

Disability Living Allowance

for Blind and Partially Sighted People 2007/08

This fact sheet explains what is important for claiming Disability Living Allowance (also known as DLA). It is useful for those who work with blind and partially sighted people, such as social workers, rehabilitation officers and local society workers. Blind and partially sighted people will also find it helpful.

Please note that the new term for being registered blind or partially sighted is 'severely sight impaired' and 'sight impaired'. However, we refer to the old terms throughout this fact sheet as many people are still unfamiliar with the new terms.

Basic rules

Claim this benefit if:

- you have had severe sight problems for at least 3 months; **and**
- you expect to have them for another 6 months; **and**
- you are aged under 65

Why claim Disability Living Allowance?

DLA is a very useful benefit because:

- you get it as well as any other income - it is non-means tested;
- you can claim while you are working, studying or unemployed;
- no national insurance payments are necessary - it is non-contributory;
- it is not taxable;
- it does not reduce any other social security benefits. If you get Income Support, Working Tax Credit, Housing Benefit and/or Council Tax Benefit, getting DLA sometimes increases them.



So, getting DLA usually means extra cash in your pocket, whatever your circumstances.

DLA is made up of two parts - a care component and a mobility component. You can get one rate from each component. The rates are:

The mobility component:

- £17.10 per week - the lower rate
- £45.00 per week - the higher rate

The care component:

- £17.10 per week - the lower rate
- £43.15 per week - the middle rate
- £64.50 per week - the higher rate

Lower rate mobility component

To qualify for this rate of benefit, you need to explain the difficulties you have in unfamiliar places. These might be:

- **avoiding obstacles:** such as parked cars, lamp-posts, dustbins, bollards, overhanging trees and other pedestrians
- **tripping over:** things like loose kerbs and paving stones, road works, uneven road surfaces, potholes or steps
- **crossing roads:** for example, knowing when traffic is coming or roads are clear, anticipating cyclists and judging the speed of cars
- **following directions:** such as reading maps, road and street signs, bus numbers, destinations or timetables.

The claim pack does not make it clear that you need to explain your problems in unfamiliar places, but the law does. Section 73(1)(d) of the Social Security Contributions and Benefits Act 1992 states that you qualify if you are:

"...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 out of doors without guidance or supervision from another person most of the time..."

This rule is therefore not a test of your physical capacity to walk, nor is it an assessment of your ability to walk on familiar routes. Any fear or anxiety you have about going outdoors is also irrelevant to your claim, unless you suffer from a mental health problem such as agoraphobia. This is because the law was specifically changed to prevent them being taken into account. Reg 12(7)(1)(d) of the Social Security (DLA) (Amendment) Regulations 2002 makes this clear by stating that a person would not satisfy the above condition if s/he:

"...does not take advantage of the faculty in such circumstances because of fear or anxiety."

Higher rate mobility component

You do not qualify for this rate of DLA unless you have a disability other than being blind or partially sighted. Social Security law and case law from the Law Courts and Social Security Commissioners make this clear.

Section 73 of the Social Security Contributions and Benefits Act 1992 and Regulation 12 of Social Security (Disability Living Allowance) Regulations 1991 say you are eligible for the higher rate mobility rate component if, as a result of your disability:

- you are unable to walk, **or**
- you are virtually unable to walk, or the exertion required to walk constitutes a serious danger to your life, **or**
- it could lead to a serious deterioration in your health, **or**
- you are a double leg amputee, **or**
- you are deaf and blind, **or**
- you are severely mentally impaired with severe behavioural problems and you qualify for the higher rate DLA care component.

Virtually unable to walk

A Commissioner in R(M)1/84 said blind people who need guidance cannot qualify on the grounds that they are "unable" or "virtually unable to walk". However, if walking short distances causes you pain or severe discomfort then you could qualify under this rule.

Deaf and blind

To qualify for the higher rate mobility on grounds of being deaf and blind, you have to show that you are both 100% disabled from blindness and 80% disabled from deafness.

Regulation 12 of Social Security (Disability Living Allowance) Regulations 1991 says you qualify for the higher rate mobility component if you are 'both deaf and blind' and, as a result, are:

"...unable, without the assistance of another person, to walk to any intended or required destination while out of doors."

You are treated as 100% disabled from blindness if you are:

"...unable to do any work for which eyesight is essential."

This is the same definition as is used for blind registration. Therefore, if you are registered blind, or if your sight loss is such that you could be registered as blind, you are treated as 100% disabled.

