of periods spent in hospital or care on social security benefits.

A person entering hospital continues to receive any state pension, Income Support, Pension Credit (PC), Employment and Support Allowance (ESA) and Severe Disablement Allowance (SDA) s/he is entitled to, for the duration of the stay, although premiums and additions payable as part of Income Support or PC are affected.

1. GOING INTO HOSPITAL

1.1 Common issues

1.1.1 Impact on benefits

The impact of going into hospital on entitlement and rate of benefit payable varies between benefits. Whenever a person goes into hospital, s/he should inform the local social security office or Central Benefits Branch of the Social Security Agency for each benefit received, as failure to do so can lead to an overpayment.

Moreover, it is important to bear in mind that the reduction in rate of entitlement to some benefits can lead to their loss altogether. This can then have repercussions for other benefits.

For example, where other benefits, such as Housing Benefit, are in payment, a reduction in the applicable amount used to calculate Income Support, Income-based Jobseeker's Allowance (JSA(IB)) or PC may lead to a loss of entitlement. In such cases, a separate claim for Housing Benefit will need to be lodged with the appropriate local Northern Ireland Housing Executive (NIHE) office in order to preserve assistance with rent. For owner-occupiers, a separate claim for a Rate Rebate will need to be lodged with the Rates Collection Agency (RCA).

Further, a person who loses entitlement to Attendance Allowance (AA) or Disability Living Allowance (DLA) care component will need to bear in mind that her/his carer will lose entitlement to Carer's Allowance (CA).



Where a person in hospital is receiving a benefit based on being incapable of work (for example, Statutory Sick Pay or ESA), the hospital can issue the necessary medical certificates on her/his behalf.

1.1.2 Definition of hospital

A person is treated as a patient in hospital where s/he is receiving, free of charge, medical or other treatment as an in-patient in a hospital or similar institution. The Social Security (Hospital In-Patients) Regulations (NI) 2005 tie the definition of hospital or similar institution to that contained in the Health and Personal Social Services Order (NI) 1972 (the 1972 Order). This definition is widely drawn as follows:

Hospital means any of the following:

- an institution for the reception and treatment of persons suffering from illness;
- a maternity home;
- an institution for the reception and treatment of persons during convalescence or persons requiring medical re-habilitation;
- any institution for providing dental treatment and maintaining a connection with a dental school; and
- clinics, dispensaries and out-patient departments maintained in connection with any such institution or home.

Furthermore, illness is also included in the definition section of the 1972 Order to include mental disorder and any injury or disability requiring medical or dental treatment or nursing.

‘Similar institution’ is not defined. If an institution does not satisfy the definition of hospital, it will be a question of fact whether it is similar to a hospital, taking into account the purpose of the institution, the type of treatment provided and the level of care offered. A private nursing home which provides appropriate nursing care by professionally trained nurses could be considered to be a similar institution. In addition, a person paying for her/his own treatment on a private basis is not considered to be a hospital in-patient for social security purposes as a result of the wording of the definition of hospital in-patient.

1.1.3 Counting days in hospital

Full days spent at home while receiving hospital treatment are not treated as days in hospital.

For most social security benefits, the circumstances that apply at the start of a day are treated as continuing throughout the day. This means that the day a person goes into hospital is not treated as a day in hospital. Equally, the day a person leaves hospital does count as a day in hospital.



However, for AA and DLA, regulations allow both the day that a person goes into hospital and the day of discharge not to be treated as days in hospital.

For rules on Income Support and PC see 1.2.1.

- **Example**

Ann goes into hospital on 3 November following an accident. She is getting DLA care component. She comes out of hospital on 4 December. The day she enters hospital (ie 3 November) does not count as a day in hospital. The day she leaves hospital (ie 4 December) is also not counted. As a result she is treated as being in hospital for a total of 31 days. As she is entitled to receive DLA for the first 28 days in hospital, she will lose entitlement for three days.

1.1.4 Linking rule

Days spent in and out of hospital can become important beyond working out entitlement to benefit on the day of entry and discharge from hospital. Separate stays as an in-patient or in care which are less than 28 days apart are added together for certain benefits when calculating how long a person has been in hospital.

A person who has several periods of admission to hospital within a short period or a regular routine of time at home and time in hospital will be affected by this linking rule. Some benefits are reduced after a small number of weeks in hospital (for example AA and DLA) and a calculation will need to be done to see if several periods in hospital should be linked together as one or not. The outcome of this calculation will decide whether or not certain benefits will continue to be paid.

