

*Disability
Living
Allowance
Factsheet.*

***Rules of Entitlement
2009 - 2010***

Introduction

This factsheet is intended as a brief guide to the rules of entitlement for Disability Living Allowance (DLA). However, it is not a comprehensive statement of all the DLA regulations and you should therefore seek professional advice for further help.

What is Disability Living Allowance?

DLA is a tax-free benefit for adults and children with an illness or impairment who have care needs and/or walking difficulties. Entitlement to DLA depends almost entirely on how a person's illness or impairment affects him/her.

Do savings or income affect the award of DLA?

DLA is a "non-means tested benefit". This means that the amount of other income that you have does not affect DLA in any way (you can be working and still claim). Capital and savings also have no effect. DLA is completely ignored when working out income for income support, income-based jobseeker's allowance, housing benefit, council tax benefit, Working Tax Credit (WTC) and Child Tax Credit (CTC).

DLA is divided into two parts, called the care component, and the mobility component. A person can get either component on its own or both components at the same time. The care component is paid at one of three rates, depending on the level and type of care needed - the lower, middle or higher rate. The mobility component is paid at one of two rates, depending on the level and type of mobility needs - the lower or higher rate.

How much will I get if I am awarded benefit?

Summary of the rates of DLA benefit payable

Type of Needs	Children	Under 65
Care needs	DLA care from 3 months (see notes)	DLA care component lower rate £18.65 middle rate £47.10 higher rate £70.35
Mobility needs	DLA mobility (see notes)	DLA mobility component lower rate £18.65 higher rate £49.10

DLA - the care component

How is my award of benefit decided?

1. There are 4 impairment tests for the care component. You qualify for the care component if you need from another person, one of the following:¹
 1. attention ² in connection with bodily functions ³
 - a) attention for a significant portion of the day⁴ (whether during a single period or a number of periods) **or**
 - b) frequent attention throughout the day ⁵ **or**
 - c) prolonged⁶ or repeated ⁷ attention during the night **or**
 2. continual supervision⁸ throughout the day to avoid substantial danger to yourself or to others **or**
 3. the person to be awake during the night for a prolonged period or at frequent intervals, to watch over you in order to avoid substantial⁹ danger to yourself or to others.
 4. You are 16 or over and cannot prepare a cooked main meal for yourself, if you have the ingredients. ¹⁰

Children

The care component is for children who need a lot of extra personal care, supervision or watching over because of their impairment. Although a claim can be submitted from birth, payment can only be made from the age of 3 months, or from birth for a terminally ill baby.

As well as satisfying any of the number 1 to number 3 impairment tests (see above), a child or young person under 16 must show that either:

- ❖ their needs are 'substantially in excess of the normal requirements of persons their age'; **or**
- ❖ they have 'substantial' care, supervision or watching over needs 'which younger persons in normal physical or mental health may also have but which persons of their age and in normal physical and mental health would not have'.

How much DLA care component could I get?

This depends on what tests you satisfy. ¹¹

There are 3 weekly rates for the care component; you could get one of the following rates:

1. Lowest rate care component **£18.65** if you need assistance for a significant portion of the day, or you cannot prepare a cooked main meal from the raw ingredients, or both (see impairment tests 1a & 4 above).
2. Middle rate care component **£47.10** if you satisfy one of the day **or** night attention/supervision tests. This means you could qualify if you need help during the day **or** at night (see impairment tests 1b, 1c, 2 & 3 above).
3. Highest rate care component **£70.35** if you satisfy a day **and** a night attention/supervision test. This means you could qualify if you need help during the day **and** at night (see impairment tests 1b, 1c, 2 & 3 above).

DLA - the mobility component

How is my award of benefit decided?

There are 5 impairment tests for the mobility component. You qualify for the mobility component if you are at least one of the following:¹²

1. physically disabled so that:
 - a) you are unable to walk; **or**
 - b) you are virtually unable to walk;¹³ **or**
 - c) the 'exertion required to walk would constitute a danger to your life or would be likely to lead to a serious deterioration in your health'; **or**
2. both deaf and blind; **or**
3. have no legs or feet (from birth or through amputation); **or**
4. entitled to the highest rate care component and severely mentally impaired with extremely disruptive and dangerous behavioural problems; **or**
5. 'so severely disabled physically or mentally that, disregarding any ability you may have to use routes which are familiar to you on your own, you cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time'.

