



Centre of Excellence in Interdisciplinary Mental Health

Promoting Mental Health and Social Inclusion: Combating Poverty

Paper 1

CLAIMING DISABILITY LIVING ALLOWANCE

**An Information Pack for adults up to
age 65 using Mental Health Services,
their Carers and Advocates**

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PROMOTING MENTAL HEALTH AND SOCIAL INCLUSION: COMBATING POVERTY

This series has been established in order to stimulate and share research, ideas and good practice which promotes mental health and social inclusion and combats poverty.

If you want to contribute to the series, please contact the series Editor. We are interested in accounts of project work, good practice and relevant research. We particularly welcome ideas from service users/survivors and carers.

This information pack addresses, in a practical way, the issue of poverty amongst people who use mental health services. Whilst increasing numbers of people with mental health problems are claiming Disability Living Allowance (DLA) the evidence suggests that many who could benefit from it are still not making successful claims. In 2005 £200 million of DLA and Attendance Allowance was unclaimed.

In 2008, research from the Department of Work and Pensions indicated that 52% of DLA claims were disallowed, and amongst the reasons for this were poor understanding of what was needed to make a claim.

The authors of this guide have had success in increasing income levels amongst service users by assisting them to claim DLA and would like to share what they have learnt with others

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CLAIMING DISABILITY LIVING ALLOWANCE

AN INFORMATION PACK FOR ADULTS UP TO AGE 65 USING MENTAL HEALTH SERVICES, THEIR CARERS AND ADVOCATES

This information pack has been written by people who have been successful in helping users of mental health services and their carers claim Disability Living Allowance (DLA). Over the years it has been in publication mental health users, advocates and workers have found it has been of positive value to them

DLA can make a substantial difference to the weekly income of someone with long term care and mobility needs. However people still tend to think of DLA as a benefit available to people with physical rather than mental health problems. Our experience is that with a well supported claim for DLA people who use mental health services have a very good chance of being successful in claiming it.

This pack will help you make your DLA claim.

It includes information about DLA and examples of support and appeal letters that have been successful in gaining an award of DLA.

Remember strong support from a carer and/or advocate as well as a mental health support worker will increase your chance of success.

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***Suresearch** is an independent network of mental health service users, survivors and allies engaged in research and training and based at the Centre of Excellence in Interdisciplinary Mental Health, the University of Birmingham www.suresearch.org.uk and www.ceimh.bham.ac.uk

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PLEASE NOTE

Throughout this pack the term social security will be used to refer to the various agencies that are now involved in benefits such as Department of Work and Pensions (DWP) or Jobcentre Plus.

Disclaimer

Every care has been taken to ensure that the content of this work is accurate and that legislation and case law used is current at the time of writing. However, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in this work can be accepted by the authors or by The University of Birmingham or the SureSearch Network.

CLAIMING DISABILITY LIVING ALLOWANCE

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WHAT IS DISABILITY LIVING ALLOWANCE?

DLA is a weekly cash benefit that can be claimed by people under the age of 65 years who have care and mobility needs because of mental or physical illness or disability. It is tax-free.

DLA replaced Attendance Allowance (AA) for people aged under 65 and Mobility Allowance (MA) in April 1992. People who need care and support after the age of 65 can still claim Attendance Allowance.

HOW MUCH CAN I GET?

Weekly rate for care needs

Higher rate	....	....	....	....	....	....	£71.40
Middle rate	....	....	....	....	....	....	£47.80
Lower rate	....	....	....	....	....	....	£18.95

Weekly rate for mobility needs

Higher rate	....	....	....	....	....	....	£49.85
Lower rate	....	....	....	....	....	....	£18.95

These weekly rates are payable from the beginning of April 2010.

In many cases it is possible to claim for both your care and mobility needs (see pages 4 and 5).

If you make a successful claim for DLA you can retain it after you reach the age of 65, as long as you still need help.

WHO CAN CLAIM?

CAN I CLAIM?

Yes, if you are under the age of 65 years and have needed help and support for at least three months and are likely to need it for the next six months. You must have lived in the UK for not less than 26 weeks in the 52 weeks before your claim, and not be subject to immigration control.

WHAT ABOUT OTHER INCOME?

It does not matter how much money you or your carer have coming in each week.

WHAT ABOUT EARNINGS?

Although DLA can be paid even if you are in employment, the relevant Social Security law (Regulation 32 of the Social Security (Claims and Payments) Regulations 1987), states that you, the claimant, must report any “change of circumstances” that might affect your right to, the amount of, or payment of your benefit. This goes for any Social Security benefit, including DLA. But in the context of DLA, should returning to work or getting a new job be seen as a change of circumstances? Well, not if your care and/or mobility needs have not changed. In other words if you still meet the qualifying criteria for DLA at the same level as when you previously applied for it, then there have been no “change of circumstances” just because you have started some work. The mistake is often made within Social Security of believing that if you return to work then you are no longer considered unwell and in need of support. Seek out welfare rights assistance if this becomes a problem for you.

WHAT IF I AM STUDYING?

As long as you satisfy the conditions you can study full time or part time and still claim DLA.

WHAT IF I AM HOMELESS?

You can claim DLA if you are homeless.

WHAT IF I GO ABROAD?

DLA will continue to be paid for the first 26 weeks of a temporary absence abroad. If you are away for longer you can get an extension but you have to show that your absence from the UK is temporary and for the specific purpose of being treated for a medical condition that began before you left the UK. This does not apply to people who are claiming DLA because of a terminal illness.

A decision of the European Court of Justice in October 2007 means that DLA care components can continue to be paid to claimants if they move to other parts of the European Union. This judgment **does not** apply to the mobility components of DLA.

See Appendix 4 for new guidance about reclaiming DLA if you had your benefit terminated between 08.03.01 and 18.10.07 because you moved to another EEA state.

WHAT IF I GO INTO HOSPITAL?

Your DLA will only be paid for the first 4 weeks of your stay. See page 14 for more details on this.

WHAT ABOUT MY AGE?

You can only claim DLA if you start to need help before your 65th birthday and make your claim before your 65th birthday. DLA can continue to be paid when you are over 65 as long as you still need help.

DO I NEED A CARER?

It does not matter whether you currently have a carer or not. DLA is paid to you and not to your carer.

WHAT IF MY CARER IS A RELATIVE?

It does not matter who is delivering the care you need.

HOW MAY I USE MY ALLOWANCE?

As far as the law is concerned you are not obliged to buy care with your allowance. You can spend it as you wish. However, an increasing number of local authorities are now charging people who are in receipt of DLA for the support/services they receive. If you are in receipt of the higher care rate of DLA it may be possible for you to get additional support through the Independent Living Fund. You should talk to your social worker or advocate/adviser about this. If this affects you, you should seek advice from a Citizens Advice Bureau or other independent source.

DO I NEED NATIONAL INSURANCE CONTRIBUTIONS?

DLA is a non-contributory benefit which means that it does not depend on your contribution record.

CAN I GET ANY EXTRA MONEY?

A successful claim for DLA may increase your entitlement to other benefits. See pages 8-14 for more information on this.

DO I QUALIFY?

In order to get either the care or mobility component of DLA you have to meet certain conditions which are laid down in law. The legislation contains a number of key phrases which are explained on pages 6-7.

CARE COMPONENT

Higher Rate

To successfully claim this rate you must satisfy **both the day condition and the night condition**

The day condition

The law says the day condition is satisfied if you require from another person/people

either
frequent attention throughout the day in connection with your bodily functions
or
continual supervision throughout the day in order to avoid substantial danger to yourself or other people.

The night condition

The law says the night condition is satisfied if you require from another person/people.

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

Middle Rate

To successfully claim this rate you must satisfy **either** the day **or** the night condition as outlined above.

Lower Rate

To successfully claim this rate you must satisfy **the part-time day condition**

The law says the part-time condition is satisfied if you

either
require in connection with your bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods)

or
cannot prepare a cooked main meal for yourself if you have the ingredients.

MOBILITY COMPONENT

Higher Rate

People who get a higher rate payment for their care needs and who can pass the test for severe mental impairment may be entitled to the higher rate payment for mobility needs.