New rules introduced in April 2006 remove the rule linking periods in hospital for the purposes of Income Support, JSA and PC entitlement with one exception. The rule is retained for non-dependant deductions.

- **Example**

Ann's recovery is not as complete as expected and as a result she goes back into hospital on 19 December. Her DLA care component is payable while she is at home from 4 December to 19 December (both dates inclusive), a total of sixteen days. As there is less than 28 days between her previous period in hospital ending (ie 3 December) and her first full day spent in hospital (ie 20 December), the two periods are linked. She loses entitlement to DLA from 20 December.

1.1.5 Collecting benefit while in hospital

A person can arrange for someone else to collect a social security benefit while in hospital. In the alternative, where a person cannot manage her/his own affairs, an application can be made for someone else (including a hospital representative if necessary) to act as the appointee for benefit purposes.



1.2 Specific benefits

1.2.1 Income Support and Pension Credit

From April 2006, the rules which previously reduced a person's benefit (to the 'pocket money' rate) after 52 weeks as a hospital inpatient were abolished. If a person was receiving a reduced rate of benefit under the previous rules, s/he should have had her/his benefit fully reinstated, except in certain circumstances, as of 10 April 2006.

It is generally only the basic rate of benefit which now continues after 52 weeks as new rules provide that some additional amounts stop. In addition, there is one group of patients who do not benefit from these changes. Prisoners detained under Article 53 of The Mental Health (NI) Order 1986 are not entitled to any benefit while in hospital.

Although the 52 week downrating rule has been abolished, some issues affecting benefits still arise after four weeks, twelve weeks and 52 weeks which may impact on a person's rate of Income Support or PC. They are detailed below.

1.2.1.1 Four weeks

Entitlement to AA and DLA care component (where it is paid for someone aged sixteen or over) stops after four weeks. As a result, any entitlement to a severe disability premium or addition, when calculating an applicable amount for Income Support or PC, also ceases.

If a couple's rate of a severe disability premium or addition is being paid because both partners are getting AA or DLA care component and one member of the couple goes into hospital, the single person's rate continues to be paid.

Where a disability, enhanced disability, higher pensioner or disabled child premium is in payment due to entitlement to AA or DLA, these premiums do not cease at this point.

In addition, a carer's premium continues to be paid for a further eight weeks after CA ceases.

1.2.1.2 Twelve weeks

A personal allowance for a child/qualifying young person continues to be included in the applicable amount of the adult claiming, providing the child/qualifying young person is unlikely to be in hospital for more than 52 weeks and regular contact is maintained with the child.

Child/qualifying young person related premiums, including the disabled child premium, remain payable as long as the child continues to be included in the claim for Income Support.

The disabled child premium remains in payment even though DLA care component for the child/qualifying young person ends at this point.



1.2.1.3 Fifty-two weeks

If a person (or partner) is an in-patient for a continuous period of more than 52 weeks, s/he continues to receive her/his full entitlement to Income Support and PC except for any changes that occurred at weeks four and twelve and in the circumstances set out below.

Where a person (or partner) is an in-patient for a continuous period of more than 52 weeks the disability, enhanced disability and higher pensioner premiums (in Income Support) stop. The 28 day linking rule does not apply here. Therefore short absences from hospital (even for a day or a weekend) break one continuous period and trigger the start of a new one.

- **Example**

Sam was admitted to hospital on 19 May 2014 due to injuries sustained in a car accident. He claimed Income Support on that date and has been in hospital ever since with one short break. He went home for three days over Christmas and returned to hospital on 27 December 2014. On 19 May 2015, a decision maker decides that Sam is now entitled to the disability premium because he has been incapable of work for a period of 364 days. The disability premium will not be stopped until after 52 continuous weeks as an in-patient, ie December 2015, providing there are no further absences from hospital.

Assistance with mortgage interest and other eligible housing costs for owner occupiers can be paid for up to 52 weeks providing a person is unlikely to be away for longer than this (or in exceptional circumstances unlikely to be away for substantially longer than this). After this, if another person can be treated as liable to pay housing costs, s/he may be able to claim instead, otherwise assistance ceases. The 28 day linking rule does not apply to housing costs.

