Law Centre (NI) Legal Information Briefing - February 2017

Personal Independence Payment: implications for financing residential care

Law Centre (NI)

At a glance

The newly introduced Personal Independence Payment replaces Disability Living Allowance for over 16s, and has implications for the financial assessment process applied to the provision of personal social services to individuals placed in residential or nursing home accommodation by a Health and Social Care Trust

This briefing explains what Personal Independence Payment is and how people will qualify. Importantly it explains how receipt of PIP, as a source of income, will be treated by a Health and Social Care Trust when conducting a financial assessment of an individual's means to determine whether they must contribute towards or pay for the costs of their placement in a residential or nursing home.

It is aimed at health and social care staff as well as advisers, service users and their carers.

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Introduction

The Department of Health Social Services and Public Safety (NI) (DHSSPSNI) circular of June 2016, *Introduction of Personal Independence Payment (PIP)* (the Circular) sets out the implications of the introduction of PIP on the financial assessment process applied to the provision of personal social services to individuals placed in residential or nursing home accommodation by a Health and Social Care Trust (HSC Trust).

This briefing gives a summary of the Circular. It also explains what PIP is and how people will qualify. Importantly it explains how receipt of PIP, as a source of income, will be treated by a HSC Trust when conducting a financial assessment of an individual's means to determine whether they must contribute towards or pay for the costs of their placement in a residential or nursing home.

2. What is PIP?

PIP is a social security benefit which was introduced in Northern Ireland on 20 June 2016 to replace Disability Living Allowance (DLA) as the main benefit paid to people of working age (16 to 64) with a long-term health condition or impairment who need help getting around and/or with daily living activities.

PIP is intended to help towards some of the extra costs that are associated with having a long-term health condition or disability that is expected to last twelve months or longer.

Like DLA, PIP is a non-means tested benefit. Once an individual qualifies, it is paid whether they are in full-time or part-time work or out of work. PIP is non-taxable and non-contributory. This means that entitlement to PIP is not dependent on an individual's financial means or whether they have paid National Insurance contributions.

This means that since 20 June 2016 people aged 16 to 64 years have no longer been able to claim DLA. They must now claim PIP instead. From November 2016, existing DLA claimants aged 16 to 64 years whose award of DLA ends naturally or who report a change in their care or mobility needs will be contacted by the Department for Communities (DfC) and reassessed under the new PIP rules. During the reassessment process, any DLA award will remain in place until the person's eligibility for PIP has been determined.

The introduction of PIP does not apply to individuals who were aged 65 or over on 20 June 2016 and who were already in receipt of DLA on this date. Claimants in this category will continue to receive DLA provided that they continue to meet the eligibility criteria.

3. Who is entitled to PIP?

Entitlement to PIP will be determined on the effect that a long-term health condition or disability has on an individual's daily life and not on the nature of the condition or disability itself.

An individual can only qualify for PIP if their condition has lasted for at least three months and is expected to last for another nine months or longer.

Individual assessment for PIP is arranged by DfC. DfC considers a number of factors when deciding whether an individual is eligible to receive PIP. These include:

- the individual's specific needs;
- how their disability affects their daily life; and
- their ability to carry out key every day activities.[1]

PIP is made up of two components:

- Daily Living component; and
- Mobility Component.

Each component is made up of two rates, standard and enhanced. The standard rate is paid if an individual is assessed as having limited ability. The enhanced rate is paid where the individual is assessed as having severely limited ability.

The rate at which PIP is paid to an eligible claimant will depend on the outcome of DfC's points based assessment of the individual's need for help with activities of daily living and/or with getting around.[2] This assessment is carried out in a similar way to the assessment for Employment and Support Allowance.

4. Financial assessment for residential care for those individuals in receipt of PIP

Many individuals placed in a nursing or residential care home by a HSC Trust are already in receipt of DLA/PIP or will be eligible to apply for PIP. The Circular instructs HSC Trust staff to

[1] For more information on the factors considered and criteria applied when assessing entitlement to PIP, please see Law Centre (NI) Information Briefing entitled 'Personal Independence Payment: Introduction' available at http://www.lawcentreni.org/practitioner-briefings-social-security.html

[2] For more information on the rates paid please see Law Centre (NI) Information Briefing entitled 'Personal Independence Payment: Introduction' available at http://www.lawcentreni.org/practitioner-briefings-social-security.html

treat PIP in the **same manner** as they would DLA when conducting a financial assessment of an individual's means to determine whether the individual must contribute towards or pay for their care in a residential or nursing home. The same rules therefore apply.

In order to understand how receipt of PIP should be considered in a HSC Trust's financial assessment, it is necessary to revisit the entitlement to DLA where a resident has been placed in residential or nursing home care by a HSC Trust.

5. Entitlement to DLA whist residing in a residential care home or nursing home

5.1 DLA Care Component

Individuals may be in receipt of DLA care component if attention, supervision or watching over from another person is needed due to either mental or physical disabilities. Additionally, an individual can receive the care component if they are unable to prepare a cooked mean for themselves. The individual must be so severely disabled physically or mentally that s/he requires from another person:

a) during the day

- frequent attention throughout the day in connection with bodily functions; or
- continual supervision throughout the day in order to avoid substantial danger to her/himself or others; or

b) at night

- prolonged or repeated attention in connection with bodily functions; or
- in order to avoid substantial danger to her/himself or others, another person is required to be awake for a prolonged period or at frequent intervals for the purpose of watching over her/him; or

c) part-time day attention

- in connection with her/his bodily functions, attention is required for a significant portion of the day (whether during a single period or a number of periods); or

d) cooking test

- s/he is sixteen or over and cannot prepare a cooked main meal for her/himself if s/he has the ingredients (cooking test).

