

# ATTENDANCE ALLOWANCE FACTSHEET

## 1. Introduction

- 1.1. The information in this factsheet is intended to be a guide to the rules for Attendance Allowance and does not cover every circumstance. It is possible that some of the information is over simplified or may become inaccurate over time, for example because of changes to the law. The rates shown are applicable from April 2015 to March 2016 and the Limbless Association has made every effort to ensure that the information is correct at the time of publication.

## 2. What is Attendance Allowance?

- 2.1. Attendance Allowance is a disability benefit for people aged 65 or over who require assistance with personal care or help to make sure that they are safe. It recognises the increased costs that an individual may face due to an illness or disability.
- 2.2. The benefit is:
  - non means tested i.e. any income or capital you have will not affect the claim;
  - not taxable;
  - paid whether or not you are working; and
  - paid at one of two levels; the lower or higher rate

## 3. Who can claim?

- 3.1. You can claim Attendance Allowance if:
  - You are aged 65 or over and
  - You have had care or supervision needs for the last six months (known as the qualifying period) and
  - You are present in GB and have been so for no less than 104 out of the last 156 weeks i.e. two out of the last three years, or you are present in Northern Ireland and have been so for no less than 26 out of the last 52 weeks and
  - You are habitually resident and not subject to immigration control and
  - You satisfy one of the disability tests (see section 4)
- 3.2. If you already receive Personal Independence Payment or Disability Living Allowance you cannot claim Attendance Allowance.

3.3. If you already receive one of the following disability benefits you will not be able to claim Attendance Allowance, if they are paid at an equivalent or higher amount:

- Armed Forces Compensation Scheme;
- Constant Attendance Allowance with Industrial Injuries Benefits; or
- Constant Attendance Allowance with War Pension

#### **4. Terminal illness**

4.1. If you have a terminal illness you will qualify for the higher rate of Attendance Allowance. A medical practitioner will need to complete a form called a DS1500 that states that you are not expected to live beyond six months. You will automatically be considered to have passed the disability tests and will not need to meet the qualifying period.

#### **5. What are the disability tests?**

5.1. To satisfy the terms of the disability tests, you must meet at least one of the following four conditions. You must be so severely disabled physically or mentally that you require from another person....

5.2. During the day:

- frequent attention throughout the day in connection with your bodily functions
- continual supervision throughout the day in order to avoid substantial danger to yourself or others

5.3. During the night:

- prolonged or repeated attention in connection with your bodily functions
- in order to avoid substantial danger to yourself or others another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over you

5.4. To help ensure consistency with awards the words highlighted above have a defined legal meaning. For the meaning of these words see our Attendance Allowance Meaning of Terms factsheet.

#### **6. How much is it?**

6.1. Attendance Allowance can be paid at one of two rates depending on the level of care required.

Lower rate	£55.10 per week	Day <b>or</b> night time needs
Higher rate	£82.30 per week	Day <b>and</b> night time needs

## **7. How long is Attendance Allowance awarded for?**

- 7.1. Attendance Allowance may be awarded to you for an indefinite period or for a fixed period of time (there is no legal minimum length for an award). If it is for a fixed amount of time, then you will normally be sent a renewal claim form four months before your existing claim expires.

## **8. What if I go into hospital?**

- 8.1. If you spend more than 28 days in hospital then your Attendance Allowance will be suspended. It can restart when you return home as long as you continue to meet the claim criteria. If you have more periods in hospital these will be added together if they are separated by 28 days or less.

## **9. How do I claim?**

- 9.1. In order to make a claim you will need to complete claim form AA1A.
- 9.2. If you live in England, Scotland or Wales, you can request the form by calling the Attendance Allowance helpline on 0345 605 6055 or 0845 605 6055 (Textphone 0845 604 5312 – for deaf and hard of hearing claimants only) or by visiting <https://www.gov.uk/attendance-allowance/how-to-claim>
- 9.3. For those living in Northern Ireland, you can request the form by calling the Disability and Carers service 028 9090 6178 or the Benefit Enquiry Line 0800 220 674 (Textphone 028 9031 1092 – for deaf and hard of hearing claimants only). You may also visit <http://www.nidirect.gov.uk/index/information-and-services/people-with-disabilities/financial-support-for-people-with-disabilities/attendance-allowance-people-with-disabilities/attendance-allowance-rates-and-how-to-claim.htm>
- 9.4. All forms requested by telephone will be stamped with the request date. If Attendance Allowance is awarded to you, it will be paid from this date provided you return the form within six weeks. Otherwise, your date of claim will register from the day your form is received by the Disability Benefits Centre.
- 9.5. You can include extra evidence when sending the form in to support your claim. For example, this could include a medical report, a diary that has recorded your day to day difficulties over a period of time or other relevant information. You should include your name and national

insurance number on anything you send in. You may find it helpful to use our Attendance Allowance Hints and Tips when completing the claim form.

- 9.6. It is advisable to copy your claim form and any extra evidence you send in so that you have your submitted information to hand should you need to challenge the decision.

## **10. What if I am unhappy with the decision?**

- 10.1. If your application is refused, or you are awarded the lower rate when you feel you should be entitled to the higher rate, you can challenge the decision. It is important to note that there is a risk to any current award of Attendance Allowance you have. So if you have been awarded the lower rate and you subsequently challenge the decision you may end up losing your award completely.

## **11. How do I challenge a decision?**

- 11.1. You can have three attempts to challenge a decision, but there is a strict process to follow. There is a one month time limit for you to register each stage of the process and you will need to follow each stage in order.
- 11.2. You should be notified in writing of any decisions made on your claim. The decision notice should set out your rights to challenge the decision. You can ask for written reasons for the decision if none were given in the decision notice. You must ask for these within one month of the date on the original decision notice.
- 11.3. Late challenges can be requested in certain circumstances. You will need to show it was not practical for you to apply in time and you should provide a clear and reasoned explanation for the delay. There is no guarantee that a late appeal will be accepted.

### **11.4. Mandatory reconsideration (Revision in Northern Ireland)**

This is the first stage of challenging a decision. Within one month of the date on the notification letter you will need to register the mandatory reconsideration / revision. If you wish you can send in some extra supporting evidence, such as a letter from yourself documenting why you disagree with the decision or evidence from a medical professional. A mandatory reconsideration will result in the Department for Work and Pensions reconsidering your award 'in house'. For Northern Ireland, revisions are considered by the relevant Social Security Agency.

#### 11.5. Appeal to First Tier Tribunal

If your mandatory reconsideration / revision is unsuccessful then you have another opportunity to challenge the decision. This must be registered within one month of the date on the mandatory reconsideration / revision notification letter. Her Majesty's Court and Tribunal Service is responsible for appeals in England, Scotland and Wales. In Northern Ireland it is the responsibility of The Appeals Service. Both are independent from either the Department for Works and Pension or the Social Security Agency. You have the opportunity to have your case heard on paper or in person. There is a higher success rate if you attend in person. Appeals can take several months. However, if you are successful, the award is backdated to the date of your claim.

#### 11.6. Appeal to the Upper Tribunal

If your first tier tribunal is unsuccessful you have another opportunity to challenge the decision through Her Majesty's Court and Tribunal Service / The Appeals Service, within one month of the first tier tribunal notification of the decision. This appeal needs to be based on a point of law. As a result, these appeals can be complex and it would be advisable to seek specialist advice.