April 2007

Key Points:
• Replaces previous version dated May 2006 • Liable relative payments not yet abolished: Dept of Health guidance to LAs not to seek them still stands.

Paying for care in a care home if you have a partner

This factsheet is aimed at people aged 60 and over.

If you require further information on the charging rules in Scotland or Wales, you may have received a supplementary sheet with this factsheet. If you have not received this, a copy can be obtained by calling 0800 00 99 66.

Contact details for the national Age Concern office's are:

Age Concern Scotland, Causewayside House, 160 Causewayside, Edinburgh EH9 1PR tel: 0845 125 9732 (lo-call rate), website: www.ageconcernscotland.org.uk;

Age Concern Cymru, Ty John Pathy, Units 13/14 Neptune Court, Vanguard Way, Cardiff CF24 5PJ, tel: 029 2043 1555 (national call rate); website: www.accymru.org.uk.

Age Concern Northern Ireland can be contacted at: 3 Lower Crescent, Belfast BT7 1NR, tel: 028 9032 5055 (national call rate), Monday - Friday 9.30am - 1pm, website: www.ageconcernni.org.

FS39/07/04/01

Factsheet 39

Contents

This factsheet explains how being part of a couple can affect a care home resident's eligibility for local authority assistance with care home fees and both partners' eligibility for social security benefits during the period in care. The term 'resident' is used to refer to the person who is living in a care home.

The term 'couple' in this factsheet is used to mean married couples, civil partners or couples who live together as though they are married or civil partners.

This factsheet should be read in conjunction with Age Concern's other factsheets on care home charging and benefits. A fuller account of the local authority charging regulations can be found in Factsheet 10, *Local authority charging procedures for care homes*. (For charging procedures in Scotland information can be found in Factsheet 10s, *Local authority charging procedures for care homes (including free personal care)* and for charging procedures in Wales information can be found in FS10w, *Local authority charging procedures in care homes*).

Further information on the rules governing eligibility for Pension Credit can be found in Factsheet 48, *Pension Credit*. People under 60 may be able to claim Income Support. **This factsheet does not cover Income Support** and there are some differences between the rules for Income Support and Pension Credit. If you have a query relating to Income Support the local Citizens Advice Bureau or other information and advice service may be able to assist. Under the current benefit rules same sex partners are treated as two individuals rather than a couple.

1. When one of a couple goes into a care home

When one of a couple goes into a care home it is important that you are aware of how the rules work and whether you need to make any claims for benefit either in your own right or as a couple.

1.1 The local authority rules

From April 2007 the upper capital limit above which a care home resident is expected to meet the full cost of his or her accommodation and personal care is £21,500. When assessing how much capital and income a resident has, the local authority will include assets held in the resident's sole name and a share of any assets held in joint names.

The authority cannot include capital or income belonging to the resident's partner in the assessment. Local authorities should not use joint assessment forms that ask for details of both partners' finances.

Temporary Residents

The local authority does not have to carry out a financial assessment for the first eight weeks of care in a care home but can instead charge what it thinks is reasonable. If so, social security benefits are still calculated in the same way.

When assessing how much a temporary resident should contribute, local authorities have been instructed to carefully consider the needs of couples over 60 who are in receipt of Pension Credit, as they may receive less benefit than younger couples in the same situation.

The local authority has to disregard up to £5.25 per week from the qualifying income of residents who are in receipt of Pension Credit savings credit (or whose income is too high to receive it). Where the resident is part of a couple and is in a care home on a temporary basis the authority should disregard up to £7.85 per week.

While a resident's stay in a care home is temporary, allowance should be made for some household expenses (see Factsheet 10 for more details). This stops once the stay is permanent but the local authority might exercise its discretion to increase the resident's personal expenses allowance.

1.2 The Pension Credit rules

When one of a couple goes into a care home and it is decided that it is on a permanent basis, the Pension Service then has to treat you as two separate individuals in assessing eligibility for Pension Credit. For both the resident and the person remaining at home eligibility for benefit will depend on the level of their individual income and capital. Any jointly owned capital will be divided. If the resident is passing 50% of a private pension to his/her spouse, then the office will count it as income for the person at home. (See Section 3).

If a couple are in receipt of Pension Credit and one of them enters a care home for a temporary stay, Pension Credit will continue to be paid as if they both remained at home.

1.3 Jointly owned capital

Where an asset (other than property) is jointly owned, the local authority treats each of the owners as having an equal interest in it until it is divided according to their actual interests. Where a couple have joint assets and one enters a care home it may be beneficial to divide any joint capital before any fees are incurred. For example: if one of a couple with £50,000 in a joint account enters a home then that resident would be assessed as having £25,000; £3,500 above the upper capital limit. However £7,000 would have to be spent from the joint account before the overall total fell to £43,000 and the resident's apparent share to £21,500. Dividing the joint account at the outset saves the couple having to spend more capital than is necessary before the resident's assessed share falls below the upper capital limit.