After 28 days in residential or nursing home care, a resident who is receiving financial assistance from a HSC Trust to pay the costs of their placement (a trust funded resident) is no longer entitled to be paid DLA Care Component whilst they remain in the residential care home or nursing home.

They continue to have underlying entitlement, however, and payment of the care component of DLA or the daily living component of PIP will re-commence once the person is no longer resident in the care home, for example, if the person returns home either permanently or overnight.

An individual must contact the DFC if this is the case as payments for overnight stay will not be credited automatically.

Residents who are not receiving any financial assistance from the Trust (self-funded residents) can continue to receive DLA Care Component provided that they continue to be eligible.

5.2 DLA Mobility Component

The eligibility test for the Mobility Component of DLA requires that a person must be capable of taking advantage of outdoor journeys.

A person qualifies for the higher rate component if due to a physical condition s/he:

- is unable or virtually unable to walk; or
- is both blind and deaf; or
- has a severe visual impairment; or
- was born without feet or is a double amputee; or
- is severely mentally impaired and has severe behavioural problems and qualifies for the highest rate of DLA Care Component.

A person qualifies for the lower rate if s/he is so severely disabled physically or mentally that s/he:

- needs guidance or supervision most of the time.[3]

A person is paid the mobility component of DLA or PIP as normal for however long they are resident in a care home.

[3] For more information on the legal provisions governing DLA please see Law Centre (NI) Encyclopaedia of Rights at http://www.lawcentreni.org/EoR/benefits-and-tax-credits/dla-and-attendance-allowance.html

6. Charging for residential care: the income rules

The legal rules which govern how a HSC Trust should carry out a financial assessment of an individual's means to determine whether the individual must contribute towards or pay for their care in a residential or nursing home are set out in the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993 (as amended) and the Charging for Residential Accommodation Guide NI (CRAG NI).[4]

If it has been established that a person comes within the capital limits[5] applicable to charging for residential care, the HSC Trust will then assess that individual's income to determine what (if any) level of financial assistance the HSC Trust should provide and to identify the level of financial contribution a resident should make towards their residential care costs from their income.

With the exception of a weekly Personal Expenses Allowance of £24.90[6], in these circumstances all income will be taken into account and must be used by a resident to pay for their care home fees unless it is specifically identified in CRAG NI as being fully or partially disregarded.[7]

6.1 DLA and permanent residents of residential care homes or nursing homes

DLA Care Component is taken fully into account as a source of income in a resident's financial assessment where the individual is in receipt of DLA Care. DLA mobility component is fully disregarded, ie is not included as a source of income in a permanent resident's financial assessment.

6.2 PIP and permanent residents of residential care homes or nursing homes

Although this is not explicit in the Circular, it appears that the Daily Living Component of PIP will be taken fully into account by a HSC Trust in a permanent resident's financial assessment (as is the case with DLA Care Component). It is also expected that the Mobility Component of PIP will be fully disregarded.

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[4] Available at https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/charging-for-residential-accommodation-guide-crag-2015.pdf

[5] For more information on the capital limits applicable for charging for residential care and the rules governing treatment of capital please see Law Centre (NI) Encyclopaedia of Rights at http://www.lawcentreni.org/EoR/community-care/financing-residential-care.html

[6] This is the current rate of Personal Expenses Allowance payable but may be subject to change

[7] For more information on types of income which can be fully or partially disregarded please see https://www.health-ni.gov.uk/sites/default/files/publications/dhssps/charging-for-residential-accommodation-guide-crag-2015.pdf

6.3 Temporary residents of residential care homes or nursing homes

Where a resident's stay in a residential care home or nursing home is likely to last for any period not exceeding 52 weeks, or (in exceptional circumstances) is unlikely to substantially exceed 52 weeks, the Trust may deem the individual to be a temporary resident.[8]

DLA care component is disregarded by a HSC Trust where the individual is considered a temporary resident. It is not taken into account as a source of income in their financial assessment.

As with permanent residents, DLA mobility is also disregarded in a temporary resident's financial assessment.

6.4 PIP and temporary residents of residential care homes or nursing homes

Although not explicit in the Circular, it appears that the Daily Living Component of PIP will be fully disregarded by a HSC Trust in a temporary resident's financial assessment (as is the case with DLA Care Component). It is also expected that the Mobility Component of PIP will be fully disregarded.

7. Conclusion

With the advent of welfare reform in Northern Ireland, it is likely that additional changes to social security benefit entitlement will (once introduced) have further implications for the rules governing financing residential care. It is important for health and social care professionals, advisers in this area and individuals receiving health and social care services to be aware of any changes and their impact on paying for care as they happen.

More information on welfare reform developments is available on the Law Centre's website: www.lawcentreni.org

[8] As defined by the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993, Regulation 2 (1)

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We also welcome calls from health and social care staff, other healthcare providers and advisers.

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More information

Consult our website for more information on the service and on health and social care legal issues: www.lawcentreni.org

Law Centre (NI) contact details

Central Office
124 Donegall Street
Belfast
BT1 2GY
Tel: 028 9024 4401
Fax: 028 9023 6340
Textphone: 028 9023 9938
Email: admin.belfast@lawcentreni.org

Western Area Office
9 Clarendon Street
Derry
BT48 7EP
Tel: 028 7126 2433
Fax: 028 7126 2343
Email: admin.derry@lawcentreni.org

Our website: www.lawcentreni.org

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