The law says to get the **higher rate mobility component** on the basis of **severe mental impairment**, you must pass the following tests:

you must be entitled to the higher rate care component (even if it cannot be paid because you live in special accommodation)
and
you suffer from “a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning”, (i.e. this is a permanent state)
and
you “exhibit disruptive behaviour” which “is extreme”
and
you regularly require another person to “intervene and physically restrain” you to prevent you “causing physical injury to yourself or another, or damage to property”
and
you are so unpredictable that you require another person to be present and watching over you whenever you are awake.

Lower Rate

The law says to get **the lower rate** you must be:

able to walk but are 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 of walking out of doors without guidance or supervision from another person most of the time.

WHAT THE KEY PHRASES MEAN

The meaning of some of the key phrases in the legislation have been considered on appeal by the Social Security Commissioners, the Court of Appeal and the House of Lords. (For further information on using case law of this kind see Appendix 3). Further guidance on interpretation is also contained in The Disability Handbook issued by Social Security (See Appendix 5). The following definitions are drawn from these sources and our own practical experience:

REQUIRES	reasonably required i.e. not medically required
FREQUENT	several times, i.e. more than twice.
ATTENTION	via service of an active nature e.g. accompanying someone to a clinic to receive medication. (For more details see Appendix 3, No.8)
THROUGHOUT THE DAY	at intervals spread over the day
BODILY FUNCTIONS	breathing, hearing, seeing, eating, drinking, walking, sitting, receiving reassurance, sleeping, getting out of bed, dressing. (For more details see Appendix 3, No.8)
CONTINUAL SUPERVISION	does not mean non-stop. The supervision can be precautionary or anticipatory it does not always have to be active i.e. a person can be standing by ready to intervene in the event of danger. (For more details see Appendix 3, No.4)
SUBSTANTIAL DANGER	the danger to the claimant or another must be the result of the claimant's condition, e.g. neglect, and must not be too remote a possibility. (For more details see Appendix 3, No.4)
PROLONGED	at least 20 minutes.
REPEATED	more than once.
SEVERE IMPAIRMENT OF INTELLIGENCE	An IQ of 55 or less has been suggested as a yardstick. (For more details see Appendix 3, No.10)
SIGNIFICANT	an hour and/or many short periods which may be equal to or exceed an hour.

**PREPARE A COOKED
MAIN MEAL**

a main meal, not a snack, prepared from basic ingredients. (For more details see Appendix 3, No.9)

THE FINANCIAL IMPACT OF CLAIMING DISABILITY LIVING ALLOWANCE

A. A SINGLE PERSON AGED BETWEEN 25-59 YEARS (WOMAN) OR 25-64 YEARS (MAN), LIVING ALONE ON CONTRIBUTORY EMPLOYMENT AND SUPPORT ALLOWANCE (ESA)

Stage One

*Weekly contributory ESA Basic Amount	£65.45
Work Related Activity Component	£25.95
Total	£91.40

Stage Two

A successful claim made for DLA	middle rate care component	£47.80
	lower rate mobility component	£18.95
Total		£66.75

Stage Three

** A successful claim for DLA means that the Severe Disability Premium of
Income Related ESA is payable. SDP= **£53.65**

Stage Four

Weekly Income Related ESA Applicable Amount	£65.45
Work Related Activity Component	£25.95
Severe Disability Premium of ESA	£53.65
Total	£145.05

So the person now gets:

Contributory ESA	£91.40
Income Related ESA	£53.65
DLA	£66.75
Total	£211.80

Since the person now gets Income Related ESA they will receive 100% eligible Housing and Council Tax Benefit plus free prescriptions etc.

*Main Phase ie post assessment phase and is in the work related activities group

**Where no-one is claiming Carer Allowance

Note: To qualify for SDP or any amount/premium of IS or income related ESA, your savings should be under £16,000

B. A COUPLE AGED OVER 18 YEARS ON CONTRIBUTORY AND INCOME RELATED EMPLOYMENT AND SUPPORT ALLOWANCE AND ONE PERSON CLAIMS DLA

Stage One

Weekly Contributory ESA	
Basic Amount	£65.45
Work Related Component	£25.95
Total	£91.40

Stage Two

Weekly Income Related ESA Applicable Amount	
Prescribed Amount Couple	£102.75
Work Related Component	£ 25.95
Total	£128.70

So Contributory ESA	£91.40
Income Related ESA	£37.30
Total	£128.70

(Income related ESA is Applicable Amount of £128.70 minus contributory ESA of £91.40 which equals £37.30)

Stage Three

A successful claim for DLA Higher Rate	£71.40
Lower Rate Mobility	£18.95
Total	£90.35

*Main phase ie post assessment phase and claimant is in the Work Related Activity Group

Stage Four

Weekly Income Related ESA Applicable Amount	
Prescribed Amount Couple	£102.75
Work Related Component	£25.95
**Enhanced Disability Premium Couple Rate	£19.65
Total	£148.35

So Contributory ESA	£91.40
New Income Related ESA	£56.95
Total	£148.35

(Income Related ESA is Applicable Amount of £148.35 minus Contributory ESA of £91.40 which equals £56.95)

New Income Total £238.60

Income has nearly doubled.

** Payable because one member of the couple gets higher rate DLA Care

C. A SINGLE PERSON AGED BETWEEN 25-59 YEARS, LIVING ALONE AND GETTING INCOME SUPPORT

Stage One

Weekly Benefit Income £65.45

Stage Two

A successful claim made for DLA:

Middle Rate Care Component £47.80

Lower Rate Mobility Component £18.95

Stage Three

A successful claim for DLA raises the amount the person is entitled to in the following way:

Personal Allowance £65.45

IS Disability Premium* £28.00

IS Severe Disability Premium* £53.45

Stage Four

The new weekly benefit income is now made up of:

IS+DLA £213.65

In this example the claimant's weekly income has more than trebled

* Disability Premium is payable to people who are entitled to any rate of DLA

** Severe Disability Premium is only payable to people who are entitled to the higher or middle rate of the care component of DLA

This example has been based on an individual, living alone, for whom no one is claiming Carers Allowance (CA). The payment of Severe Disability Premium (SDP) is a complicated area. (For full details seek expert advice from welfare benefits adviser or see the Disability Rights Handbook, details in Appendix 5).

But please note:

- **When a person is entitled to SDP Social Security do not always automatically pay it. If you are already claiming Income Support write to your Social Security office and ask for your payment to be added. If you are already claiming Incapacity Benefit you will have to make a fresh claim for Income Support. Contact your local social security office for information about this. (NB a new claim for IS may well result in you being offered a 'work focused interview' to determine your employment potential). See G 'People on Incapacity Benefit'**

D. A SINGLE PERSON AGED BETWEEN 25-59 YEARS ON INCAPACITY BENEFIT (ICB) WHO BECOMES ENTITLED TO INCOME SUPPORT (IS) THROUGH A DLA CLAIM

Stage One

Weekly benefit income [ICB short term higher rate] £81.60

NB. No IS is payable because ICB is above IS applicable amount for a person over 25 years (£65.45)

Stage Two

Successful claim made for DLA middle rate care component £47.80
lower rate mobility component £18.95

Stage Three

A successful claim for DLA raises the applicable amount in the following way

IS Personal allowance	£65.45
IS Disability Premium	£28.00
IS Severe Disability Premium	£53.45
Total	£146.90

This means that the person can now claim IS to top up their ICB to this amount.

Stage Four

The new weekly benefit income is now made up of ICB+IS+DLA
A total of £213.65

In this example the person's income has nearly trebled and is the same amount as in Example C.