Unfortunately, deciding if you are 80% deaf is not as simple. CDLA 7090/99 says the Department for Work and Pensions (DWP) should assess your hearing loss using an audiogram. If your average hearing loss is more than 87 decibels at 1, 2 and 3 kHz in each ear, you may be 80% deaf. However, if you use hearing aids, the DWP then has to consider how much they improve your hearing. In CDLA 7090/99 the Commissioner said:

"Assessment of (her) hearing loss with hearing aids should be calculated in the open air rather than in an enclosed environment".

The DWP used to define 80% deaf as being "unable to understand a simple instruction shouted from 1 metre". However, CDLA 7090/99 says:

"...this should not be regarded as conclusive in determining the matter."

This is a very contentious area. So, if you are trying to get higher rate mobility under the deaf/blind rules, you should seek further advice from a welfare rights adviser.

Lower rate care component

The problems you have cooking a main meal can enable you to get this rate of DLA. You should mention the problems you might have if you attempted the following tasks:

- **reading:** for example, recipes, instructions, use by dates, markings on weighing scales and measuring jugs or settings on cookers
- **identifying ingredients:** for example, distinguishing between different tins and packages

- **monitoring cooking:** such as using a timer, ensuring pans don't boil over or burn out and checking if food is properly cooked
- **ensuring hygiene and safety:** for example, handling knives, opening tins, ensuring food is fresh and properly cleaned, dealing with spilt liquid or broken glass and avoiding burns and scalds.

You should consider your ability to do these tasks. Even if you don't normally cook for yourself you ought to qualify. Equally, if you can only prepare snacks or warm up pre-cooked meals, for example, in a microwave, you still pass the test.

Commissioners' decision CDLA 85/94, CDLA/3778/2002 and CDLA/5250/2002 establish this. If you can only prepare a meal very slowly, you may also qualify, as another case, CDLA 14594/96, says: you must be able to cook a main meal at a reasonable speed. All of these cases looked at Section 72(1) of the Social Security Contributions and Benefits Act 1992, which states that you qualify for the lower rate if:

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

Another way you can qualify for the lower rate care component is through the help you need as a result of the problems with your sight. If the amount of help you need is an hour or more, most days, you should get this rate of benefit.

Commissioners' decision CDLA 058/93 (*94/94) and R(DLA)2/03 said this is enough to be a significant portion of the day. Section 72(1) of the Social Security Contributions and Benefits Act 1992 says you qualify if:

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

If you only need help in the dark, or in poor light, you may qualify in this way. However, if you need help as a result of your sight loss you should try to get the middle rate care component of DLA.

Middle rate care component

The help you need because of your severe sight problems can enable you to get the middle rate care component of DLA. You may need help to do the following:

- **washing yourself:** for example, checking your face, hands and nails are clean, shaving, checking your make-up is correctly applied, identifying containers and brushing your hair
- **dressing:** for example, sorting clothes and checking they are clean and matching or sorting jewellery

- **finding and identifying your belongings:** such as money, cassettes, CD's, keys and medication
- **getting around:** for example, crossing roads, avoiding everyday obstacles, guiding in shops, pubs, restaurants and when exercising
- **reading:** for example, letters, newspapers, TV and radio guides, medicine containers, labels and price tags, shop receipts and 'best before' dates on food. This could also be help that you need whilst at work.
- **eating and cooking:** for example, checking your food is fresh, identifying where your food is on a plate, cutting up your food and de-boning chicken or fish
- **social and leisure activities:** for example, following TV programmes, doing the daily crossword, guiding you in pubs and other public places, or helping you to tend your garden.

To get the middle rate of DLA you need to tell the DWP that you need help with things like the above, several times, most days of the week, and that you need some help in the morning, the afternoon and the evening. This is the most common way blind and partially sighted people qualify for this benefit. A diary of your daily routine may help to illustrate the pattern of your needs.

You must also explain that the help you need can only be provided by another person. Sometimes the DWP argues that a particular need for help can be met by a 'simpler method', e.g. a guide dog, a low vision aid or a Braille label. You should anticipate these objections and explain why it may not be reasonable or practical to use a particular aid or adaptation. For example, guide dogs cannot read bus timetables and print is often too small to be read even with magnification.

What the law says

The Social Security Contributions and Benefits Act 1992 explains that to qualify for the middle rate of the care component you must satisfy **either** the day **or** the night condition. To qualify for the higher rate you must satisfy **both** the day **and** the night condition. For more information about the higher rate, see the relevant section further on in this fact sheet.

Section 72(1) of the Act says the **day condition** is:

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

And it says the **night condition** is:

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

Attention

The help you need only counts as 'attention' if it is closely connected with your 'bodily functions'. Commissioners' decision R(A)2/80 explains that the term 'bodily functions' includes physical functions such as seeing, hearing, speaking, washing, dressing, eating, going to the toilet, walking and getting out of chairs.