Test 5 relates to the qualification for lower rate mobility component and was amended from 8 April 2002. This amendment means that only people who experience fear or anxiety when outdoors, as a direct result of a severe mental impairment will be eligible for low rate mobility.

Children

To qualify for the higher rate mobility component the child must be aged 3 years or over and be able to satisfy at least one of the four impairment tests – see tests 1 to 4 shown above.

To qualify for the lower rate mobility component the child must be aged 5 years or over and be able to satisfy impairment test 5 – see above. There is an extra impairment test for the lower rate for children under 16 years of age. They must show that either:

- ❖ they require ‘substantially more guidance or supervision from another person than persons of their age in normal physical and mental health would require’; **or**
- ❖ people of their age ‘in normal physical or mental health would not require such guidance or supervision’.

How much DLA mobility component can I get?

This depends on what tests you satisfy. ¹⁴

There are 2 weekly rates for the mobility component, you could get:

1. lower rate mobility component **£18.65** if you need guidance or supervision while walking outdoors (see impairment test 5 above).
2. higher rate mobility component **£49.10** if you satisfy at least one of the other four tests. (see impairment tests 1 - 4 above).

Example:

Mrs. McBride, a 45-year-old woman who as a result of a car accident has had both legs amputated. She also has limited use of her right hand, which means that she cannot cook a meal or peel vegetables.

What rates of DLA if any, would she be entitled to?

Mrs McBride would automatically qualify for the highest rate of the DLA mobility component because she has no feet.¹⁵ She would also be entitled to at least the lowest rate of care component because she cannot prepare a cooked main meal from the raw ingredients.¹⁶ Whether she was entitled to more would depend on whether she required additional attention or supervision as defined above.

References

- 1 Section 72 (1) of the Social Security Contributions and Benefits Act (SSCBA) 1992.
- 2 Commissioner's decision R(A)3/74 **defined attention** as "some personal service of an active nature".
- 3 Bodily functions have been defined as including breathing, hearing, seeing, eating, drinking, sitting, sleeping, getting in or out of bed, dressing, undressing, eliminating waste products etc.

However ordinary domestic duties such shopping, cooking, making tea or coffee, laying the table or tray, carrying it into the room, or making the bed or filling the hot water bottle could not be classed as "bodily functions". (R v National Insurance Commissioner ex parte Secretary of State for Social Services (1981) 1 W.L.R. 1017 - Court of Appeal Packer case) But recent cases have extended the rules on bodily functions. The Mallinson case found that helping a disabled person to cook could be counted towards the bodily functions test. In the Cockburn case (and R(A) 1/91) extra laundry caused, for example, by incontinence was found also to be relevant.
- 4 House of Lords debate, Hansard, 25th March 1991.Col. 884 & CDLA/058/1993 (*94/94) **defined "significant portion"** as being about 1 hour.
- 5 Commissioner's decision R(A)2/80 **decided "frequent"** means several times and not just "once or twice".
- 6 Commissioner's decision R(A)2/80 **defined "prolonged"** as "some little time".

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- 7 Commissioner's decision R(A)2/80 **defined "repeated"** as "more than once".
- 8 Commissioner's decision R(A)6/72 **defined "supervision"** as being a more passive concept than "attention", such as being in the same room with a disabled person so as to be prepared to intervene as necessary, but not actually intervening except in emergencies.
- 9 Commissioner's decision R(A)1/73 **decided that "substantial danger"** can result not only from a fall but from exposure, neglect and a good many things".
- 10 CDLA/085/1994(*04/95) indicates that "**prepare**" includes peeling & chopping of fresh vegetables. If you cannot prepare a main meal given **normal** reasonable facilities then the conditions are satisfied.
- 11 Section 72 (4) SSCBA 1992.
- 12 Section 73 SSCBA 1992.
- 13 Commissioner's decision R(M) 3/86 confirms that there are 4 separate elements of the "**virtually unable to walk**" test i.e. distance, speed, length of time and manner (without severe discomfort) which have to be considered separately.
- 14 Section 73 (11) SSCBA 1992.
- 15 Section 73 SSCBA 1992.
- 16 Section 72 (1) SSCBA 1992

This factsheet is available in other formats, including large print, Braille, tape and computer disk. The information is also available to people on our website: www.gcil.org.uk

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