E. A SINGLE PERSON AGED BETWEEN 25-59 YEARS, LIVING ALONE AND GETTING INCOME SUPPORT

Stage One

Weekly benefit income [i.e. personal allowance through IS] £65.45

Stage Two

A successful claim made for DLA higher rate care component £71.40
lower rate mobility component £18.95

Stage Three

A successful claim for DLA raises the amount the person is entitled to in the following way:

Personal allowance	£65.45
IS Disability Premium	£28.00
IS Severe Disability Premium	£53.45
IS Enhanced Disability Premium*	£13.65
Total	£160.55

Stage Four

The new weekly benefit income is now made up of IS+DLA

A total of	£250.90
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In this example the claimant's weekly income has almost quadrupled

*Enhanced Disability Premium was introduced in April 2001 and is payable to people who receive the higher rate care component of DLA and are under 60 years. For people age 60 or over, pension credits apply- for more details see CPAG and Disability Rights Handbooks. (Appendix 5)

F. A SINGLE PERSON LIVING IN A RESIDENTIAL CARE HOME*

Stage One

Weekly benefit income [i.e. personal allowance through IS] £22.30

Stage Two

Successful claim made for DLA lower rate mobility component £18.95

Stage Three

The successful claim for DLA raises the person's weekly benefit income to
£41.25

In this example the claimant's weekly income has almost doubled

* This example relates to people living in private, voluntary or local authority care or nursing homes. People living in NHS establishments are not normally entitled to the mobility component after 28 days.

G. A COUPLE – AGED OVER 18 YEARS ONE PERSON CLAIMING DLA

Stage One

Weekly benefit [i.e. personal allowance through IS] £102.75

Stage Two

Successful claim made for DLA middle rate care component £47.80
lower rate mobility component £18.95

Stage Three

A successful claim for DLA raises the amount this couple are entitled to in the following way:

Personal allowance	£102.75
IS Disability Premium	£39.85
IS Carer's Premium*	£30.05
TOTAL	£172.65

Stage Four

The new weekly benefit income for this couple is IS+DLA **£239.40**

In this example the couple's weekly income has more than doubled

* For an explanation of why the Carer's Premium is payable in this example, see the Disability Rights Handbook (details in Appendix 5).

H. PEOPLE ON INCAPACITY BENEFIT (IB)

If you are on ICB and make a successful claim for either the middle or higher care component of DLA then you could be entitled to claim Income Support as well as maximum Housing and Council Tax Benefit. New claims for social security benefits including Income Support now need to be made via a telephone call to a 'Contact Centre' claims.

Please note that such a claim may mean that you are required to attend a work focus interview to establish your ability to work. Throughout the process of claiming you should seek the advice from a welfare rights adviser.

I. PEOPLE ON INCOME SUPPORT, HOUSING BENEFIT OR COUNCIL TAX BENEFIT BECAUSE OF INCAPACITY FOR WORK

If social security decides you are incapable of work you have to show that this has been your situation for 52 weeks to become entitled to the Disability Premium. An award of DLA will get you the Disability Premium from the date of your DLA claim.

J. PEOPLE ON EMPLOYMENT AND SUPPORT ALLOWANCE (ESA)

If you are on ESA and make a successful claim for DLA then you could be entitled to extra income related ESA (Severe Disability and/or Enhanced Disability Premium). If you just get contributory ESA, it could mean an income related ESA top up.

K. PEOPLE ON JOBSEEKERS ALLOWANCE (JSA)

If you are signing on as available for work and receiving JSA you can still claim DLA. DLA entitles you to Disability Premium in JSA (IB)

L. PEOPLE ON LOW INCOMES WHO WORK LESS THAN 16 HOURS A WEEK

If you work less than 16 hours a week and are on a low income a successful claim for either the middle or higher care component of DLA may mean that you are entitled to claim extra Income Support as well as maximum Housing and Council Tax Benefit. See G above for details of what a new claim involves.

M. PEOPLE ON LOW INCOMES WHO WORK 16 HOURS A WEEK OR MORE

If you work 16 hours or more a week, DLA will help you qualify for the disability element of Working Tax Credit to top up your earnings. See Disability Rights Handbook for further information.

N. CARERS OF PEOPLE ON DLA

Once you get the higher or middle rate care component of DLA your carer may be able to claim Carers Allowance. This could mean they may be able to get extra benefit, for example, if aged under 60 years a Carers Premium from the Income Support Scheme. If over 60 years a Carers additional amount from the Pension Credit Scheme. See Disability Rights Handbook for further information (details in Appendix 5)

O. PEOPLE GOING INTO HOSPITAL

If you go into hospital your DLA care and/or mobility components will only be paid for the first twenty-eight days of your hospital admission. ***Remember the first day of admission and the day of discharge from hospital are both treated as days at home for the purposes of calculating entitlement to DLA.***

Your higher rate mobility component can continue if it is being used to pay for a car under the Motability Scheme

<p>It is important that social security is kept informed of all dates relating to hospital admission, discharge and short periods spent at home so that maximum entitlement can be maintained. It is your responsibility or that of your appointee to keep social security informed of all of these changes. If you have been too unwell to do this whilst in hospital and the social security ask you to repay DLA which they claim has been overpaid to you during your hospital stay you should appeal against this decision on the grounds that you were incapable of doing this due to your ill health.</p>
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People who had been in hospital for over one year on July 31st 1996 and had been in receipt of mobility component for over one year on that date and are not detained under the Mental Health Act, will continue to receive the mobility component but only at the lower rate.

P. PEOPLE GOING INTO RESIDENTIAL CARE HOMES OR NURSING HOMES

If you go into a residential care home or nursing home and the fees are being paid by social security or the local authority, then you will not benefit from your DLA care component (See Disability Rights Handbook for more details). If you go into a residential care home or nursing home and you pay your own fees you will continue to benefit from your DLA care component. You can pay your fees from a combination of DLA care component, Retirement Pension & Pension Credit or ESA, ICB, and IS as long as you do not get financial help from the local authority, and the local authority did not make arrangements for your admission. You will continue to receive mobility component if you go into a residential care home or nursing home. If the establishment is funded by the NHS then normally you will not be entitled to the mobility and care components of DLA after the first twenty-eight days. This is a complex area and you should seek further advice from a specialist welfare adviser.

Q. EXEMPTION FROM THE PERSONAL CAPABILITY ASSESSMENT

If you receive the higher care component of DLA then you are **exempt** from the Personal Capability Assessment that is used to decide if you are incapable of work when you are on ICB, IS and SDA. This means that you should not be sent a self-assessment questionnaire and/or asked to attend a medical examination. This exemption is sometimes missed by social security. If you are requested by social security to attend a work focused interview point out to them that you are exempt. You can get help with this from a welfare rights or Citizens Advice Bureau worker or other benefits advisor. Receiving the higher rate care component of DLA does **not** exempt you from the Work Capability Assessment which is used to decide entitlement to Employment and Support Allowance.

(For more detailed information about the Personal Capability Assessment read Paper 2 in this series 'Mental Health and Incapacity for Work' details in Appendix 5).

THINKING ABOUT MAKING A CLAIM?

Before you make a claim, it is important to understand certain aspects of the assessment procedure that may be off-putting and deter you from claiming.

Many people find there is some stigma attached to being in receipt of a benefit that reflects their need for supervision, support etc. You may find that concentrating on the difficulties you experience is distressing. However, remember that DLA can make a substantial difference to your income even if you are in employment.

Before you make your decision about claiming DLA, read what we have to say about what is involved in the assessment process. Read the examples of the kinds of letters that people who know you will have to write. If you still have any doubts about making a claim, we suggest you talk it over with others who have claimed the benefit, your advocate, support worker or carer.

There are frequent changes to the DLA claim form. You should always check that you have the current version. People under 65 years, claiming this benefit have to complete a lengthy application form. This form allows people to assess their own needs.

At the time of writing this pack the DWP have been piloting a “pre-claim” questionnaire for people wishing to claim DLA. It is their intention to roll out this DLA960 checklist questionnaire to reduce the number of claims for DLA that have “no chance of success”. This is obviously of great concern to advisors and claimants alike. Figures show that each year millions of pounds of disability benefits go unclaimed under the present system and this DLA960 gives even less attention to a person’s mental health needs and the relevance to DLA.

We would urge claimants to tick “yes” to the question at the bottom of page 1 and “yes” to questions 2 and 3 in this form so that you are granted the opportunity and your right to make a full DLA application. Seek further advice from a welfare rights officer if needed.