2. Where a couple both go into a care home

2.1 The Pension Credit rules

In most cases a couple who both enter a care home on a permanent basis will be treated as two separate individuals, even if they share a room in the same care home. The Pension Service will look at your particular circumstances before deciding how whether to treat you as two individuals or a couple.

If you go into different homes, or live in different sections of a home which is registered to provide both accommodation with personal care and accommodation with nursing and personal care, there should be no problems in arguing that you should be treated separately.

2.2 The local authority rules

The local authority has to assess you as individuals regardless of whether you go into the same home together. You should be means tested separately based on your own capital and income (including your share of any jointly held assets). If you have less than £21,500, you may qualify for local authority assistance.

If you are being treated as a couple for Pension Credit, and so being paid the couples rate rather than the amount for two individuals, the authority should disregard up to £7.85 per week of any qualifying income for Pension Credit savings credit.

3. Help for the person remaining at home

Often one of a couple will have a significantly larger income than the other. The rules set out below can reduce the likelihood of the other person experiencing financial hardship if the main income holder goes into a care home.

3.1 50% disregard of private and occupational pensions (married couples and civil partners)

Where one of a couple who are married or have a civil partnership enters a care home, 50% of that person's occupational (works) pension, personal pension or payment from a retirement annuity contract can be passed back to the person remaining at home. The charging rules allow 50% of this income to be disregarded (ignored) in the means-test when calculating how much the resident can pay, in order that it can be passed back to the spouse or civil partner.

The disregard only applies where:

- the resident passes half of his or her occupational or private pension or retirement annuity income back (if the resident has more than one such source of income, it must be 50% of the total income from these sources); ***and***
- the spouse or civil partner lives anywhere other than in the same care home as the resident.

The disregard *does not* apply to:

- partners who are neither married nor civil partners (but see the discretion to increase the Personal Expenses Allowance below);
- residents who pass an amount other than 50% of their relevant income to their spouse or civil partner.

The resident is not obliged to pass this money back to the spouse but the disregard can only be applied where money is actually being passed back. If the resident dies, or the couple divorce or end their civil partnership, or the other person moves to live in the same care home as the resident, then the disregard will cease.

If the spouse is already legally entitled to part of the resident's private pension (for example, because of a Court Order to this effect) then this amount will be treated as already belonging to the spouse. The resident can then pass 50% of the remainder of the private pension to his or her spouse in addition to the amount covered by the existing arrangement.

The person eligible to receive the disregarded income does not have to accept it. To do so may affect entitlement to means tested benefits such as Pension Credit, Housing Benefit or Council Tax Benefit. If you are unsure whether receiving this money will leave you better off, seek further advice. (*Age Concern England is unable to give legal or financial advice*).

If someone else is managing the resident's finances under an Enduring Power of Attorney (EPA), the attorney can usually decide whether to pass any private pension income back to a spouse or partner, including situations where the attorney is the person who will receive the money. An exception will be if the donor has imposed specific restrictions or conditions in the EPA preventing this.

A Receiver (including a spouse or civil partner) appointed by the Court of Protection who wishes to pass 50% of the resident's private pension back to the spouse or civil partner should write to the Public Guardianship Office. The letter should set out what is proposed and how it will affect the resident, and ask the Public Guardianship Office's permission to proceed.

New arrangements for managing other people's finances are due to be introduced in October 2007. Contact the Age Concern Information Line for further information on the new system.

Government guidance suggests that local authorities should tell couples about the 50% disregard at the first point of contact or during the initial financial assessment.

The DWP does not recognise this disregard and will assess the resident's eligibility for Pension Credit as if this money was still available to the resident. The local authority should adjust the resident's assessed contribution to take account of any resulting shortfall in benefits income.

4. Local authorities' discretion and the partner at home

4.1 Increasing the personal expenses allowance

Local authorities have a discretionary power which allows them to increase the resident's personal expenses allowance above the national set level. By doing so, part of the resident's income which would otherwise be paid towards care costs can be made available to a partner at home. This can be particularly helpful for couples who are neither married nor civil partners and so not covered by the 50% disregard set out above.

Any money passed back in this way may affect the partner's eligibility for means tested benefits. If the partner currently receives any such benefits it may be worth checking whether they will in fact benefit from receiving some of the resident's income in this way.

If it seems that the partner would benefit from an arrangement of this type, ask the local authority to use its discretion to allow the resident to have an increased personal expenses allowance to help to support the partner at home. This is a discretionary power so the local authority does not have to agree but if the authority refuses your request without properly considering it you can use its complaints procedure to have the decision reviewed.

