



# **USERS OF RESPITE CARE**



## **SHORT TERM OR TEMPORARY CARE AND DISABILITY BENEFITS**

### **THE “28 DAY” RULE**

This factsheet refers to how Attendance Allowance, Disability Living Allowance (DLA) and Personal Independence Payments (PIP) are affected by periods in short term or temporary Care.

The rules differ slightly depending on whether the Care is provided by (1) the Health Authority or by (2) the Local Authority (County Council). They also differ depending on whether the user of respite/temporary care is aged 18 or over when entering Care.

#### **1. Care provided (or paid for) by the Health Authority**

This section applies to anyone aged 18 or over when they enter Care:

After spending **28** days in Care funded in full (or in part) by the NHS, entitlement to DLA (Care and Mobility), PIP (Daily Living and Mobility) and Attendance Allowance is not payable for any subsequent day spent in that accommodation.

The 28 day limit can be reached in a single bloc, **or** by adding together different periods in Care e.g. over 14 weekends.

The 28 day limit is a rolling total and not 28 days in any fixed period.

The 28 day cycle will be **broken** by a continuous period of 29 (or more) days out of Care (or out of publicly-funded accommodation in general). After 29 days ‘back home’, a fresh 28 day cycle commences.

So, managers of Respite Care facilities can plan patterns of Respite Care to build in clear 29+ day “breaks” from publicly-funded Care. The ideal position is that the resident doesn’t spend more than 28 days in Care without having a distinct break of at least 29 days at home.

- How are the days calculated?

Any day going into, or out of Care, does not count as a day in Care.

#### **EXAMPLE**

*Jenny goes into a Respite Care Home on Friday and comes out on Monday.*

*Only Saturday and Sunday count as days in Care.*

**Thus, a single overnight stay does not count as a day in Care.**

- Which Benefits are affected?

Attendance Allowance, DLA Care & Mobility and PIP Daily Living & Mobility [and by extension Motability will be affected].

## 2. Care provided (or paid for) by the Local Authority

This section applies to all ages, adult and child:

The same 28 day rule as outlined above applies to those using respite care funded by a Local Authority, but with the following exceptions:

- a. Where the user of Respite Care is a child or young person who is aged under 18 when entering respite care, the 28 day rule DOES apply.
- b. The Mobility Components of DLA and PIP are not affected, only DLA Care Component, PIP Daily Living or Attendance Allowance.

## 3. Breaking the Link

If you spend at least 28 days back in your own home the link between different stays in Care will be broken. You will then be able to go into Local Authority or NHS Care for another 28 days.

## 4. Linked periods in different forms of publicly-funded Care

Periods spent in any form of publicly-funded Care are linked, unless broken by a clear period of 28+ days out of Care - any time spent in hospital will link with time spent in a Local Authority, or a NHS-funded accommodation. For those aged under 18 only, stays in in-patient hospital care do NOT count towards the 28 day limit.

### EXAMPLE

*Aneeta has a fall at home. She goes into hospital for a fortnight and then goes into a Local Authority-funded Home for older people to convalesce for a few more weeks.*

*There is no 28 day break between the two types of accommodation, so the periods are linked.*

*After a total of 28 days in Care her Attendance Allowance is suspended.*

## 5. What happens to the Attendance Allowance/DLA/PIP?

If you do exceed the 28 days you don't completely lose your entitlement to Attendance Allowance/DLA /PIP – only for the days spent in publicly-funded Care. Entitlement is *suspended*, not lost.

If you regularly exceed 28 days, the DWP will withdraw your normal payment arrangements, ask you to fill in a form giving days in and out of Care and may pay you in arrears.

## 6. **Effect of loss of Attendance Allowance/DLA/PIP on other benefits**

There are implications in losing Attendance Allowance, DLA or PIP for both (a) the disabled person *and* (b) their Carer. There are therefore good reasons to ensure that when you use respite care you avoid the 28 day limit.

### **(a) Disabled Person**

Losing Attendance Allowance/DLA/PIP can affect the disabled person's other benefits. Mainly it will mean the loss of the extras (called premiums) paid as part of Income Support\*, income-based Employment & Support Allowance\*, income-based JSA\*, Pension Credit, Housing Benefit\* and Council Tax Reductions. These premiums are called, the disability premium, the 'severe disability premium' and the 'enhanced disability premium'.

The loss of these premiums may reduce the amount of these benefits you get, or may mean losing entitlement altogether.

### **(b) Carer**

As Attendance Allowance/DLA Care (middle or higher rate)/PIP Daily Living are the qualifying benefit for Carers Allowance, the carer's benefits could be affected. This would include Carers Allowance, plus any Income Support\*, Pension Credit\*, Housing Benefit\* and Council Tax Reductions in payment to the carer.

For both the disabled person and their carers this may also have a knock-on effect on their *automatic* entitlement to a rent or Council Tax Rebate

- See our leaflet Pb29 "A Risky Business" for further detail (available to view/download for free at [www.wwras.org.uk](http://www.wwras.org.uk)), & get advice.

In addition, depending where you live it, losing other benefits may mean having to claim Universal Credit instead (which does NOT give premiums) – get advice if you are in a 'full' or 'digital' service area for Universal Credit. In Warwickshire that is the Rugby and Stratford upon Avon Jobcentre areas as of the date of this leaflet.

\* to be replaced by Universal Credit, in Rugby from May 2016, from Stratford upon Avon from December 2016, other areas in 2017/18. See WWRAS leaflet Pb92

## 7. What should you do?

- \* Try to avoid clocking up 28 days, for example by building in regular 29+ day breaks from publicly-funded Care.
- \* Notify (in writing) the Disability Benefits Unit (and if relevant, Jobcentre Plus/ Pension Service) as soon as the Respite Care user goes into Care.  
When corresponding with the DWP always put your national insurance number on the communications, and keep a copy
- \* Get advice from your local advice agency (see below).

## OTHER INFORMATION

Warwickshire Welfare Rights Advice Service has a number of leaflets and guidance materials on our website, available to view or download for free. Visit us at [www.wwras.org.uk](http://www.wwras.org.uk).

## LOCAL ADVICE AGENCIES

### CITIZENS ADVICE

1<sup>st</sup> Floor, Chestnut House,  
North Street, **Rugby**, CV21 2AQ

The Parish Rooms,  
Welcome Street, **Atherstone**, CV9 1DU

25 Congreve Walk,  
**Bedworth**, CV12 8LX

10 Hamilton Terrace,  
**Leamington Spa**, CV32 4LY

25 Meer Street,  
**Stratford-upon-Avon**, CV37 6QB

Switchboard number for ALL CAs: 0344 855 2322 (open 10am – 1pm)

### For Carers Advice, Information and Support .....

#### **Warwickshire Carer Wellbeing Service** *(for Warwickshire)*

9 Lawford Road, Rugby, CV21 2DZ

Tel: 024 7638 5888

e-mail: [carerssupport@carerstrusthofe.org.uk](mailto:carerssupport@carerstrusthofe.org.uk)

Website: [www.carerstrusthofe.org.uk](http://www.carerstrusthofe.org.uk)

### For those aged 55+ there is Age UK (details online/in telephone book)

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