You may be told by some mental health workers that there is no point in making a claim for DLA because in their opinion you would not be entitled to it. Don't be put off, speak to a welfare rights advisor or someone who has a working knowledge of DLA!!

MAKING A CLAIM

If you decide to make a claim you will have to get a DLA claim pack which as of December 2005 consists of one section. Complete it and send it off with evidence of your need for the benefit. Below you will find information and advice about the steps you must take in making a claim.

- GETTING THE CLAIM FORM
- COMPLETING THE CLAIM FORM
- PROVIDING EVIDENCE TO SUPPORT YOUR CLAIM

GETTING A CLAIM FORM

ACTION Contact your local social security office to request a claim form

OR:

Ring the Benefits Enquiry Line (BEL) and they will post a claim pack to you. The telephone number is 0800 882200. Minicom 0800 243355

COMPLETING THE CLAIM FORM

ACTION When you receive your claim pack (which should be date stamped with the date of the request and the date that you must return it in order to gain maximum benefit) and guidance notes. Ask someone, e.g. a carer, advocate (or anyone else who you would chose to speak on your behalf), care worker, social worker, to complete the form with you.

REMEMBER The form is intended to be a self-assessment of your needs. Put aside at least two to three hours to complete them. You will need extra time for putting your support letters together.

ACTION Before you complete the claim form, consider thoroughly your needs for help with care and mobility and describe what you need in your own words.

REMEMBER The claim form can be confusing. Some questions relate to the needs that arise from your mental health problems. If the questions do not cover all your needs do not worry you can provide additional evidence via a covering letter from either a doctor, nurse, support worker, etc. The claim form may seem to ask you some of the same questions twice. Always provide detailed information, even if you are repeating yourself.

MAKE A COPY OF YOUR FORM FOR FUTURE REFERENCE

PROVIDING EVIDENCE TO SUPPORT YOUR CLAIM

ACTION In the claim form you are asked to attach a statement from 'the person who knows you best.' This could be someone who looks after you like a relative, a friend, a carer, or someone else who has an up to date knowledge of your mental health problems, e.g. a social worker, community psychiatric nurse, psychiatrist or GP. Try and get this section completed. Then state in the box provided that there is a supporting letter or letters enclosed with the form. (See pages 25-29 for examples).

REMEMBER The people who know you well are an important means of providing extra information in support of your claim. To get the best possible assistance from them it is vital that they fully understand how to link your needs with the benefit criteria. Make sure they read this pack.

KEEP COPIES OF ANY LETTERS OF SUPPORT

WHAT HAPPENS AFTER I'VE MADE A CLAIM?

The person who makes a decision about your claim is the Decision Maker (DM) who may decide to send a doctor called an Examining Medical Practitioner-(EMP) to examine you at home before your claim can be decided.

ACTION You should only go ahead with an examination by an EMP if you have a friend/carer/worker with you. Evidence suggests that some EMPs do not have a good awareness of mental health problems. Some rush their visits and do not allow enough time to gather enough information. Be prepared for this. If the doctor arrives **without prior notice** ask for the examination to be postponed until it is convenient for you and your representative. You can make a request for a male or female doctor.

The DM may write to tell you that your claim has been successful. The letter will let you know what rate of benefit has been awarded, the date you first became entitled and the date on which your award runs out.

ACTION Consider whether or not the level of benefit reflects your level of need, e.g. you have been awarded the lower rate care or mobility component when your needs suggest that you should get a higher award.

If you are unhappy about the level, start date or finish date of your benefit award, write and ask for the decision to be looked at again (this is called asking for a revision.) You have one calendar month from the date that your decision was posted to you to ask for a revision of the decision. However, this may mean that your whole claim will be looked at again and there is a possibility that you may find your benefit rate is reduced. Regulations appear to be interpreted in a restrictive way, this is why it is important to make sure you make your initial claim strong by following the guidance. If you do ask for a revision get as much supporting evidence as possible from people who know about your condition.

The DM may write to you to say that your claim has been unsuccessful

ACTION If you are unhappy about this decision then write and ask for the decision to be looked at again (this is called asking for a revision). You have one calendar month from the date on the letter on the original decision to ask for a review. If you are unclear about why your claim has been turned down ask for more information. This request will extend the deadline for the revision by 2 weeks.

ABOUT REVISIONS

If you decide to ask for a revision there are a number of things you can do to improve your chances of being successful.

ACTION Write a letter requesting a revision within one calendar month, and send evidence in support of your request.

Try to get letters from the people who know and understand your needs best, e.g. carer, doctor, social worker, consultant

It may also help to keep a diary where you can show examples of real events when you needed help and support.

When your letter is received, the DM will consider your claim. They may ask for more information from, e.g. your doctor or arrange for a medical examination to take place.

ACTION If the DM does ask for more information from e.g. your doctor, it is vital that you or your advocate/adviser talks to your doctor to ensure that the information provided will support your claim.

You will be sent a decision on your revision including the reasons for that decision. If after the revision you are still unhappy about some part of your claim, contact the appeals service and request an independent appeal. See section below called About Appeals and Appendix 3.

If you are successful on revision you get a backdated award from the date of your claim.

ABOUT SUPERSESSIONS

If you have been awarded DLA and your circumstances change e.g. your health gets worse, then you can ask the DM to take another look at your claim. You can do this at any time.

ACTION Write to the DM asking for a supersession sending in evidence in support of your request. e.g. statements from your psychiatrist, community psychiatric nurse or care worker. Note you will be required to fill in a new DLA claim form

If you are unhappy about the supersession decision you can ask for a review or can appeal. Get advice quickly if you are told that you cannot appeal.

ABOUT APPEALS

If you wish to appeal you have one calendar month from the date the decision on revision is posted to you. If you have to send for a written statement of reasons for this decision, the time limit will be extended by 2 weeks. If you are unable to respond within the one calendar month deadline, you can request an 'out of time' appeal, for example on the basis of ill health. Take advice about this from a welfare rights expert. An appeal will be decided on the written information about you unless you request an oral hearing. We recommend that you request an **oral** hearing.

In your letter of appeal you need to be **specific** about the reason(s) why you are requesting an appeal, e.g. "you need continual supervision throughout the day etc." The Tribunal will only consider points you raise in your appeal application, so mention everything you think is relevant. Although the Tribunal has the power to look at all the evidence (See Appendix 1, para. 6)

ACTION You need to appeal on form GL24 which you can get from your local social security office.

ACTION If you decide to appeal, find someone to assist you who has knowledge in this area, e.g. a welfare rights worker, or Citizens Advice Bureau worker. Make sure that you or your representative return the Tribunals Service Enquiry Form form within 14 days, which will ask for you or your representative's availability to attend a hearing over the next three months. The evidence suggests that you are much more likely to succeed in your appeal if you are represented at the Tribunal. (See page 29 for an example of a successful supporting letter to a Tribunal and Appendix 3 for examples of case law that can be used in tribunals).

ACTION You can request that the Tribunal is held in a venue which is convenient to you, e.g. your day centre or home. You may need to provide evidence to support this request as the decision is at the discretion of the Tribunal Chair, as it is unusual for such requests to be made.

ACTION If the date of your appeal is not suitable to you or your representative, you should contact the Tribunal Service for a new date that is convenient. It is difficult to get a postponement unless there are exceptional circumstances.

ACTION While some Tribunals treat claimants with courtesy and consideration there is evidence that some claimants with mental health problems have experienced their appeal as a very destructive and painful process. If you feel that

attending the appeal hearing will make your mental health problems worse ensure that a representative goes to the appeal and provides the reasons why you cannot attend. If you do attend and you are dissatisfied with the way in which you were treated by the Appeal Tribunal – **COMPLAIN.**

Get information on who to complain to from www.tribunals.gov.uk alternatively telephone the team that has been dealing with your appeal and speak to the team Manager.

ACTION If your appeal to the Tribunal is unsuccessful seek further advice from a welfare rights worker or CAB. worker as to whether you can appeal to a Upper Tribunal on a point of law. This procedure is both complex and lengthy, it is vital you get good advice.