Where a deduction is made for housing costs for a non-dependant and the non-dependant goes into hospital for more than 52 weeks, the deduction ceases. The 28 day linking rule applies here.

A person is no longer treated as a member of a couple or a lone parent for Income Support purposes if s/he is likely to be separated from her/his partner or child for substantially more than 52 weeks. S/he needs to claim Income Support as a single claimant.

Similarly, a person is no longer treated as a member of a couple for PC purposes if s/he is likely to be separated from her/his partner for substantially more than 52 weeks. S/he needs to claim PC as a single claimant.

Once a child has been in hospital for 52 weeks, the person claiming continues to have any allowance included in her/his Income Support assessment for as long as s/he keeps visiting the child.



1.2.1.4 Date from which Income Support or PC changes

The date from which Income Support or PC is changed depends on whether the person is paid Income Support or PC in advance or arrears.

A person receiving Retirement Pension or over pensionable age is paid PC in advance. In these circumstances, PC is reduced from the benefit pay day after having been in hospital for the specified number of weeks. This means that, if the circumstances change on a pay day, entitlement changes that day. Otherwise, the change is not implemented until the next pay day which means that a person may continue to receive extra benefit for up to six days.

For a person who does not fall into the above categories, Income Support is reduced from the first day of the benefit week in which the change in circumstances occurs. As a result, s/he may have her/his Income Support reduced for up to six days before the four, twelve or 52-week period in hospital is reached. Equally, when discharged, a person may receive full Income Support for up to six days before the day following discharge.

A person who ceases to be an in-patient for less than a week is entitled to the normal rate of Income Support for each complete day at home and the day of re-admission.

1.2.2 Jobseeker's Allowance

A person claiming JSA, either Contribution-based or Income-based, is treated as being capable of and available for work for up to two weeks of incapacity. A person is allowed two such periods in each year of job seeking. Outside of these periods, a person is not entitled to JSA and needs to claim either Contribution-based or Income-related ESA or Income Support.

A person claiming JSA(IB) who has a partner or child/qualifying young person in hospital is subject to the same rules that apply to claims for Income Support.

1.2.3 Tax credits

An award of Working Tax Credit (WTC) and Child Tax Credit (CTC) is not affected by going into hospital.

For WTC, a person or, where appropriate, her/his partner must be working at least sixteen to 30 hours per week depending on circumstances. If the working hours of a person and/or partner are reduced due to being in hospital, it is advisable to notify Her Majesty's Revenue and Customs Tax Credit Office as an overpayment could occur.

CTC is paid to families with children regardless of whether the person claiming is working or not. A child or qualifying young person who is in hospital long term continues to be counted in the claim providing the person claiming continues to have the main responsibility for the child or qualifying young person.

A partner who has been in hospital for more than 52 weeks is no longer treated as part of the claim.



1.2.4 Contribution-based ESA

Contribution-based ESA may be paid at a reduced rate where the person claiming has been a patient in hospital for 52 weeks or more. The person is paid the normal rate less any work related activity or support component.

1.2.5 Retirement Pension, Incapacity Benefit, SDA, Bereavement Allowance, Widowed Parent's Allowance

Downrating at 52 weeks does not apply to any of these benefits. They continue to be paid for the person claiming however long s/he stays in hospital. Additions for adult or child dependants, where applicable, are affected as follows:

- where the person claiming or both the person claiming and dependant have been in hospital for 52 weeks or more, any child/adult dependant addition stops unless the person claiming applies to the Department for Social Development to have this paid, on her/his behalf, to the dependant or another person approved by the Department.

1.2.6 Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Maternity Allowance, Industrial Injuries Benefits (except Industrial Death Benefit and Unemployability Supplement), Child Benefit and Guardian's Allowance

These benefits are unaffected by periods spent in hospital except in the following circumstances.

- After four weeks, Constant Attendance Allowance ceases to be payable. For children under sixteen, the benefit stops after twelve weeks.
- After twelve weeks, where a child is in hospital, Guardian's Allowance and Child Benefit only continue to be payable if the person claiming is regularly incurring expenditure or contributing at least the weekly rate of Child Benefit towards the child's maintenance. Child Benefit can be paid to the person looking after the child during the period the person claiming is in hospital.