Before 1994 the DWP did not accept that the assistance blind people needed could count as 'attention'. However, in the Mallinson judgment, the House of Lords decided that guiding or reading to a blind person is 'attention' in connection with the bodily function of 'seeing'. The Lords ruled that:

"The attention is in connection with the bodily function if it provides a substitute method of providing what the bodily function would provide if it were not totally or partially impaired".

Therefore, a sighted person provides 'attention' by acting as your eyes. So, if someone assists you with guiding, reading, describing something or giving verbal instructions they are giving you 'attention'.

Commissioners' decision R(A)3/86 says that, in order for help with seeing to count as attention, it must be 'reasonably required' but it does not need to be 'medically required'. The House of Lords said in the case of Secretary of State for Social Security v Fairey (also known as Halliday) that whether something is 'reasonably required' depends on:

"...whether the attention is reasonably required to enable the severely disabled person as far as reasonably possible to live a normal life."

The Lords agreed with the Commissioner in CA 780/91 who said the assessment should take into account:

"...such attention as may enable the claimant to carry out a reasonable level of social activity."

So, when you complete the DLA claim form, you should list all the help you need to undertake social, recreational or leisure activities.

The frequency test

You need to show that you need some help from someone else most mornings, afternoons and evenings. This shows you need 'frequent attention throughout the day'.

Commissioners' decision R(A) 2/80 says:

"...frequent connotes several times and not just once or twice."

R(DLA)10/02 (CDLA/3908/2000 unreported) held that:

"Only if the claimant reasonably requires attention with her bodily functions, very often across the whole span of the day albeit each episode may be short, will she qualify for middle rate care through the attention route" and that "throughout the day" means "across the whole span of the day".

This decision acknowledged that whilst 'individual episodes may only be brief' it was 'the frequency and pattern of the attention that was important'.

So, even if you have lengthy periods when you do not need help, you can still qualify for DLA. This is because CA 140/85 said that if your needs are in the main at the start and end of the day, this did not stop you qualifying. Therefore, even a small amount of help in the middle of the day is very important.

Domestic duties

You may need a lot of help with 'domestic duties', such as cooking and shopping. If you do your own cooking or shopping and need a sighted person to help you accomplish these tasks, this may help you to get the middle rate care of DLA. For example, you may need someone to guide you to the shops or read cooking instructions to you. Commissioners' decisions CDLA 267/94, CDLA 11652/95, CDLA 3711/95 and CDLA 12381/96 support this approach. In CDLA 267/94 (*12/96) the Commissioner says that:

"...if a claimant reasonably requires to be able himself to cook and can do so if he has assistance with, for example, seeing or lifting, that seems to me to show a requirement for attention in connection with his bodily functions."

However, this is a contentious area of the law that creates many disputes between claimants and the DWP. This is because Commissioners' decision R(A)2/80 says cooking, shopping or other domestic tasks are not bodily functions. Paragraph 61101 of the Decision Makers Guide, official guidance to DWP staff, says:

"Attention is defined as some personal service of an active nature in connection with bodily functions. It does not in general include cooking, shopping, keeping the house clean or other domestic tasks which are commonly done by one person for the benefit of another".

The law therefore seems to make a distinction between someone doing domestic tasks for you, or doing them for yourself with help. Someone doing them for you is not 'attention' that helps you to get DLA, but getting help to do them yourself may help you to qualify. However, the DWP may continue to exclude attention that enables you to perform your own domestic tasks. As the issue of domestic duties is contentious, you should try to show that you need 'frequent attention throughout the day' without counting domestic tasks.

Looking after your child

If you are a parent who needs sighted help to wash, dress, feed and play with your child, this should help you qualify for DLA care component as it is attention with the bodily function of seeing. Most Commissioners' decisions support this. This was established in CDLA 16996/96 and CDLA 16129/96 where the claimants were visually impaired mothers of babies. Two cases about other disabilities, CDLA 5216/98 and CDLA 4352/99, also said that help to care for a child helped the claimants to qualify for DLA. However, in CSDLA 314/97 the Commissioner thought this help was too remote to be attention. So, if possible, try to show you qualify without counting help with looking after your child.

Supervision

Another way to get the middle rate of the care component is to convince the DWP that you need 'continual supervision'. You satisfy the continual supervision condition if you need someone to keep an eye on you to prevent the risk of substantial danger. You may satisfy the supervision condition if:

- you suffer from fits or seizures because of diabetes or epilepsy
- you are at risk of accidents due to dementia, memory loss, confusion or dizzy spells
- you are prone to falls indoors as well as outdoors
- you have recently lost your sight and have not been able to adjust.