ACTION If you have been unsuccessful but still feel that you ought to be awarded DLA and if you still have the stamina, **CLAIM AGAIN!**

EVIDENCE SUGGESTS THAT THERE IS A HIGH RATE OF SUCCESS FOR CLAIMANTS WHO CHOOSE TO ASK FOR REVISIONS AND APPEALS SO IT IS WORTHWHILE

FOR FURTHER INFORMATION ABOUT PREPARATION FOR APPEALS TRIBUNALS SEE APPENDIX 1

DRAFTING A SUPPORTING LETTER

The DLA claim form provides opportunities for you to describe your disability and, in your own words, the care and/or mobility needs you have. It is important to give your own account of the difficulties you face in the space provided on the form. In addition our experience suggests that it is important for a diagnosis to be provided by your psychiatrist or a Community Psychiatric Nurse (CPN).

The DLA claim form also invites you to provide evidence from a carer or support/care worker who knows you well. In our experience the space on the form is too small to provide what is needed and we suggest that you attach a supporting letter to it.

The supporting letter should:

- avoid **vague** and **unsubstantiated** statements, e.g. “Mr. Singh has a history of psychiatric illness and needs daily help”
- include **specific reference** to areas of need e.g. diet, finances, medication, practical support, social contact, help with travel to new places
- emphasise where appropriate the claimant's need for **supervision/direct assistance/guidance** in these areas
- be definite e.g. harm and danger **will** result from Ms Green's reluctance to take her prescribed medication” or “Mr. Freeman's tendency to walk straight out into busy roads, with his arm raised to stop the traffic, **places** him and others in considerable danger”.

Particular points to emphasise

1. THE NEED FOR SUPERVISION, GUIDANCE, SUPPORT AND WATCHING OVER

It is important to concentrate on the person's need for supervision, guidance, support and watching over, particularly at times of crisis and anxiety. Link these clearly with the person's care and/or mobility needs.

It is important to note when and why supervision is required on a repeated and continual basis. Remember too that supervision can involve precautionary actions (e.g. when a crisis or danger is anticipated). At a time such as this it may be vital to watch over the person in order to see if their needs fluctuate (See Appendix 3, No's 4,5,and 6).

2. The CONSEQUENCES when SUPERVISION IS ABSENT

It is important to emphasise what the consequences will be when **supervision** and/or **guidance** is absent.

For example, what effect will this have on a person's mental/physical health? Would it result in self-neglect?

Will the person and/or others suffer **danger** or **harm** as a result of an absence of supervision? For example it could result in a person sustaining injury due to a road accident.

3. Emphasise HOW the SUPERVISION helps

It is important to show how the **supervision** and/or **guidance** can have a positive/preventative effect.

For example, helping to maintain a person in the community; decreasing hospital admissions; helping to deal with a crisis and so avoid harm and danger to themselves or others; helping them travel in order to take part in social or family events.

Emphasise the importance of the support you may receive from statutory services such as assertive community outreach teams.

4. When talking about SUPERVISION or GUIDANCE in relation to MOBILITY

It is important to remember that the focus is on the person's ability to take advantage of the faculty of walking when travelling to **familiar and unfamiliar destinations**. Therefore, if the reality is that the person is unable **to travel** or cannot travel **frequently** to familiar and unfamiliar places this is a vital factor to mention and explain.

SOME EXAMPLES OF SUPPORTING LETTERS

The following supporting letters give examples of workers statements which have contributed to successful claims.

EXAMPLE 1: A letter from a Community Psychiatric Nurse

Date

The Manager,
Disability Benefits Centre,

Dear Sir/Madam,

Re: Ms National Insurance No.:.....

I am writing in support of Ms..... application for the lower rate mobility component of the Disability Living Allowance.

Ms..... has had mental health problems since her teenage years, and has spent long periods of time in Hospital, where as well as drug therapy she received E.C.T. Whilst in hospital she did not go anywhere except to her parents' house once a week. She now lives in a nursing home for people with mental health problems, and is able to attend industrial therapy at the hospital every week day. She also goes home to her parents for a short period at the weekend. Ms..... never goes anywhere else unaccompanied however, because she feels that she does not have the skills to do so. Having spent a number of years in Hospital, Ms..... is not used to travelling new routes alone and becomes anxious at the thought. Ms..... illness has had an effect on both her concentration and her confidence, and she now requires the support and supervision of someone she trusts when she goes to unfamiliar places. She receives a monthly depot injection of Pipartil and has Procylicodene orally 3 times a day.

For these reasons I believe that Ms..... is eligible for the mobility component of the DLA and I hope you will view her application favourably.

Please do not hesitate to contact me should you need any further information.

Yours faithfully,

Community Psychiatric Nurse

EXAMPLE 2: A Letter from a Mental Health Social Worker

Date

The Manager,
Disability Benefits Centre,

Dear Sir/Madam,

Re:
National Insurance No:.....

I am writing in support of Ms claim for the mobility component and care component of the Disability Living Allowance.

Ms..... has had a number of admissions to hospital since her first in 1979. She has been given a diagnosis of schizophrenia with paranoid features. On a number of occasions Ms..... has been admitted compulsorily to hospital following episodes when it was considered necessary for both her own safety and the protection of others, that she was in hospital

Ms.....has been supported in the community by a community psychiatric nurse, social worker and day centre staff. She attends hospital for out-patient clinics and I have supported her while she has been in hospital.

However, probably the greatest support has been provided by her sister. Ms..... has lived with her sister for some years following the break-up of her marriage. Ms..... needs continual supervision regarding her compliance with medication in order to maintain a stable mental state.

Ms..... does not have any problems with travelling on familiar and well-known routes. It is quite different though when it is a question of travelling to new destinations. Her anxieties can take the form of paranoia; she believes that cars are trying to "get her" and she jumps out at them to "get her own back". At its worst, Ms..... fears that she could kill someone and these are fears that have been taken seriously by the medical team.

For these reasons I believe that Ms. should be eligible for both components of the Disability Living Allowance.

Please do not hesitate to contact me should you need any further information.

Yours faithfully,

Senior Social Worker

EXAMPLE 3: A letter from a Hospital-based Nurse

Date

The Manager,
Disability Benefits Centre,

Dear Sir/Madam,

Re: Mr. National Insurance No.:.....

I am writing in support of the application made by Mr..... for the mobility and care components of the Disability Living Allowance.

Mr.....was admitted to psychiatric hospital in May 1991, he has a long history of chronic mental illness. His illness severely restricts his ability to cope with independent living and also his mobility.

Mr. is due to leave hospital shortly. He will be living in his own tenancy with an intensive support package provided by the local community mental health services. His mobility is seriously affected by his illness and this situation is likely to last for the foreseeable future. He is extremely nervous and will not go anywhere alone and will need support to make journeys even to familiar places.

In addition Mr..... will need continual supervision with respect to his medication , his finances and his personal hygiene.

I hope that you will view this application favourably.

Yours faithfully,

Ward Nursing Manager

EXAMPLE 4: A letter from a community worker.

The Manager. Disability Benefits Centre,

Date

Dear Sir/Madam.

Re: Mr.....(Address.....) National Insurance No.....

Please find enclosed an application for DLA for the above-mentioned person.

Mr.....experiences enduring difficulties as a result of long-term mental health problems. He experienced a nervous breakdown in 1978 while working in full time employment. Since then he has only been able to return to work for a few months in 1980. Throughout this period he has had numerous admissions to hospital to receive treatment for depression/self harm (cutting himself).

MOBILITY NEEDS

Mr.....suffers from ongoing chronic anxiety and depression, which makes it very difficult for him to maintain relationships, even with his family. He has a fear and suspicion of those around him and will avoid shopping for food to avoid people. He often feels trapped when in public, and admits to feeling violent to those around him. The danger is that he may well pose a threat to the safety of himself and those he comes in contact with. He also suffers from a medical condition which impairs his hearing and his vision in one eye. This further increases his anxiety.

