

Benefits and Learning Disabilities

Benefits for children, older teenagers/young adults and their parents/carers

Content

- Benefits for children/teenagers/young adults
 - Non means-tested
 - Means-tested
- Benefits for parents/carers
 - Non means-tested
 - Means-tested
- Claims
 - Including appointeeship
- Appeals

Benefits for children/young adults:

Non means-tested

Disability Living Allowance and
Personal Independence Payment

PIP and DLA - basics

- Non-means tested benefits for people who need help with mobility and personal care/life skills
- Disability Living Allowance (DLA):
 - For children under 16
- Personal Independence Payment (PIP):
 - For people aged 16+

DLA – main points

- General requirements:
 - Must have mobility and/or personal care/life skills needs above what would normally be expected for a child of the same age
 - Already been that way for three months
 - Expected to stay that way for at least six months
- Two components:
 - Care component
 - Three rates: low £22.65 , middle £57.30 and highest £85.60
 - Mobility component
 - Two rates: lower £22.65 and higher £59.75
 - Need higher rate for Motability lease car

DLA - conditions

- Care component:
 - Highest rate:
 - Attention/supervision all day **and**
 - At night: prolonged or frequent
 - Attention, or
 - Being watched over by someone who is awake
 - Middle rate:
 - Either of the day or night conditions above
 - Lowest rate
 - Attention for a significant part of the day or night

DLA conditions

- Mobility component
 - Higher rate
 - Unable/virtually unable to walk, or
 - Blind or severely visually impaired (there are detailed rules on how that is measured), or
 - Tough alternative route for severe LD:
 - on the highest rate of the care component **and**
 - “severely mentally impaired” **and**
 - severe behavioural problems (danger to self/others)
 - Lower rate
 - Easier route for LD: “guidance or supervision” on familiar route
 - Not sufficient for Motability

PIP main points

- Similar general rules to DLA
 - Mobility and personal care/life skills needs
 - Three months in the past/six months in the future
- Two components
 - Daily living
 - Only two rates (not three like DLA) “standard” £57.30 and “enhanced” £85.60
 - Equivalent of lowest rate DLA(care) is missing
 - Mobility
 - Two rates – standard £22.65 and enhanced £59.75

PIP conditions

- 12 “activities”
 - Things you need to do in your daily life
 - 10 “daily living”, 2 mobility
- Assessed on ability to carry out each activity on majority of days:
 - Safely
 - To acceptable standard
 - Repeatedly
 - Within reasonable time
- Each activity broken down into “descriptors” ...

PIP conditions

- Descriptors:
 - Range from
 - Fully able to carry out the activity, to
 - Completely unable
 - And stages in between, for example
 - Able to do it with a device of some kind
 - Able to do it with help from another person
 - Score points:
 - 0 if you can do it
 - 12 if you cannot do it at all
 - 1, 2, 3, 4, 6 or 8 for stages in between

PIP conditions

- For daily living:
 - Need total of 8 points to get standard rate
 - Total of 12 points to get “enhanced” rate
 - Can assemble these points from as many or as few of the 10 activities as necessary, for example:
 - 2 points for 6 activities = 12 in total
 - 12 points for one activity = 12 in total
- For mobility:
 - Same target: 8 standard, 12 enhanced
 - But only two activities

PIP activities: highlights for LD

- Daily living highlights:
 - Prepare or cook a meal
 - 4 points if you need supervision
 - Verbal communication
 - 4 to 12 points depending on degree of communication/comprehension difficulty
 - Reading and understanding
 - 2 to 8 points depending on degree
 - Engaging face to face
 - 2 to 8
 - Budgeting
 - 2 to 6

PIP activities: highlights for LD

- Mobility highlights
 - Planning and following journeys - either:
 - Overwhelming psychological distress, or
 - Need another person to help/supervise
 - 12 points if *“cannot follow the route of a familiar journey without another person”*
 - This is enough on its own to get a Motability lease car
 - Much lower threshold than DLA mobility component

Benefits for children/young adults:

Means-tested

ESA

Universal Credit

ESA and UC: Basics

- Tops up income if you do not have enough to meet essential living costs
- There are two benefits that can be awarded to older teenagers/young adults who have limited work opportunities because of learning disability. They can get either:
 - Employment and Support Allowance (ESA), or
 - Universal Credit (UC)
- 15 • So which one?

