

Attendance Allowance

For Blind and Partially Sighted People 2009/2010

This fact sheet explains how to claim Attendance Allowance and includes helpful tips which can increase your chance of making a successful application. It is useful for severely sight impaired (blind) and sight impaired (partially sighted) people and those individuals and organisations which support them.

You should claim Attendance Allowance because:

- you can get it in addition to any other income as it is non-means-tested;
- it does not reduce any other social security benefits;
- if you receive Pension Credit, Housing Benefit and/or Council Tax Benefit, getting Attendance Allowance may increase the amounts of these benefits;
- no national insurance contributions are necessary as it is non-contributory;
- it is not taxable;
- you do not need to have a carer to qualify.

So, receiving Attendance Allowance usually means extra cash in your pocket whatever your circumstances.

What are the rules for claiming Attendance Allowance?

You can claim this benefit if:

- you have had severe sight problems for at least six months; **and**
- you are aged 65 or over.



Action for blind people

If you qualify for Attendance Allowance, you will receive one of the following rates:

- £47.10 per week - the lower rate; **or**
- £70.35 per week - the higher rate

How to qualify

The help you need as a result of your sight problems can enable you to get Attendance Allowance. You may need help with the following:

- **Washing yourself:** for example checking your face, hands and nails are clean, shaving and identifying containers
- **Taking care of your appearance:** for example checking your make up is correctly applied, 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, CDs, keys and medication
- **Getting around:** for example avoiding everyday obstacles, crossing roads, guidance in shops, pubs, restaurants and when exercising
- **Reading:** for example letters, newspapers, magazines, TV and radio guides, medicine containers, labels, price tags, shop receipts and 'use by' dates on food
- **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
- **Leisure activities:** such as following TV programmes, doing the daily crossword, guiding you in pubs, clubs, day centres and other public places, or helping you to tend your garden.

To get Attendance Allowance, you need to tell the Department for Work and Pensions (DWP) that you need help with things like the above several times a day, 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 also need to explain that only another person can provide the help you need. Sometimes the DWP argues that a particular need for help can be met by a 'simpler method', for example, 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 read, even with magnification.

What the law says

The rules for claiming Attendance Allowance are set out in the **Social Security Contributions and Benefits Act 1992 (SSCBA)**. The meaning of these rules is not always clear, so interpretation of the law is carried out by the courts of law, and the Judges of the Upper Tribunal.

Commissioners' decisions

In the following paragraphs we make reference to 'Commissioners' decisions'. These are decisions made by the Social Security and Child Support Commissioners on how the law should be interpreted, not just in a particular case, but in general. This guidance can then be applied to future applications for Attendance Allowance.

Please note that following changes introduced under the **Tribunals, Courts and Enforcement Act 2007**, Social Security and Child Support Commissioners are now officially referred to as 'Judges of the Upper Tribunal'. Commissioner's decisions are however still referenced in the same way.

Section 64 of the Social Security Contributions and Benefits Act 1992 (SSCBA) explains that to qualify for lower rate Attendance Allowance you must satisfy **either** the day **or** the night condition (explained below). To qualify for the higher rate you must satisfy **both** the day **and** the night condition.

The day condition:

- 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.

The night condition:

- 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, getting out of chairs and so on.

Before 1994 the DWP did not accept that the assistance blind people needed could count as 'attention'. However, in the **Mallinson judgment (R(A)3/94)**, the House of Lords decided that guiding or reading to a blind person is 'attention' in connection with the bodily function of 'seeing', stating 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/Halliday (reported as R(A)2/98)** 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 House of 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 Attendance Allowance claim form, you should also list all the help you need to undertake social, recreational or leisure activities, as well as basic daily tasks.

The frequency test

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

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

"...frequent denotes 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 of DLA (or lower rate Attendance Allowance) 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 Attendance Allowance. This is because **CA/140/1985** said that if your needs are in the main at the start and end of the day, this does not stop you qualifying. So, 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 Attendance Allowance. 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**, **CDLA/12381/96** and **CDLA 3376/2005** support this approach.

In **CDLA/267/94** 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. **Volume 10, 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 tasks for you is not attention that helps you to get Attendance Allowance, 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.

Supervision

Another way to get Attendance Allowance is to show the DWP that you need 'continual supervision'. You meet the continual supervision condition if you need someone to keep an eye on you to prevent the risk of causing substantial danger to yourself or others. You may satisfy the supervision condition if you:

- suffer from fits or seizures because of diabetes or epilepsy;
- are at risk of accidents due to dementia, memory loss, confusion or dizzy spells;
- are prone to falls indoors as well as outdoors;
- 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, when 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'.