CARE NEEDS

Mr.....has spent 5 months recently as an in-patient in the Mental Health Unit after being admitted for harming himself. He often hears voices which instruct him to harm himself, and though he can receive protection and supervision in hospital, he harms himself as a way of relieving tension. There is enough evidence to show that once discharged from hospital he repeats these actions.

When Mr..... is living in the community he frequently overdoses on his medication which leads to hospital admission. He worries about domestic bills to the extent that he will not eat. This is of great concern as it poses a threat to his health and safety. He was detained in hospital partly because he was two stone underweight and was ignoring the need to eat. When he does eat he often takes fluids as his anxiety makes it hard for him to swallow.

Overall Mr.... is a very vulnerable individual who constantly poses danger to himself as a result of his actions. What makes his situation more fragile is the fact that he doesn't trust those around him. Should you require any further information please get in touch.

Yours faithfully,

Community Worker

EXAMPLE 5: An example of a successful supporting letter to an appeal tribunal from a consultant psychiatrist

Tribunals Service

Date

Dear Sir/Madam,

Re: Mrs. _____ (d.o.b _____) National Insurance
No.....

I am writing in support of Mrs..... appeal to the First Tier Tribunal against the decision to refuse her the mobility component of the Disability Living Allowance.

Mrs..... has a long-standing diagnosis of paranoid schizophrenia. She has auditory hallucinations, as a result she can become verbally aggressive and distressed by these symptoms. She finds it difficult to cope with travelling and going to new places as this tends to increase her symptoms and she requires supervision and guidance to try and overcome the problem.

Yours faithfully,

Consultant Psychiatrist

ADVICE TO CARERS, SUPPORT WORKERS AND ADVOCATES

From our experience of dealing with this type of claim for DLA you should bring to the attention of your carer and/or support worker and/or advocate the following important points.

THE PROCESS OF CLAIMING

1. The DLA form provides opportunities to describe physical and mental aspects of illness and disability. However, people claiming DLA and carers may often find it difficult to explain in detail the need for help, in terms of how a person's mental health problems pose difficulties on a day-to-day basis.

Action

Use the example letters for guidance on how to supplement the information provided on the form.

2. The process of claiming can get complicated, particularly as it enters the stages of revisions and appeals, the person claiming may be unclear and anxious about the process.

Action

Always explain to the person claiming DLA why and what you are doing throughout the claim process.

3. As well as perhaps feeling stigmatised as a result of receiving DLA the benefit is also seen as negative comment on the person's inability/disability and sometimes violent/aggressive behaviour. This can result in the person feeling negative about themselves. The fact that the information is then written down can add to a person's negative feelings.

Action

Providing the people with full explanations and listening and responding supportively may help overcome this.

4. Obviously if an initial claim is unsuccessful, the length of time necessary to deal with a revision simply prolongs worry and anxiety.

Action

Explain to the person claiming DLA that delay is likely. Emphasise the need to deal immediately with any letters received about the claim.

Ensure that all requests to doctors etc. for further information stress the need for a prompt reply.

5. Some GPs ask for payment for providing supporting evidence. These charges can be as much as £40.

Action

Alert your advocate, support worker or user organisation to this possibility and lobby the Primary Care Trusts in this area for a change of practice by GPs in recognition of the need to reduce poverty amongst mental health service users.

THE MEDICAL INTERVIEW

6. If an Examining Medical Practitioner (EMP) carries out a medical interview for DLA, they will not be known to the person claiming DLA and this can cause anxiety. Some people may also be worried that the medical examination will result in admission to hospital, particularly as it concentrates on very negative aspects of a person's need.

Action

People claiming DLA should be reassured and fully prepared for the medical examination. People have the right to ask for an EMP of the same sex, but this may ultimately depend on who is available. The examination is not about being admitted to hospital.

7. In the medical interview the person you are supporting may give either very little information in support of the application, or may attempt to appear very well for the Examining Doctor.

Action

As people's mental health difficulties tend to fluctuate and they can feel well one day, unwell the next, it is important that the EMP gets an accurate reflection of a person's on-going need, otherwise the DLA claim will fail. Having a carer or advocate present at the medical examination can help ensure this.

RENEWALS OF DLA

We have become aware that an increasing number of people who receive DLA for a limited period are experiencing problems when they are asked to apply for renewal of the benefit. They report that although their conditions are raising the same problems for them in their daily lives their DLA has been either downrated or lost at renewal time. This often seems to happen when people are making some progress with their recovery.

There are no easy answers to this problem. The only advice that we can give when they are filling in their forms is that people should focus on the negative impact of their condition, on what they cannot do rather than what they can do. Mental health services and staff encourage people to be positive despite their ongoing difficulties in daily living. This message is often a key part of a person's recovery. However, this is not relevant when applying for DLA. What is relevant is that the claimant still has ongoing care and mobility needs as they strive to recover from illness.

For further information about this via a video made by mental health service users who have experienced this kind of problem when claiming benefits see the details in Appendix 4 of how to access 'Bungled off Benefit'.

APPENDIX 1: PREPARING FOR FIRST TIER TRIBUNALS

1. It is important to read the appeal papers/submission papers carefully to identify issues you wish to dispute as the tribunal need not consider any issues that are not raised by the appellant and / or representative. The onus is on you to bring any issues to the tribunals attention.
2. Let the tribunal know if you are content with any section of the decision so as not to waste any time unnecessarily.
3. Remember that the Tribunal can only consider circumstances that existed at the time of the decision under appeal (not incidents occurring after the decision). However in DLA renewal cases, any change taking place between the date of decision and the date of renewal can be taken into consideration. Therefore it may be in the interest of the claimant to make a fresh claim for DLA if their support needs have increased significantly.
4. There is ultimately a need to establish a credible argument. The tribunal will not take kindly to a half prepared argument or one where the law has not been interpreted properly so this needs to be taken into consideration. N.B. you do not have to prove any fact 'beyond reasonable doubt' rather on a 'balance of probabilities'.
5. Try and submit your argument in a 'summary' report which succinctly ties up all your points/references to law etc in one easily readable side of A4. The Judge will appreciate it.
6. If you have been awarded DLA and are not happy with the rate or the components awarded and decide to appeal against this there is always a risk that you might not only lose the appeal but the award could be reduced or withdrawn completely. To minimise this risk it is important to be clear as to which component is being appealed. It is advisable **not** to provide evidence regarding the component that is not being appealed. The Tribunal still has the discretion to examine the "unappealed component", however if it does so it must indicate why it is examining the "unappealed component" ie the "trigger" for the review. The tribunal should also warn your representative that that is what it is doing. The Tribunal should also consider whether to allow a short adjournment for you and your representative to discuss whether to withdraw their appeal. The Tribunal should make it clear that this is what they are doing.

If you and your representative ask for a longer adjournment in order to obtain further evidence regarding the "Unappealed Component" then the Tribunal should consider this and if the adjournment is not granted give clear reasons as to why they took their decision.

APPENDIX 2: THE COOKED MEAL TEST

This test is used to assess a person for the lower rate care component of DLA. To qualify using this test you have to show that you are so severely disabled physically or mentally that you cannot prepare a cooked main meal for yourself if you have the ingredients

We have found that the Commissioner's decision **R(D)2/95: Lower rate care component of DLA-cooking test** is useful to quote when preparing evidence for a review or appeal. This decision confirms that the cooked meal test has been devised as a practical test of how far a person's disabilities cause them difficulties in making a freshly cooked main meal for themselves on a routine basis.

It is an abstract test and does not take into account the facilities or equipment a person may or may not have in order to cook such a meal regularly.

It should be used by claimants whose mental health problems mean that they need some help in carrying out the tasks involved in cooking a main meal for themselves.

In thinking about this test it is important to bear in mind that there are a variety of difficulties associated with mental health problems which may distract a person, make them forgetful or otherwise unable to carry out the labour intensive task of preparing and cooking a meal. If a person eats take-always or snacks or only has a cooked main meal prepared by family, friends, hospital or day centre it is important to ask why they are making this choice.