1.2.7 DLA and AA

A person entitled to AA or DLA loses entitlement after 28 days in hospital. Where a person is under sixteen, payment does not stop until 84 days in hospital. As AA and DLA are daily benefits, the figures are expressed in days rather than weeks. This can become important when linking rules come into play.

AA and DLA are normally stopped from the payday following the 28th (or for children 84th) day. Benefit is restored from the next payday following the day a person ceases to be an in-patient. If a person is out of hospital for a short period only, benefit can be paid from the day s/he leaves hospital to the day s/he returns (both dates included).



The cut off point of 28 days (or 84 days for children under sixteen) is not applied where a person is receiving DLA mobility component and a Motability agreement is in force. The mobility component continues to be paid until the agreement comes to an end.

Furthermore, transitional arrangements allow a person who has been in hospital for a continuous period of 365 days or more by any date between 3 July 1996 and 31 July 1996 and who, at that time, was receiving the DLA mobility component, to continue to receive DLA mobility component at the lower rate. Any time of 28 days or less spent outside of hospital does not affect entitlement under this provision.

A person who is terminally ill and staying in a hospice can continue to receive AA or DLA throughout the time spent in the hospice.

1.2.8 Carer's Allowance

A person receiving CA loses entitlement when the person being cared for loses her/his AA or DLA care component after four weeks. During the week a person is discharged from hospital, CA is restored providing the carer provides 35 hours care during that relevant benefit week.

A carer who goes into hospital can continue to receive CA for up to twelve weeks. Where a number of stays in hospital amount to more than twelve weeks in any 26 week period, CA also ceases. This may mean that the person cared for becomes entitled to a severe disability premium addition in Income Support or PC.

Additions for child/adult dependants are affected as outlined in 1.2.4.

1.2.9 Housing Benefit and Rate Rebate

A person who is in hospital can continue to receive Housing Benefit or a Rate Rebate providing the stay in hospital is unlikely to exceed 52 weeks or, in exceptional circumstances, unlikely to substantially exceed 52 weeks and the property has not been let or sub-let. The absence from home must be likely to be continuous and a short stay of for example a few days at home will start a new period of absence.

Where a person has a partner or some other person is living at home then it may be possible to get that person to claim Housing Benefit.

A person not getting Income Support, JSA(IB) or PC will have her/his applicable amount altered during set periods. After four weeks, a person who would have had a severe disability premium included in the applicable amount will have this removed when AA or DLA care component ceases. After 52 weeks, Housing Benefit or Rate Rebate normally ceases.

Changes to Housing Benefit are not put into effect until the first Monday following the date that the relevant change of circumstances occurs.

If a deduction is being made from Housing Benefit for a non-dependant and the non-dependant goes into hospital, then the deduction ceases after the person has been in hospital for 52 weeks. The 28 day linking rule applies here.



1.3 Going into hospital from residential care

The rules that apply to social security benefits during hospital stays are the same where a person moves from residential care to hospital.

2. GOING INTO RESPITE CARE

There is no definition of respite care anywhere within social security legislation. In effect, respite care is covered by provisions which govern temporary absences from the home. A temporary absence is defined as one unlikely to exceed 52 weeks or, in exceptional cases, unlikely to substantially exceed 52 weeks, where a person intends to return home and has not let or sub-let the home in the meantime.

This section also covers a person who goes into care on a trial basis (ie for a short period in order to see if a particular residential care or nursing home suits her/his needs).

Note: In these circumstances, rules governing Housing Benefit are significantly different (see 2.3).

2.1 Income Support and Pension Credit

2.1.1 Independent sector and trust accommodation

A person who moves into independent sector or trust accommodation on a respite basis will have her/his applicable amount for Income Support or PC assessed in the following way.

- **Single person**

The Income Support applicable amounts or PC guarantee credit will be calculated in the normal way including housing costs where appropriate.

- **Lone parent**

The normal personal allowances for the lone parent and any children plus any appropriate premiums and housing costs on the normal home are allowed.

- **Couple**

- **Income Support**

A couple will receive whichever of the applicable amounts in (a) or (b) below is more advantageous:

- (a) the aggregate of the normal personal allowance treating each member of the couple as a single person plus any appropriate premiums at the single person rate plus housing costs for the normal home; or



- (b) the normal personal allowance for a couple plus any premiums at the couple rate plus housing costs for the normal home.

Normally, the more advantageous calculation will be as in (a) where the couple is treated as two single people.