Living in special accommodation

If you go to live in special accommodation such as a care home or hospital, your Attendance Allowance usually stops after four weeks. However, if you pay the care home fees in full yourself, even if you previously received Local Authority funding, you may be able to receive Attendance Allowance. This is a complex area so you should contact a welfare rights adviser for further advice.

How to claim

To claim Attendance Allowance you need to complete claim form AA1. Contact the Benefit Enquiry Line on 0800 88 22 00 to get a claim pack. They will stamp it with that day's date, so that if you qualify, you get the benefit from the day you contacted them. You can also get the claim pack by sending off leaflet AAA5DCS. This is available from Post Offices or your Jobcentre Plus. Alternatively, you can complete a claim form online at www.direct.gov.uk/disability-aa.

Filling in the claim form

The AA1 is a self-assessment form and you are assessed for Attendance Allowance on the help you need, not what you actually get, so you do not need to have a carer. Explain the difficulties you have when carrying out tasks on your own. 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.

Our **Daytime Attention** checklist will help you identify the relevant points. If you have additional disabilities you should use our **Visual impairment and additional disabilities** checklist. If you need additional advice please feel free to contact us on 0800 915 4666.

An experienced worker from an advice centre, social services or a local society for blind and partially sighted people can help you to complete the form. We would advise you to try and get help through an independent adviser first, but if this is not possible, you can contact the Benefit Enquiry Line and they can arrange for someone to assist you to complete the form over the telephone. The DWP will send you a transcript of your answers in your preferred format for example Braille or large print. It may not be necessary for you to see a DWP doctor. However, they 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.

If in doubt, appeal!

If your claim is turned down, or you are not happy with the level of your award, you can make use of the dispute process. The letter you get from the DWP usually implies that you need to appeal in order to dispute their decision. However, there are actually two stages:

1. Revision

If your claim for Attendance Allowance is turned down, you should ask the DWP to look at the decision again. You have one month in which to do so. This is called a 'revision'. The decision letter you receive does not usually make it clear that you can ask for a revision before an appeal, therefore you should emphasise that you are asking for a revision at this stage. You can also send in additional evidence or information to support 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 go for an oral hearing where you can present your case in person. If you want to appeal, we also recommend you seek assistance from an advice agency such as a Citizens Advice Bureau. If you think you satisfy the daytime attention condition, you should read our briefing paper, '**Making use of Mallinson**'.

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.

Attendance Allowance and other benefits

Carer's Allowance

If you have a carer, they 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 sheets. To claim Carer's Allowance contact the:

- Benefit Enquiry Line on 0800 88 22 00 or
- Carer's Allowance Unit on 01253 856 123

Severe disability premium

This premium is worth £52.85 per week and can substantially boost or entitle you to Pension Credit, Housing Benefit and/or Council Tax Benefit. You are eligible for the premium if:

- you are getting Attendance Allowance; **and**
- nobody gets Carer's Allowance to look after you; **and**
- you live alone.

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

- registered severely sight impaired (blind); **or**
- on Attendance Allowance or middle or higher rate of DLA care component; **or**
- aged under 18; **or**
- a temporary resident or a landlord, tenant, lodger, joint tenant or co-owner; **or**
- a member of your family aged 18 or 19 for whom you are still eligible to receive Child Benefit.

Exemption from non-dependent deductions

If you are registered severely sight impaired (blind) or get Attendance Allowance, no deductions will be made from your Housing Benefit/Council Tax Benefit, or from help with housing costs that you may receive as part of Income Support or Pension Credit, 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 Local Authority to ensure they make no deductions.

You should claim these other benefits immediately or you may lose out on arrears. Do this even if you are still waiting for an Attendance Allowance decision because the rules for backdating benefits are very restrictive.

Grants for draft proofing, heating systems and loft insulation

People on Attendance Allowance can apply for grants from the Warm Front Scheme to help pay towards heating measures and energy efficiency. Contact Eaga on freephone 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.

Christmas bonus

If you are awarded Attendance Allowance at any rate, you will get a £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, or contact your local advice centre or Citizens Advice Bureau.

Action for Blind People's Welfare Rights Service can also provide advice:

Action for Blind People
Welfare Rights Service
14 - 16 Verney Road
London SE16 3DZ
National Freephone Helpline: 0800 915 4666
Email: benefit.check@actionforblindpeople.org.uk

You can find all of Action's fact sheets, briefings and checklists on our website at: www.actionforblindpeople.org.uk/welfare-rights

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

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