

## **Attendance Allowance in Care Homes**

**Ref IS/13**

Age Concern receives many queries about the payment of Attendance Allowance to residents in care homes. This paper looks briefly at the disability conditions for the allowance but is principally concerned with how the way in which your care is funded affects whether or not you can be paid Attendance Allowance when you live in a care home. More detailed information on Attendance Allowance can be found in Age Concern's Factsheet 34, *Attendance Allowance and Disability Living Allowance*, and on financial assistance with care home fees in Factsheet 10, *Local authority charging procedures for care homes*.

A survey by one Age Concern Organisation, of residents paying for their own fees in care homes, found that a surprising number of people who should have been receiving Attendance Allowance were not. They had either not claimed it, or had not realised that it should have been put back into payment when they moved into a home after a spell in hospital. This finding has been backed up by a subsequent survey by the Department for Work and Pensions which found that only 73% of those surveyed received Attendance Allowance or Disability Living Allowance when they were funding themselves in care homes.

Although this paper is about Attendance Allowance the rules for Disability Living Allowance (Care component) are very similar but the latter benefit is awarded to those who meet the disability conditions before the age of 65.

Income Support for people over 60 (also known as the Minimum Income Guarantee) was replaced by a new benefit called Pension Credit from 6 October 2003. Important changes to the rules regarding payment of Attendance Allowance to care home residents who are in receipt of Pension Credit (or Income Support if under 60) came into effect at the same time. Further information on Pension Credit can be found in Age Concern's Factsheet 48, *Pension Credit*.

We use the term care homes to cover all homes that have to be registered under the Care Standards Act 2000. This includes homes which just provide personal care, and homes which also provide nursing care.

The Disability Benefits and Carers Service (DBCS) is referred to several times in this paper and the address is at the end.

## **I. The basic rules for getting Attendance Allowance**

The main grounds for getting Attendance Allowance are that you are aged 65 or over when you apply and are physically or mentally disabled and need:

- frequent attention throughout the day in connection with your bodily functions, or continual supervision throughout the day to avoid substantial danger to yourself or others; or
- prolonged or repeated attention at night in connection with your bodily functions, or another person to be awake at night for a prolonged period or at frequent intervals to watch over you to avoid substantial danger.

If you meet any of these conditions then you will qualify for the lower rate of £38.30. If you need help both during the day and during the night you may qualify for the higher rate of £57.20. You normally need to have met these conditions for six months before the allowance can start to be paid. There are some other rules about your residence in the UK, and for people who have a terminal illness. Attendance Allowance is not means-tested but is not paid to some residents in care homes, hospitals and other settings.

It is highly likely that most people in care homes would qualify for at least the lower rate, and many will qualify for the higher rate if they need help in the night. If you are receiving the lower rate and your condition worsens whilst you are in the home and you begin to need the sort of care described above at night, then you should ask for your Attendance Allowance to be reconsidered. It may be worth doing this even if you cannot be paid Attendance Allowance when you are in a home, especially if there are times when you are away from the home such as visiting relatives for a few days. See Section 4 about leaving your care home for brief periods.

## **2. The payability of Attendance Allowance in care homes**

There are a number of different ways of meeting the fees that are charged by care homes. Nearly a third of all residents pay the fees out of their own income and capital. Some people have their fees fully paid by the NHS (see Age Concern Factsheet 20, *Continuing NHS health care, 'free' nursing care and intermediate care*). Others get help from the local authority social services department. Local authority funded residents usually have to make some contribution towards the cost of their care and any entitlement to benefits such as Pension Credit may be taken into account in the assessment of that charge.

When you go into a care home you should inform the DBCS about the home you have gone into, and if possible how your care is being funded. If you are not sure how your care is being funded you should say so, and the DBCS will make the necessary enquiries. If you are clear that you are paying for yourself you should let them know. You should always let the DBCS know if at any time either social services or the NHS starts funding your care in the home.

Note: The Registered Nursing Care Contribution paid by the NHS to cover the cost of nursing care provided in care homes does not affect your Attendance Allowance as you still have to pay for your personal care.

### **2(a) Funding yourself**

If neither the social services nor the NHS has any involvement in funding your care, then you can receive Attendance Allowance in a care home. Even if social services makes the arrangements (ie by making the contract with the home), but you are paying the full cost then you should be able to get Attendance Allowance paid.

It is most important to make sure, if your Attendance Allowance has been stopped (eg because you were previously in hospital, or you were previously being funded by social services), that you ask as soon as possible for the benefit to be paid to you again.