The supervision you need must be 'continual'. If you only need supervision in specific situations, for example, using a cooker, crossing a road, or having a bath, then it is not 'continual'. Furthermore, supervision only counts if you are at risk of 'substantial danger'. This does not mean a risk of death, but supervision to prevent minor knocks or food spills is unlikely to count. So, most blind and partially sighted people are more likely to qualify through their need for 'attention'.

Higher rate care component

If your only disability is that you are blind or partially sighted, you are unlikely to qualify for the higher rate of the care component. This is because you need to show that you require help both during the day and at night.

Children and DLA

There is a specific claim form for children (DLA1 Child) that asks questions about development, therapy and communication. If you are claiming for your child you should get our 'DLA for Children' fact sheet. It explains in more detail, the following special rules for children under the age of 16:

Care component for children

The cooking test does not apply if your child is under 16. Section 72(6) of the Social Security Contributions and Benefits Act 1992 says if you are applying for a child under 16 you must show they satisfy the care or supervision conditions and in addition either:

- s/he has requirements substantially in excess of the normal requirements of a child of the same age; **or**
- s/he has substantial requirements which a younger child in normal health would have, but which a healthy child of the same age would not have.

Mobility component for children

The lower rate mobility component is only paid from age five onwards. Section 73(4) of the Social Security Contributions and Benefits Act 1992 says if you are claiming for the lower rate mobility component for a child aged under 16 you must show that either:

- s/he requires substantially more guidance or supervision than a non- disabled child of the same age; **or**
- non-disabled children of the same age would not require such guidance or supervision.

The higher rate mobility component is paid from age three onwards and the rules are the same as for adults.

Living in 'special accommodation'

If you go to live in 'special accommodation' such as a care home, the care component of your DLA usually stops after four weeks. This is a complex legal area so you should contact us for further advice. Your mobility component is not affected by stays in 'special accommodation'.

How to claim

To claim DLA you need to complete claim form (DLA1). Ring the Benefit Enquiry Line on 0800 88 22 00 to get a claim pack. They will stamp it with the day's date so that if you qualify, you get the benefit from the day you rang them. The DLA1 is a self-assessment form. Do not be put off by the length of the form. An experienced worker from an advice centre, social services or a local society for

blind and partially sighted people may be able to give you valuable help completing the form. We would advise you to try to get help through an independent adviser first. But, if this is not possible, the Benefit Enquiry Line offers a telephone form completion service. The DWP will complete the form over the phone and will send you Braille or large print transcripts of your answers. It may not be necessary for you to see a DWP doctor. However, the DWP may write to your doctor or ask you to undergo a medical examination.

If you can, **make a copy of the form before you send it away**. This could be useful if you are unhappy with the DWP decision about your claim.

Filling in the claim form

You are assessed for DLA on the help you need, not what you actually get. You can still get DLA even if you do not have a carer. If you struggle to do tasks on your own, you should explain what these difficulties are. For example, you may shave yourself, but cut yourself a lot. Or you may put on make-up, but not do a very good job. You may also have to restrict your activities or have given them up because no one is available to help you. Think about how long it takes you to carry out tasks, how easy it is and what you would do if someone helped you.

If you are completing the form by yourself, our '**DLA Completion Guide**' will help you identify the relevant points. If an adviser is assisting you with the form s/he may find our '**Help with Seeing**' checklist useful. If you have additional disabilities you should use our '**Visual Impairment and Additional Disabilities**' checklist. Please contact us on 0800 915 4666.

If in doubt, appeal!

If you are not happy with the decision, **you only have one month** to use the dispute procedure. Unfortunately, lots of blind and partially sighted people have to do this to get the middle rate care component of DLA. The letter you get from the DWP implies that you need to appeal to dispute their decision. However, there are actually two stages of dispute:

1. Revision

If your claim for DLA is turned down, you should ask the DWP to look at the decision again. This is called a 'revision'. The decision letter you receive does not make it clear that you can ask for a revision before an appeal, therefore you should emphasize that you are asking for a revision at this stage. You can also send in additional evidence or information to help your claim.

2. Appeal

If you are not satisfied with the outcome of the revision you can appeal to a tribunal. Again you have one month to do this. We strongly recommend you opt for an oral hearing where you can present your case in person. DWP statistics show, if you do this, it will greatly improve your chances of success. If you want to

appeal, we strongly advise you to seek assistance from an advice agency such as a Citizens Advice Bureau. If you think you satisfy the daytime attention condition, you should also read our briefing paper, '**Taking Mallinson cases to tribunal**'.

