



SJSS COMMITTEE MEETING - THURSDAY 16 DECEMBER

The Child Poverty Action Group (CPAG) in Scotland works for the one in four children in Scotland growing up in poverty. We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship. We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

CPAG in Scotland welcome the opportunity to provide our views on the draft Disability Assistance for Working Age People (Scotland) Regulations. We are happy for our submission to be published.

We have some comments on the following regulations.

Entitlement to other benefits

Armed forces independence payment (AFIP) currently overlaps with PIP (allowing a claimant to be entitled to both benefits, unlike ADP). So it is important that AFIP also passports individuals to any additional entitlements that adult disability payment (ADP) does.

Determination of ability to carry out activities

It would be useful if the definition of 'to an acceptable standard' in Reg 7(4)(b) was brought in line with the current PIP case law, by adding the level of a pain that an individual experiences as a consideration.

The relevant date: Adult Disability Payment after an interval

A more straightforward way to achieve what appears to be the aim of Reg 14 would be to simply shorten the required period test to a period of nine months for those who were previously entitled to an award of ADP, disability living allowance (DLA) or PIP (or CDP) within the past two years. As the regulation is currently drafted it is not clear that, for example, the care component of DLA is the 'same component' as the daily living component of ADP. Even if it is accepted as such, the current drafting requires the ADP decision maker to consider the ADP entitlement conditions for a period up to two years in the past during which the individual was getting, in the case of DLA care component, a benefit with completely different entitlement conditions. Also, Reg 14(2) and (3) now require redrafting. They refer to amending 'the relevant

date' in Regs 11 and 12, but there is no use of those words in the current drafting of Regs 11 and 12.

Residence and presence conditions

The rules for serving members of Her Majesty's forces, civil servants and their family members and aircraft workers, mariners and individuals working in continental shelf operations are in some respects more generous than the rules for PIP, and in some respects less generous. There is also a lack of clarity about what would happen when such individuals return to Scotland.

Reg 17(1) treats serving members of Her Majesty's forces, civil servants and their family members as present and resident in Scotland and Reg 17(2) exempts them from the past presence test (PPT) altogether. This is different from the PIP rule, which does not mention civil servants, and treats such individuals as present in the UK, rather than exempting them from the tests entirely.

Reg 18(1) exempts aircraft workers, mariners and individuals working in continental shelf operations from the presence and past presence requirements only, but does not treat them as ordinarily resident or habitually resident. This is again more generous than PIP in that there is an exemption from the PPT, but not as generous as the provisions for Her Majesty's forces, civil servants and their family members as they still need to meet residence condition (although that seems not likely to be an issue in most cases).

However neither regulation treats the persons covered as present for the purpose of the test in Reg 15(1)(e) but rather exempts them from that test entirely. This creates a problem when Reg 17 or Reg 18 no longer applies. The regulations seem to allow these individuals to get ADP whilst abroad, but create a gap in entitlement on their return, as those periods do not count as presence in the common travel area. As soon as Reg 17 or Reg 18 no longer applies to an individual, they must immediately meet the condition in Reg 15(1)(e) and in many cases will not do so, having been abroad for over 26 weeks in the previous year.

Entitlement under rules relating to age

Under Part 6 there appears to be no provision to transfer those individuals who are over pension age from PIP to ADP.

Right to review suspension

Reg 38(2)(a) specifies that assistance may be suspended if the individual has failed to provide specified information requested by Scottish Ministers within a specified time period of at least 14 days (Reg 44).

- 14 days is too short a minimum time period in which to request evidence. Reg 36(4) allows an individual who is making a new claim eight weeks to provide the required

information. We would expect this eight-week period to also apply to requests for information when Scottish Ministers want to make a new determination in relation to an existing award.

- Reg 36(6) allows an individual to retain the original date of claim even if information in relation to the application is not provided until after the eight weeks following the claim so long as it is determined that there was 'good reason.' We would expect extension for good reason to be carried through to these regulations.
- Failure to provide information may be an indicator of a need for support. Under no circumstances should benefit be ended following suspension, without robust safeguarding procedures being carried out to ensure the ongoing safety and wellbeing of the individual.

Determination following change of circumstances etc.

Reg 49(a) allows for a determination without application if an award is made in ignorance of a material fact. However, the date the increased award is paid from is less generous than the equivalent rule for PIP if the determination results from a request made by the individual for a further determination.

Individuals in respect of whom Personal Independence Payment is paid in another part of the United Kingdom immediately before moving to Scotland

Reg 58(1) allows for an award of ADP to be paid when an individual who is entitled to PIP moves to Scotland. We would like to see clarity around what would happen if an individual claims PIP but moves to Scotland prior to a decision on the PIP claim being made.

Reg 59(4) contains different provision to in Reg 36(4) of the child disability payment regulations (following amendments made by SSI 2021/416). Whilst it might simply be assumed that the next draft of the ADP regulations will bring the two provisions in line, this might be worth seeking clarity on, as there could be a different policy intent for the two benefits (which would be strange).

SCHEDULE 1 ADULT DISABILITY ASSISTANCE DETERMINATION

PART 1 Interpretation

We welcome the fact that the definitions in Part 1 of Sch 1 largely follow the current law for PIP, but there are a couple of definitions that could be amended to better match the current PIP caselaw.

The definition of 'assistance' could make it clear that intervention is for part and not all of an activity, as the Upper Tribunal made clear in [SSWP v GM \(PIP\) \[2017\] UKUT 268 \(AAC\)](#).

The definition of 'follow the route of a journey' could be read to mean that 'navigate' and 'make their way along the route' are two separate tests and help must be needed with both. Current caselaw (for example [MH v SSWP \(PIP\) \[2016\] UKUT 351 \(AAC\); \[2018\] AACR 12](#)) suggests that making the way along a planned route includes navigation so 'navigate and' could be removed from the definition for clarity, or the 'and' could be replaced by 'or'.

The definition of 'prompting' – this could be amended to clarify that the person doing the promoting does not need to be physically present.

Part 2

This provides the descriptors for the daily living component. Again we welcome the approach to ensure, where possible, the regulations match the current law on PIP.

Descriptors 3(c) – (f) could be amended to clarify that, as with PIP, it is the length of time that help is needed for, rather than the length of time that the therapy takes, that is relevant.

Part 3

This provides the descriptors for the mobility component. Again we welcome the approach to ensure, where possible, the regulations match the current law on PIP. There have been slight changes to the descriptors 1e, 2c and 2d.

The insertion of the phrase 'at all' in 1e is more restrictive than the comparable descriptor for PIP. It also runs counter the current PIP caselaw (for example [TR v SSWP \(PIP\) \[2015\] UKUT 626 \(AAC\); \[2016\] AACR 23](#)), and the welcome provision of Reg 10(2)(a) that a descriptor is satisfied on a day if it has been satisfied for any part of that day.

Entitlement to short-term assistance

Schedule 2 Paragraph (1)(2)(a) allows short-term assistance to be paid if a First-tier Tribunal sets aside a decision after a review, but not if it is quashed and readmitted after an appeal to the Upper Tribunal. As these have the same outcome, that the First-tier Tribunal will re-decide the appeal, it seems in the interest of fairness to allow short-term assistance to be paid in both instances. Failure to do so could inadvertently discourage individuals from appealing to the Upper Tribunal.

We believe there may need to be an amend regulations to ensure that if someone is awarded short-term assistance, and later awarded the daily living or care component of disability assistance to cover the same period, they can reclaim carer's allowance to cover the period short-term assistance was paid for.

For further information on this response, please contact

Ed Pybus (Policy and Parliamentary Officer)