The DWP does not recognise this discretion and will assess the resident's eligibility for Pension Credit as if this money was still available to the resident. The local authority should adjust the resident's assessed contribution to take account of any resulting shortfall in benefits income.

4.2 When a partner wants to move from a jointly owned house

When one of a couple enters a care home on a permanent basis the local authority has to disregard the resident's interest in their former home for as long as the other spouse or partner remains there.

The partner or spouse may at some point wish to move from that property, perhaps to somewhere smaller and more manageable. However once the original property has been sold the disregard ends and the resident's share of the proceeds could be taken into account in the financial assessment.

Government guidance says that where necessary residents should be able to use part of their share of the sale proceeds to enable their spouse to buy a more suitable property.

Unmarried partners or other relatives benefiting from a disregard should ask to be treated in the same way. The guidance does not specify how any capital remaining after the purchase of the new property should be treated and local authorities have adopted differing approaches to this.

See Age Concern Factsheet 38, *Treatment of the former home as capital for people in care homes*, for more details about the treatment of property.

5. Married couples – liable relative payments

Under the *National Assistance Act 1948*, spouses are liable to maintain each other. On this basis local authorities have a discretionary power to seek 'liable relative payments' from spouses of care home residents. There is no set means test for assessing the level of liable relative payments and previously where authorities have felt that a payment is appropriate they have had to negotiate an amount with the spouse concerned. If the parties are unable to agree a payment, only a magistrate's court can impose one.

The Department of Health intends to repeal the liable relatives rule. This requires primary legislation which had not yet been fitted into the parliamentary timetable at the time of writing (March 2007). In the meantime the Department has reminded local authorities of guidance previously issued that strongly encourages them not to seek liable relative payments pending the repeal of the rules. Funding has been made available to authorities to compensate them for any additional costs incurred as a result of not collecting liable relative payments.

If you or your spouse enter a care home and the person remaining at home is asked to make a liable relative payment, raise the points in the preceding paragraph with the local authority. If the authority indicates that it still wishes to discuss the possibility of a liable relative payment, please contact Age Concern for further advice.

If you or your spouse are currently making a liable relative payment, ask the local authority to review this arrangement in view of the Department of Health's guidance and contact Age Concern for further advice if the authority indicates that it wants the arrangement to continue.

There is no provision for liable relative payments in the rules for Pension Credit.

6. Challenging decisions

A local advice agency may be able to offer advice or perhaps help you make an appeal against a social security or local authority decision.

6.1 Local authority complaints procedure

Each local authority has to operate a complaints procedure that meets national requirements and must produce written information on how to use that complaints procedure. Informal discussions are the first stage of the procedure, with a formal process following if the matter cannot be resolved informally. The complaints procedure is the route for querying any aspect of the financial assessment that you are unhappy with.

6.2 Challenging a social security decision

If you disagree with a decision made by the local social security office you can either ask for the decision to be revised or appeal against it. It is most important to note that in most circumstances if you wish to challenge the decision you should do so within one month of the date of notification. Further information is available in leaflet, GL24, available from your local social security office. Your local Citizens Advice Bureau or Welfare Rights Officer can advise on procedures and possibly help prepare your case.

7. Further information from Age Concern

The following factsheets may be relevant:

Factsheet 10	*Local authority charging procedures for care homes*
Factsheet 38	*Treatment of the former home as capital for people in care homes*
Factsheet 41	*Local authority assessment for community care services*

If you would like:

- to find your nearest Age Concern
- any additional factsheets mentioned (a maximum of five may be ordered);
- a full list of factsheets and/or a book catalogue;
- to receive this information in large print

phone 0800 00 99 66 (free call) or write to Age Concern FREEPOST (SWB 30375), Ashburton, Devon TQ13 7ZZ. For people with hearing loss who have access to a textphone, calls can be made by Typetalk, which relays conversations between text and voice via an operator.

Age Concern factsheets and other information materials can be downloaded free from our website at: www.ageconcern.org.uk. To receive a free e-mail notification when new and updated factsheets are published, please either contact the Factsheet Subscription Service on tel: 020 8765 7200 by email: factsheet.subscriptions@ace.org.uk, or sign up on-line.

Age Concern provides factsheets to older people, their families and people who work with them. If you would like to make a donation to our work, you can send a cheque or postal order (made payable to Age Concern England) to the Personal Fundraising Department, ACE Freepost CN1794, London SW16 4BR.

Find out more about Age Concern England online at: www.ageconcern.org.uk.

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Whilst every effort is made to ensure accuracy, Age Concern cannot be held responsible for errors or omissions.

No factsheet can ever be a complete guide to the law, which also changes from time to time. Therefore please ensure that you have an up to date factsheet and that it clearly applies to your situation. Legal advice should always be taken if you are in doubt. (*Age Concern England does not give legal or financial advice*).

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