You do not need to make a new claim, you just need to write to inform the Disability Benefits and Carers Service (the address is given at the end of this paper). If your condition has worsened and you were only getting the lower rate of Attendance Allowance you might want to also ask for the level of your

allowance to be reconsidered at the same time. However as stated above you can ask for it to be reconsidered at any time if your condition worsens.

## **2(b) Funding by Social Services or the NHS**

Even if you qualify for Attendance Allowance (and perhaps were receiving it when you were at home) it cannot normally be paid if social services are funding your care in a care home, however see Section 2(c) if you are only receiving 'interim' funding from social services and you will be paying them back. Attendance Allowance will usually stop 28 days after the local authority starts to assist you.

Your Attendance Allowance will also usually stop after 28 days if you enter a care home fully funded by the NHS. The home you are in will generally be considered to be a 'similar institution' to a hospital and you will be treated as if you are a hospital patient. However some people who are fully funded by the NHS have recently won appeals and now get paid Attendance Allowance even though they are fully funded by the NHS. It is not easy to establish whether the home you are in will count as a 'similar institution' so you may want to seek advice. Attendance Allowance has not been affected by the Government's extension of the period for which other benefits continue to be paid at the normal rate to hospital patients before being down rated and will continue to be withdrawn after 28 days.

This 28 day period during which you continue to receive Attendance Allowance after entering a home will be shorter if you have already spent some time either in hospital or in a home funded by the social services department or the NHS within four weeks prior to moving in. The dates of admission and discharge do not count.

### **Example**

*You were in hospital for 10 days (not including the day you went in and out of hospital), and you then went home. After two weeks you found that you could not manage and social services agreed that you needed care in a care home, and a week later you moved in to a home. As this was not more than four weeks from the time you left hospital, your Attendance Allowance will stop after 18 days (it may be slightly later depending on which day of the week your benefit is paid).*

Some people receive 'part funding' from the NHS (not under the NHS payments for registered nursing care - see note above). As long as you are not also receiving funding from the social services (other than 'interim' funding - see Section 2(c)), then you may be able to receive Attendance Allowance.

Sometimes this type of funding causes confusion, and your benefit may be suspended while the DBCS asks about the nature of the NHS payments. You should appeal if you think you are wrongly being treated as a hospital patient if you are partly funded by the NHS and paying the rest of the fees yourself.

It is important to remember to ask for your Attendance Allowance to be restarted if social services or the NHS cease to fund your care at any point.

## **2(c) 'Interim' funding by social services**

If you need interim or temporary funding from social services but know that you will be able to repay the assistance provided by the local authority at a later date, you may be able to receive Attendance Allowance during this time. For example, if the local authority is taking the value of your property into account, you may be assessed as able to meet the full cost of your care but might need temporary funding while you are selling your former home because most of your capital is tied up in the property (See Factsheet 38, *Treatment of the former home as capital for people in care homes*, for details of when property is taken into account and when it is disregarded). Another situation where interim funding may be required is where someone is waiting for a Receiver to be appointed by the Court of Protection because they can no longer manage their finances. Once your capital is realised you have to pay back the local authority in full, so really you pay the full cost yourself, it is just that the local authority has 'loaned' you the money.

Prior to 6 October 2003 residents could only receive Attendance Allowance during the time that they were getting interim funding from the local authority on condition that they were **not** receiving Income Support/MIG as well. The rules for Pension Credit since 6 October 2003 have changed and residents may now be able to claim **both** Attendance Allowance and Pension Credit for periods of interim funding provided that the local authority will, in due course, be repaid in full. This change also applies to Income Support (for people under 60) and DLA care component.

Residents who were receiving interim funding prior to 6 October 2003 and chose to continue to receive Attendance Allowance rather than Income Support should now apply for Pension Credit. Their appropriate amount for Pension Credit should include the additional amount for severe disability (recognising that Attendance Allowance is being paid).

Residents who were receiving interim funding whose Attendance Allowance was withdrawn because they were claiming Income Support should ask for it

to be reinstated. Once Attendance Allowance has been reinstated the resident's appropriate amount for Pension Credit should be increased to include the additional amount for severe disability.

NB: The value of a property may be taken into account for Pension Credit purposes unless attempts are being made to sell it. This may affect eligibility for that benefit where a deferred payment agreement is entered into without any steps being taken to market the property. However as there is no upper capital limit for Pension Credit residents whose property has a low value may still be able to claim pension credit provided that the sum of their income and any tariff income levied upon capital above £10,000 does not exceed their appropriate amount.

Guidance to social security staff states that Attendance Allowance should be paid unless, and until the point is reached, when there is a real risk that your capital is inadequate to make a full repayment. Internal guidance suggests that it should be checked after two years.