We have also found that the checklist reproduced below from the Disability Alliance Disability Rights Handbook (See Appendix 5 for details) is helpful in working out what is involved in making a cooked meal and where the difficulties lie for a person wishing to claim DLA.

“The process of preparing a cooked main meal includes:

- planning what to prepare for the cooked main meal e.g. each type of food, seasoning and the quantities required;
- the law says you already have the ingredients for the main meal, so it's debatable whether or not “preparation” also includes getting them from their usual storage places
- carrying out all the stages in the correct order and to the standard timings;
- lifting, carrying, washing, peeling and chopping fresh vegetables, meat etc.;
- using taps, e.g. to fill a saucepan;
- using a cooker, e.g. lighting the gas, adjusting the heat, opening and closing an oven door;
- putting vegetables etc. into pans, stirring, tasting, checking whether properly cooked etc.
- lifting and moving full or hot pans on or off a cooker, or bending to lift pans into or out of the oven;
- draining cooked vegetables from hot pans; and
- dishing up your meal.”

APPENDIX 3: USING CASE LAW

Case law on social security legislation is made by Social Security Commissioners, now called Upper Tier Judges, the Court of Appeal and the House of Lords. Their rulings (called 'decisions' when made by the Upper Tier Judges and 'judgements' when made by the Court of Appeal and the House of Lords) about the meaning of benefit law must be applied by Decision Makers and Tribunals.

On some occasions quoting decisions or judgements can be helpful when talking to Social Security, or asking for a Revision, Supersession or an Appeal.

EXAMPLES

1. Quoting this decision could be helpful in situations where Social Security is using the fact that someone has stayed out of hospital or institutional care as evidence that they do not qualify for DLA.

Commissioner's Decision R(A)2/91 provides that adjudicating authorities would be wrong to assume in cases of mental illness, that the claimant does not have a serious condition or need for continual supervision by reference to the mere fact that medical advisers have not put them under hospital or institutional confinement. The Commissioner acknowledged the Department of Health's policy "to have such patients looked after within the community, wherever possible" and that this policy was "based on modern concepts of caring for those who suffer from mental illness."

2. Our experience to date suggests that on occasions when the medical evidence you have provided in support of your claim has been ignored or not sufficiently addressed quoting the decision below can be important. It can result in a positive response to your request for the refusal of benefit to be reconsidered at revision or appeal stage.

First Tier Tribunal

Findings of fact and reasons for decision

CM/527/92

Affirming R(M)1/93 and CSM/75/92, "the claimant should be able to discern why the evidence failed to satisfy the authority. Where a specific contention is put forward or medical evidence submitted, it should be clearly taken into account and a reason given for its rejection"

3. If questions are being raised about the meaning of the phrase “**significant portion of the day**” when claiming lower rate care component you may find it helpful to refer to the following:

CDLA/58/93: also numbered as *94/94 Lower rate care component

The Commissioner has stated that he “would not dissent from the view that the length of time could be.....a minimum of one hour:”

4. The following are useful decisions to quote when there is a question about what constitutes **supervision**.

Commissioner’s Decision R(A)6/89 provides approval to the observations of R(A)1/73. In this decision it was held “I think ... there is a danger of not starting the enquiry [as to the need for continual supervision] at an early enough point. If one starts with the fact that the disabled person is living with relatives who are looking after him, and then asks oneself to what extent he requires supervision, that is beginning at the wrong point. It might indeed be helpful to ask also whether without substantial danger the disabled person could be by himself in a house at any rate for periods long enough to make any supervision that there was not continual.”

Commissioner’s Decision CA/194/1987 provides that “life contains the unexpected” and it was an error of law for adjudicating authorities in considering whether a person needs continual supervision to fail to take adequate account of the unexpected happening and it’s danger creating potential.

Commissioner’s Decision R(A)1/88 (Moran case) confirms that “supervision” may be precautionary and anticipatory. That a person who stands by to intervene in the event of danger can be said to be exercising supervision between the periods of danger arising. That the frequency or infrequency of the event of danger is immaterial to the question whether supervision is continual so long as the risk of substantial danger arising is not “too remote” a possibility.

Commissioner’s Decision R(A)3/92 confirms that the supervision test is not about eliminating danger merely reducing the real risk of harm. This came following the refusal of payment to a potential suicide on grounds that no amount of supervision could prevent a determined suicide.

Commissioner’s Decision R(A)2/75 confirms “continual supervision” is overseeing or watching over considered with reference to its frequency or regularity of recurrence. The object of supervision is to avoid substantial danger which may or may not in fact arise, so supervision may be precautionary and anticipatory, yet never result in intervention, or it may be ancillary to and part of active assistance given on specific occasions.

Commissioner's Decision R(A)1/73 confirms that the phrase should not be too narrowly construed. "Substantial danger can result not only from a fall but from exposure, neglect and a good many things."

5. In order to clarify the meaning of the words '**guidance**' and '**supervision**' when claiming lower rate mobility component it may be helpful to refer to:

CDLA/42/94: also numbered as *109/94 Lower rate mobility component-guidance on meaning

The Commissioner has stated that: "The meaning of guidance or supervision must be considered within the context of action which is aimed at enabling the claimant to take advantage of the faculty of walking despite the limits imposed by her physical or mental conditions. It is not a condition that guidance or supervision should be necessary to avoid a risk of danger to the claimant or others."

"(j) Guidance means the action of directing or leading.....for example [it may] be constituted by physically directing or leading the claimant or by oral direction, persuasion or suggestion."

"(k) Supervision means accompanying the claimant and at least monitoring the claimant or the circumstances for signs of a need to intervene so as to prevent the claimant's ability to take advantage of the faculty of walking being compromised. Other, more active, measures may amount to supervision. The monitoring does not cease to fall within the meaning of supervision by reason that intervention by the person accompanying the claimant has not in the past been actually necessary".

"(l) The fact that the claimant derives reassurance from the presence of the other person does not prevent action which would otherwise fall within points (j) or (k) being guidance or supervision."

6. **Commissioner's Decision CDLA/3986/2003** Continual supervision and manic depression. 'The need for supervision in my judgement is continual given that (her) episodes of manic depression are not predictable and cannot then reasonably be foreseen.

7. In order to clarify the meaning of the phrase '**so severely disabled**', it may be helpful to refer to:

CDLA/2481/1995: Meaning of "so severely disabled"

The Commissioner said that the phrase 'so severely disabled physically or mentally that ... he requires ...' in s72(1)(a) and (b) Social Security Contributions and Benefits Act (SSCBA 1992) 'seem to me to unequivocally point to the fact that the test of severity is whether the claimant makes out the other relevant requirements of those provisions'. There was no separate requirement that a claimant has to show, to get a claim off the ground, that s/he suffers from severe physical or mental disability.

8. Regarding “attention” with “bodily functions”

Secretary of State v. Fairey (aka Halliday), 21.5.97

The issue of what counts as “attention with bodily functions” has become an increasingly complex area. In a 1997 House of Lords judgement, it was stated that: 'The test in my view, is whether the attention is reasonably required to enable the severely disabled person as far as reasonably possible, to have a normal life'

For more detailed information about this see Disability Rights Handbook, 27th Edition, 2002-2003)

Also see Commissioner’s Decision CDLA/1148/1997: also numbered as *19/00 for a helpful decision regarding the need for ‘frequent attention with respect to bodily functions’ where the need for frequent reassurance for a claimant who had chronic anxiety, panic attacks and agoraphobia resulted in the claimant receiving DLA middle rate care. But note that the government has ruled that this kind of frequent reassurance must be given in person and not over the telephone.

9. Regarding the cooking test and mental health.

CSDLA/80/96 provided “I do not accept the adjudication officer’s original submission that lack of motivation can never found an award based on the main meal test.” The Commissioner held that if explained and in consequence of a neurosis a lack of motivation or fear prevents the preparation of a cooked main meal then a tribunal would be entitled to conclude that the lowest rate care component award was justified.

Commissioner’s Decisions CDLA/206/94 and CDLA/3360/1995 suggests that inability to follow a recipe due to, for example, poor concentration or learning disability will satisfy the cooking test.