ESA and UC: Basics

- UC is replacing ESA
 - It is no longer possible to make a new claim for means-tested ESA
 - So any new claim would have to be UC
- Some current/recent CTS students will already be getting ESA
 - For the time being they can stay on it – they won't be forced to switch to UC for a few years yet
 - But some young adults might be better off claiming UC ... and if they want to, they can

ESA and UC: Basics

- Can only get these benefits if parent/carer not claiming Child Benefit/Child Tax Credit for the teenager/young adult
- Worth doing if you aren't on Tax Credits
- Tax Credits + Child Benefit for a disabled dependant can sometimes be better buy than if the teenager claims benefits in his/her own right
 - But sometimes not – we will look at the different rates shortly

ESA and UC: Basics

- Cannot get means tested benefits if claimant's capital exceeds £16,000
 - This means your son/daughter's capital, not parents' capital
- Amount is reduced if capital is between £6,000.01 and £16,000
- Capital in a discretionary trust is not counted
 - If capital has been moved to a discretionary trust (from eg a bank account) deliberately to avoid this rule, it will still be counted
 - Inheritance planning quite important: if parents leave capital in a discretionary trust, the benefit claimant has not moved his/her capital anywhere – it is what it is and discretionary trusts are ignored

ESA and UC: Basics

- Working and claiming:
 - Rules are quite generous
- ESA:
 - May earn up to £20 a week – no strings
 - May earn up to 16 x NMW a week for a year at a time
 - Leave a year in between
 - May earn up to 16 x NMW indefinitely if it has therapeutic value
 - Doesn't affect benefit at all – still get full ESA
- UC:
 - No limit but
 - won't normally be accepted as unfit for work in the first place if earning more than 16 x NMW
 - earnings reduce the UC award (63% of earnings above c£400 a month comes off UC)

ESA – entitlement conditions

- Must have “limited capability for work” (LCW)
- One way to meet this requirement:
 - In education and entitled to PIP or DLA
 - No need for any further assessment
- Otherwise: assessment a bit like PIP
 - List of activities you might need to do at work
 - Score 6, 9 or 15 points for each activity you struggle with
 - Need total of 15 points for LCW
 - Examples ...

ESA entitlement conditions

- LCW points – examples particularly relevant to LD
 - Learning how to do tasks
 - Reduced awareness of hazards
 - Planning, organisation, problem solving
 - Coping with change
 - Inappropriate behaviour

ESA entitlement conditions

- If you have LCW, you might be expected to take part in “work related activity”
 - Learn new skills, overcome barriers to work
 - Benefit can be reduced or suspended (“sanctioned”) if you don’t cooperate
- But no work related activity and get a higher amount of ESA if you have “limited capability for work related activity” (LCWRA)
 - Not required to even think about work – for the time being it is completely out of the question ...

ESA entitlement conditions

- Assessment of LCWRA:
 - Shorter list of activities – only need to satisfy one of these and you have LCWRA
 - Includes (just a selection – 16 altogether):
 - Cannot understand simple message
 - Cannot learn simple task
 - Lack of hazard awareness leading to significant risk of injury to self/others
 - Daily episodes of disinhibited behaviour

Rates of income related ESA

- Once the person is confirmed as having LCWRA:
 - Basic £73.10 a week
 - Plus £29.05 a week if:
 - You have LCW but not LCWRA, and
 - Been on ESA since before April 2017
 - Plus £37.65 a week if you have LCWRA
 - This is instead of the £29.05, not as well
 - Plus £16.40 if you have either LCWRA or highest rate of DLA(care) or PIP(daily living
 - That is on top of everything else
 - These are the rates if you live with parents or have a carer - £127.05 a week max

Universal Credit

- The only new means tested benefit claim you can make anywhere in Great Britain from 12/12/18
- Monthly rather than weekly
- Because it's new, DWP are finding it difficult to learn the rules and there is a high error rate
 - Question anything you are told – get advice

Universal Credit

- Can get UC if still in education, provided:
 - Have LCW and
 - Getting PIP/DLA
- Unlike ESA, disabled students are not automatically treated as having LCW
 - So the claimant will need to have “work capability assessment”
 - Same as ESA: score 15 points, many of the criteria are likely to be satisfied by person with LD

Universal Credit

- Problems for disabled students:
 - Until recently DWP was arguing that there was a “Catch 22”:
 - Don’t have LCW until they do an assessment
 - But they were rejecting claims without doing an assessment because the claimant didn’t have LCW
 - They have now conceded that they cannot make a decision until they have done a work capability assessment – which is good news but ...
 - it takes a while and they don’t pay any UC in the meantime
 - They will pay arrears back to the claim date eventually though

Universal Credit

- Limited capability for work related activity (LCWRA)
 - Same as ESA: you just need to satisfy one of the tests (eg uncontrolled inappropriate behaviour)
 - Then get a supplement in the UC award