If you were being funded by the local authority prior to 6 October 2003, did not receive Income Support/MIG, knew that you would be paying the local authority back in full and had your Attendance Allowance stopped, you should ask for it to be put back into payment immediately. You should also ask for a refund of the amount that has not been paid. It may be possible to get past periods paid if Attendance Allowance was wrongly stopped. If the past period goes back earlier than November 2000 (which is the date of the case that established that Attendance Allowance was payable even when the local authority is providing interim funding) you will need to seek specialist advice.

If you have just gone into a care home and know you will be paying the local authority back in full, you should make sure that your benefit is not stopped (or that it is put back into payment if you have been in hospital). If you have any problems you might wish to seek local Welfare Rights advice. If you have problems getting a refund, you or your advisor may find the information in the guidance to social security staff useful. Ask the Customer Service section at your Disability Benefit and Carers Service for a copy.

### **3. Residents who previously funded care from Attendance Allowance and Income Support/MIG**

Prior to April 2002 the calculation of the minimum income residents in private care homes were treated as needing for Income Support purposes included a Residential Allowance. This was abolished for new claimants from April 2002

but existing claimants were given transitional protection under which the Residential Allowance continued to be paid until 6 October 2003, from which date it was abolished completely.

The benefits regulations in England and Wales prior to 2002 allowed residents to receive both Attendance Allowance and Income Support whilst in a care home as long as the local authority was not funding them. The maximum amount which a resident's income could be made up to with Attendance Allowance and Income Support (including Residential Allowance and Severe Disability Premium) could sometimes be enough to cover, or nearly cover, the cost of a care home. This was known as the 'benefits loophole' or 'Boyd loophole' and was used by some people to fund care in a care home rather than approaching the local authority.

This method of funding may no longer be viable for those residents following the abolition of the residential allowance from 6 October 2003. The maximum amount which a resident's income can be made up to with Attendance Allowance and the Pension Credit guarantee credit is currently £202.25 per week. Even if some pension Credit savings credit is also being paid this may leave a shortfall in the care home fees. If that shortfall cannot be met then the resident may have to approach the local authority for assistance if they have capital of less than £19,500 (£20,000 in Wales).

Residents funded using the loophole should have received a letter or visit from the local social security office explaining about the change. This should have included advice on approaching the local authority and asking for funding. The local authority will have to carry out an assessment of the resident's needs before it can agree to assist financially with the cost of care. Guidance issued to local authorities by the Department of Health anticipates that most residents involved will meet local authority eligibility criteria and suggests that individuals should only be moved from their current care homes against their wishes in exceptional circumstances.

## **5. Periods away from your care home**

As explained above, you may satisfy the disability conditions for Attendance Allowance but not receive it because of the way your care is funded. However, you can still make an application and establish underlying entitlement to Attendance Allowance. It is useful to do this if you think there is a possibility of

returning home in the future or if you may spend time away from the care home.

If you then leave the care home, even for a short period you can contact the DBCS and ask for your Attendance Allowance to be paid without having to make a claim and wait for it to be decided. If you apply for Attendance Allowance whilst being funded in a care home, then the first time you leave for a few days will mean that you will get paid for four weeks after your return to the home. The day you leave and the day you return to the care home both count as days at home. (Attendance Allowance is not payable if you leave the care home for a stay in hospital).

### **Example**

Mrs Angelou is funded by the local authority, but goes to stay with her daughter for Christmas. Even though while in the home she does not get Attendance Allowance she applied for it a few months after moving in. This year she is going on 22 December and returning on 28 December. She will receive Attendance Allowance for a week and then following her return to the home will continue to receive it for a further four weeks. If she goes to stay with her daughter again she will receive it for the number of days she is away from the home.

The DBCS needs to be told about any moves in or out of a care home, to avoid any overpayments or underpayments of benefit.

### **Conclusion**

This paper aims to give you the most up-to-date information about the payment of Attendance Allowance in care homes. It is long because the rules are complex. Therefore in some situations it may be difficult to ensure that you are going to achieve the best option and you may need help from a benefits specialist. This paper will be updated again in April 2004 and if you are reading this after that date please contact Age Concern England for a copy of the current version.

The address of the Disability Benefits and Carers Service is Warbreck House, Warbreck Hill, Blackpool, Lancs FY2 0YE. Tel: 08457 123456.

For a full list of Age Concern factsheets, phone 0800 00 99 66 or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ.



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Age Concern England, Astral House, 1268 London Road, London SW16 4ER.  
Registered charity no. 261794.

**IS/13**

**PT/BM**

**November 2003**