- **Pension Credit**

When a member of a couple is temporarily separated from her/his partner, the amount of PC payable remains unaffected because in such a case both partners remain members of the same household and the absent partner is treated as still normally residing at home.

When calculating income and capital for Income Support or PC purposes, a couple continues to be treated as a couple with the income and savings of each partner being combined. Income Support or PC continues to be paid to whichever person was receiving the benefit prior to one partner going into care.

2.1.2 Date from which Income Support changes

Where a person enters respite care for eight weeks or less, the altered rate of Income Support can be paid from the date of admission into respite care. The day a person goes into care is treated as a day in care and the day a person returns home is treated as a day spent at home. During the benefit week when the change occurs, a complex calculation will need to be undertaken, taking account of the proportion of days spent at home and proportion spent in respite care.

For example, if a person goes into care on Thursday evening and comes back home on Monday, s/he will be treated as spending four days in care (ie Thursday, Friday, Saturday and Sunday) and three days at home (ie Monday, Tuesday and Wednesday). Entitlement in that benefit week will be 3/7 of the weekly rate of entitlement to Income Support at home plus 4/7 of the weekly rate of entitlement to Income Support or PC when in respite care.

For Income Support or PC, the benefit week is the seven days that run from the day of the week on which benefit is paid. This means that a benefit week can overlap two calendar weeks.

Where a person is going into respite care for more than eight weeks, Income Support will not be changed until the start of the next benefit week after the person went into respite care.

2.2 Attendance Allowance and Disability Living Allowance

AA and DLA continue to be paid for up to 28 days spent in respite care whether in trust or independent sector care home accommodation. Care home is not defined in the regulations and is not linked to the legal definition of other settings.



However, if a person is in trust or independent accommodation and paying the cost without financial assistance from means-tested benefits or social services funding, AA or DLA care component can continue to be paid beyond 28 days.

Separate stays in respite care or in hospital which are less than 28 days apart are added together when calculating how long a person has been in care. Regulations set out that day of admission to and discharge from care are not treated as days in care.

For more details on the linking rule see 1.1.4.

2.3 Housing Benefit

Whilst in respite care, Housing Benefit can continue to be paid on the normal home for up to 52 weeks.

Where a person goes into care on a trial basis, Housing Benefit will be paid for up to thirteen weeks for the home in the community.

After thirteen weeks, a person is expected to have come to a decision and if s/he remains in the residential care or nursing home, Housing Benefit will be withdrawn. If a person elects to stay in the residential accommodation before the end of the thirteen weeks, Housing Benefit is withdrawn from the time s/he decides to make the residential accommodation her/his permanent home.

Where the trial period in residential accommodation has not worked out and a person decides to try another residential care or nursing home, then a new period of entitlement to Housing Benefit for up to thirteen weeks begins again.

Where trial periods in different accommodation are added together and exceed 52 weeks, Housing Benefit is no longer payable.

2.4 Other benefits

All other social security benefits are normally unaffected by temporary periods spent in respite care. A carer can continue to receive CA while the person being cared for is in respite care providing that AA or DLA care component remains in payment.

2.5 Going home temporarily

A person who is permanently in care may, nonetheless, leave care for short periods (eg to spend time with family).

2.5.1 Independent sector

Where a person temporarily leaves independent sector accommodation, Income Support or PC continues to be paid as if still in care.

While away from the residential accommodation, a person can receive AA or DLA care component unless the move is to hospital. The day a person leaves care and the day a



person returns to care are both days on which DLA care component or AA can be paid. Linking rules also apply to temporary stays outside of residential care (see 1.1.4).

The rules governing a move from residential care to hospital are covered in 1.3.

2.5.2 Trust accommodation

A person who temporarily leaves trust accommodation for any reason other than going into hospital will have her/his Income Support or PC calculated as if living back in the community. For Income Support, personal allowances and appropriate premiums will be added together to obtain applicable amount. For PC, standard minimum guarantee and additional amounts will be added together.

As outlined above for independent sector care, AA or DLA care component will also be payable during the period the person is temporarily back in the community.

The rules governing a move from residential care to hospital are covered in 1.3.

3. FURTHER INFORMATION

Welfare Benefits and Tax Credits Handbook, 18th Edition, CPAG, 2016-2017, £61.00.

This book is available from CPAG, 94 White Lion Street, London, N1 9PF.

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