UC rates

- Basic £251.77 a month if under 25 (**less than ESA** for people with LCW)
 - £317.82 over 25 (same as ESA)
- Additional £126.11 a month for LCW
 - But only if you had LCW before April 2017
 - Can carry it across from ESA if you switch from ESA to UC
 - Works out same as ESA weekly rate
- Additional £328.32 a month if you have LCWRA (more than ESA)
 - As in ESA this replaces the £126.11, you cannot get both
- Maximum UC rate is £580.09 a month
 - About £133.50 a week – more than maximum ESA rate

Universal Credit

- When can/should you claim UC?
 - Anyone may claim UC at any time
 - That includes people currently getting ESA who would be better off
 - Over the next few years, people getting benefits that UC is replacing (including ESA) will be told they have to claim UC
 - “Managed migration”
 - If they don’t claim, the existing benefit will stop

Benefits for parents/carers

Carers Allowance

- Spend 35 hours a week caring for one person who gets:
 - DLA care component at middle or highest rate, or
 - PIP daily living component
- Individual claimant must not be earning more than £120 net on average
 - NB this is slightly less than 16 x minimum wage
 - Average worked out over “cycle” – relief TAs etc could argue that cycle includes summer and whole year average includes months when you earn nothing
- But it doesn't matter if partner works: Carers Allowance is a personal benefit, not a family means tested benefit

Universal Credit

- Replacing:
 - ESA(ir), JSA(ib) and IS
 - Tax Credits
 - Housing Benefit
- May claim UC if you like
 - Except in Havering atte Bower until next Wednesday
- Most people may no longer make a new claim for any of the benefits UC is replacing
 - This means if you find yourself needing to make a new claim after a change of circumstance, UC is the only means tested benefit you can claim

Universal Credit

- Will you be better off claiming UC?
 - It is impossible to give a “one size fits all” answer – so many variables that interact with each other
- But one key difference
 - Rate for a disabled child/teenager who is not on top rate DLA care component or enhanced rate PIP in UC is a lot less than Tax Credit equivalent:
 - £126.11 a month in UC (= c£29 a week)
 - £3275 a year in Tax Credit (= c62.80 a week)
- Otherwise the rates are mostly the same when you convert them to the same period
 - Of particular note today is that the supplement for carers is the same in UC as in the old benefits

Universal Credit

- UC work requirements:
 - Carer not expected to undertake any work related activity (work, sign on, retrain etc)
 - Not a problem if you do, but you don't have to
 - Although obviously earnings will reduce the award
 - BTW, you keep the UC carer supplement if you earn too much to get Carers Allowance itself
 - But couples are assessed individually
 - Only one of you is exempt from work related activity as a carer, the other will have to sign on etc
 - This is different from Income Support, which a lot of parent carers have claimed up to now

Claims

How to claim

- DLA:
 - Download a form from <https://www.gov.uk/government/publications/disability-living-allowance-for-children-claim-form>
 - Or phone 0800 121 4600 to order paper form
- PIP:
 - register claim by phone 0800 917 2222 – questionnaire will be sent out
 - Or write to
 - Personal Independence Payment New Claims
Post Handling Site B
Wolverhampton
WV99 1AH

How to claim

- Carers Allowance

- Online at

- <https://www.carersallowance.service.gov.uk/allowance/benefits>

- UC

- Online at

- <https://www.gov.uk/universal-credit/how-to-claim>

How to claim

- Appointees
 - Making and managing the claim on behalf of your son/daughter or other relative
- Notify DWP you want to be an appointee:
 - DLA / PIP
 - Use the same telephone number you use to request a claim form
 - UC
 - Phone Jobcentre on 0800 055 6688
- Don't delay the claim while waiting to be approved as an appointee

Appeals

“Mandatory reconsideration”

- If you are not happy with the decision:
 - First stage is internal review by DWP = what they call a “mandatory reconsideration” or MR
 - Can request MR in writing or by phone or even through UC online account – time limit 1 month
- Refusal rate is quite high
 - But don’t be deterred: if they don’t know what they are doing when they make the decision, they are no more likely to know what they are doing when they review it at the MR stage
- You have to go through the MR stage to appeal to a Tribunal ...

Appeal to Tribunal

- If MR is unsuccessful you then have the right to appeal within one further month
 - There is currently a loophole that allows a month to appeal even if you were late asking for the MR
 - Tribunal can also extend the appeal time limit up to max 13 months (and they are normally pretty relaxed about that)
- Tribunal is independent and success rates are high, especially PIP and LCW/LCWRA

Tribunal appeal

- DWP might make you an offer to end the appeal – increase benefit but not as much as you were hoping for
 - If you do accept it you then have the right to appeal immediately against the new decision that increases your benefit

The Tribunal

- If appeal involves PIP, DLA or LCW:
 - One “Judge” plus one doctor
- Additionally in DLA/PIP cases:
 - One other member who has experience of disability either through work or family life
- It is free
- You can be represented if you wish