If you miss the time limit, you may be able to ask the DWP to reconsider its last decision. This is called a 'supersession'. You can ask for a supersession if your condition gets worse or for other specific reasons. We recommend contacting an advice agency to help you do this.

Periodic checks of your benefit

If you are awarded DLA, the DWP will sometimes check to see if they think you still qualify for your existing rate of your benefit. This means that the DWP may contact you by a pre-arranged visit or postal questionnaire to see if your circumstances have changed. Therefore, you should keep copies of your original claim form and our guides and checklists, in case you are contacted.

DLA and other benefits

Carer's Allowance

If you get the middle or higher rate care component and have a carer, s/he may be able to get Carer's Allowance. However, your carer getting this allowance can affect your other benefits, so you should seek advice before claiming. For further information see our 'Carer's Allowance' fact sheet. For a claim pack ring the Benefit Enquiry Line on 0800 88 22 00 or the Carer's Allowance Unit on 01253 856 123.

Working Tax Credit

If you qualify for any rate or component of DLA, you will pass the qualifying benefit condition for Working Tax Credit. For further information see our Working Tax Credit fact sheet.

You may also qualify for the following:

Disability premium: an award of DLA at any rate will give entitlement to a disability premium (£25.25 per week), if you get Income Support, Income-based Jobseeker's Allowance, Housing Benefit and/or Council Tax Benefit (although this does not apply if you are over 60).

Severe disability premium: this premium is worth £48.45 per week and can substantially boost your Income Support, Pension Credit, Income-based Jobseeker's Allowance, Housing Benefit and/or Council Tax Benefit. You are eligible for this premium if:

- you receive the middle or higher rate of DLA care; **and**
- nobody gets Carer's Allowance to look after you; **and**
- you live alone

You can still count as living alone if you live with a person who is:

- registered blind; **or**
- on middle or higher DLA care component or Attendance Allowance; **or**
- aged under 18; **or**
- a temporary resident or a landlord, tenant, lodger, joint tenant or co-owner.

Seek advice if you think you may qualify.

- **enhanced disability premium:** If you get the higher rate care component, you also get the enhanced disability premium. This premium can boost your Income Support, Income-based Jobseeker's Allowance, Housing Benefit or Council Tax Benefit, but does not apply if you are over 60.
- **disabled child premium:** If your child gets DLA at any rate you get the disabled child's premium. This can increase your Income Support, Income-based Jobseeker's Allowance, Housing Benefit, Council Tax Benefit and/or Child Tax Credit.
- **exemption from non-dependant deductions:** If you get DLA care component, then no deductions will be made from your Income Support, Pension Credit, Income-based Jobseeker's Allowance, Housing Benefit or Council Tax Benefit, if you have a non-dependant in your household. The most common non-dependant is a grown-up son or daughter. You should check with your benefits office to ensure they make no deductions.
- **road tax exemption:** If you get the higher mobility component of DLA, you can claim exemption from Vehicle Excise Duty (commonly known as road tax). Contact the DLA Helpline on 08457 123 456 for a claim form.

Please note you should claim these other linked benefits immediately or you may lose out on arrears. Do this even if you are still waiting for a DLA decision, because the rules for backdating benefits are very restrictive.

Grants for draft proofing, heating systems and loft insulation

People on DLA can apply for grants from the Warm Front Scheme to help pay towards heating measures and energy efficiency. Contact Eaga on freephone on 0800 316 6011 for more information or visit their website at: www.eaga.com. Alternatively, call the Home Heat Helpline on 0800 33 66 99.

The Independent Living Fund

If you get the higher rate DLA care component you can apply to this fund. Payments are discretionary. For more information ring 0845 601 8815.

Christmas bonus

If you are awarded DLA at any rate, you will get the £10 Christmas bonus. There is no need to claim, as the bonus is paid automatically.

Further information

To find out more, visit www.direct.gov.uk/disability, contact your local advice centre, Citizens Advice Bureau or:

Welfare Rights Service
Action for Blind People
14 - 16 Verney Road
London SE16 3DZ

National Freephone Helpline: 0800 915 4666
Email: benefit.check@actionforblindpeople.org.uk

You can also find all our fact sheets, briefings and checklists on our website at: www.actionforblindpeople.org.uk - then click on the link to '**Welfare Rights**'.

This is only a brief guide about how blind and partially sighted people can benefit from DLA. It is not a complete or exhaustive statement of law.

10 April 2007

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