10. Regarding severe mental impairment of intelligence.

Commissioner's Decision CDLA/8353/95 also numbered R(D)3/98 provides as a yardstick an IQ of 55 or less. However, a Court of Appeal decision Megarry v CAO on 11.11.99 ruled that tribunals and commissioners need to admit and consider evidence other than ‘a mere IQ score’. Court of Appeals decisions are more authoritative/important than Commissioners' decisions.

11. Regarding diagnosis of illness, this Commissioner’s decision favours claims which emphasise a person’s support needs rather than relying on medical diagnosis.

Commissioner’s Decision CDLA/1721/2004 This concerns the meaning of the phrase ‘so severely disabled physically or mentally’ when assessing whether or not a claimant satisfies the criteria for the are component and/or

the lower mobility component. The tribunal of commissioners concluded that it was not a condition of entitlement that there needed to be a diagnosed or diagnosable medical condition – the severity of the claimant’s disability would be determined by the care and/or mobility needs that were reasonably required – and advises decision makers of the action they should take in line with the decision.

12. People with mental health problems and alcohol abuse

DLA claims are often refused by Social Security if they consider the claimant’s needs are linked to alcohol abuse. The argument then centres around whether or not the alcohol consumption is a voluntary act and therefore bears no significance with respect to a person’s disability or whether the drinking is caused by certain health problems.

Commissioner’s decision R (A) 2/92 can be used to argue that the claimant’s problem/condition can **be defined medically** if it is considered the alcohol consumption is not voluntary but linked to their overall mental health difficulties.

Commissioner’s decision CDLA/171/98 states that any symptoms that are medically regarded as mental or physical disabilities should be assessed **regardless** of their cause. Nor is it particularly relevant whether the alcohol misuse was within the claimant’s control.

Commissioner’s decision CDLA/778/2000 is a ‘starred’ decision which means the Commissioner wants other Commissioners to take particular notice and therefore carries substantial ‘weight’ in arguing a case. Here the Commissioner states that in certain cases (where evidence can show that alcohol misuse is a ‘medical condition’) alcoholism is **capable** in itself of being a physical or a mental disability, or both, and that to dismiss it as merely the result of weak will or a defective character is too summary’.

Commissioner’s Decision CDLA/2408/2002 states ‘....care needs resulting from any physical or mental disability which have been caused or aggravated by alcoholism should be taken into account, irrespective of whether the consumption of alcohol can be considered within the claimant’s control’.

As with previous arguments for securing DLA, follow up your case with supportive evidence which outlines the care, support and supervision needs which arise as a result of the condition

APPENDIX 4: EXPORTING DLA, ATTENDANCE ALLOWANCE AND CARER'S ALLOWANCE

New DWP Guidance (From Rightsnet)

The DWP has issued new guidance in relation to exporting DLA, Attendance Allowance and Carer's Allowance and, in particular, the Government's announcement that, following the ECJ judgement in 'Commission of the European Communities v the European Parliament and the Council of the European Union (C-299/05, 18 October 2007), it has relaxed the requirement for claimants to demonstrate that they have been in the UK for 26 out of the past 52 weeks.

The new guidance, DMG memo 28/10, states:

'after careful consideration, the Department now accepts that those who had their entitlement to AA, DLA (Care) or CA terminated after 08.03.041 but before 18.10.07, following a move to another EEA state are entitled, upon request, to have the award reinstated provided certain conditions are met. This will normally require the disallowance decision to be superceded and their benefit reinstated from the date of request, so long as throughout the disallowance period:-

- 1. All other domestic conditions of entitlement have been met, and**
- 2. The UK was the competent state for a payment of sickness benefit**

The Department accepts that such claimants will have satisfied the past presence test when they left the UK and are not required to further satisfy this condition at the date of request for reinstatement'. (paragraph 12)

The memo goes on to give detailed guidance on related issues including:-

- Where the request for reinstatement has already been refused
- Where the period of original award had expired before the request for Reinstatement
- When, for the DLA Care Component, the claimant reaches 65 before the date of the request for reinstatement
- Where the original disallowance decision terminating the award has been confirmed by the First Tier Tribunal or Upper Tribunal
- Dealing with requests for reinstatement of Carer's Allowance, since a disallowance cannot be superceded
- Where decisions are under appeal

DMG Memo 28/10 is available from the DWP website

APPENDIX 5: FURTHER HELP WITH DLA CLAIMS

The following will provide you with more detailed help and guidance:

1. **CPAG WELFARE BENEFITS AND TAX CREDITS HANDBOOK** (12th edition) April 2010
Price: £37.00
(£9.00 + Post free for individual benefit claimants direct from CPAG)

Available from:

Child Poverty Action Group,
Department WS
94 White Lion Street
London N1 9PF
Tel: 02078377979

Email enquiries to bookorders@cpag.org.uk
Also available on CD Rom

2. **DISABILITY RIGHTS HANDBOOK** (35th edition)
Price £27.00 (incl. P&P) (£12.00 for people on benefit).
Also available on CD Rom.

Available from:

Disability Alliance,
Universal House
88-94 Wentworth Street
London E1 7SA
Tel: 0207 2478776

www.disabilityalliance.org

3. **THE DISABILITY HANDBOOK: A Handbook on the Care Needs and Mobility requirements likely to arise from various Disabilities and Chronic Illnesses** (2004).
Available as a download from www.benefitsnow.co.uk or www.dwp.gov.uk

4. **MENTAL HEALTH AND INCAPACITY FOR WORK:** An information pack for people claiming Incapacity Benefit, Income Support & Severe Disablement Allowance

Available from: Pam Newby, CEIMH (for full address see below). Also downloadable from:
www.ceimh.bham.ac.uk

5. **CLAIMING ATTENDANCE ALLOWANCE**

An Information Pack for adults aged 65 or over with Mental Health Issues including Dementia, their Carers and Advocates

Available from:
Pam Newby
Centre of Excellence in Interdisciplinary Mental Health
The University of Birmingham
Edgbaston
Birmingham B15 2TT
Tel: 0121 415 8570

Also downloadable from: www.ceimh.bham.ac.uk

6. **POVERTY, SOCIAL EXCLUSION AND MENTAL HEALTH:**

A RESOURCE PACK-Ann Davis and Phil Hill (2001)

Downloadable from www.ontheside.org/focus/fpovres.pdf

7. **THE BIG BOOK OF BENEFITS AND MENTAL HEALTH 2010/11**

(price not confirmed, please check)

From Judy Stenger, Neath Mind Income Project, 32 Victoria Gdns, Neath SA11 3BH
Telephone 01639-643905. E: welfarerights@btconnect.com

8. **BUNGLED OFF BENEFITS** video- downloadable from www.ceimh.bham.ac.uk

AUTHORS' POSTSCRIPT

If you have used this guide and have found it useful or you have ideas about how it could be improved we would like to hear from you.

Send your comments, ideas etc to:

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CEIMH PUBLICATIONS:

Paper 1-Ann Davis, Alex Davis and Martin O'Kane (2010) Claiming Disability Living Allowance: An Information pack for people aged under 65 using Mental Health Service, their Carers and Advocates.

Paper 2- Jean Betteridge & Ann Davis (2010). Mental Health & Incapacity for Work: An Information Pack for People Claiming Incapacity Benefit, Income Support & Severe Disablement Allowance.

Paper 3- Marion Clark, Ann Davis, Adrian Fisher, Tony Glynn and Jean Jefferies (2008): Transforming Services: Changing Lives. A Guide for Action

Paper 4 – Jean Betteridge, Alex Davis, Ann Davis, Martin O'Kane (2010) - Claiming Attendance Allowance: An Information Pack for adults aged 65 or over with Mental Health Issues including Dementia, their Carers and Advocates

ISBN NUMBER 0 7044 1354X

Copies of this report can be downloaded from www.ceimh.bham.ac.uk alternatively send a stamped addressed envelope with a large first or second class stamp) to: Pam Newby, Centre of Excellence in Interdisciplinary Mental Health, The University of Birmingham, Edgbaston, Birmingham B15 2TT.

