

Policy Circular

Document No 14/07

Owner: Strategy & Communications Directorate

Subject: DLA/AA/CAA Appeals

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Next Review: June 2012

1.0 Background

The rate of a user's Disability Living Allowance (DLA), Attendance Allowance (AA) or Constant Attendance Allowance (CAA) is one of the ILF eligibility criteria. If the user is not receiving the appropriate rate they cease to be eligible.

When DLA/AA/CAA is reduced or stopped a user has the option of requesting that this decision is reviewed by DWP. If this is unsuccessful they can then take this to first formal appeal. Alternatively users may choose to take their case immediately to a first appeal and by pass the decision review.

Payments can continue where a user is requesting a revision of the decision or is in the process of a first appeal (presently to a Social Security Appeal Tribunal (SSAT)). ILF payments may not continue if a first formal appeal is unsuccessful even if a further appeal is then made.

DLA/AA/CAA recipients are given one month in which to request a revision of decision or appeal against the change by DWP in their

Independent Living Fund

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DLA/AA/CAA, unless there has been a change in circumstances since the decision was made, in which case a new decision is sought and the one month deadline does not apply.

2.0 Policy

2.1 Review of decision or first formal appeal

Candidates who cease to be in group 1 or 2 only because they lost their qualifying rate of DLA/AA/CAA, become candidates of group 4 if they request a revision of the decision to reduce their DLA/AA/CAA or if they make a formal appeal to a SSAT.

As a candidate of group 4 the user should be paid a replacement award calculated to include half the care component of the actual rate of DLA/AA/CAA they are receiving whilst they are in the process of a revision of decision or a first appeal against a reduction in their DLA/AA/CAA. No DLA/AA/CAA should be included within the Available income calculation where the DLA/AA/CAA has been stopped.

Where a revision of decision or a first appeal is successful, the normal ILF award should be backdated to the date DLA/AA/CAA was reinstated at the original rate. This will usually create an overpayment of the award (where the replacement award is more than the normal award) which must be recovered in the usual way.

Where the appeal is unsuccessful, payments should cease from the date the decision was made not to reinstate the previous rate of DLA/AA/CAA. This also applies where a decision review is unsuccessful and the user does not pursue a formal appeal.

2.2 Further formal appeals

If the user is appealing to the Commissioners against the decision of the SSAT (ie it is not the first appeal), which they can only do if there is an error of law in the decision of the SSAT, ILF payments should remain suspended unless and until the appeal is successful and the original rate of DLA/AA/CAA is reinstated (for Group 1 candidates this must be at least the rate of DLA/ AA/CAA that they were entitled to on 1 October 2007 and for group 2 candidates this must always be higher rate DLA/CAA).

Where an appeal, which is not a first appeal, is successful and ILF payments are reinstated, the normal award can be backdated to the date DLA/AA/CAA was reinstated at the original rate if care costs were incurred during this time. Any overpayment of the grant raised as a result of payments made during the first appeal should be recovered in the usual way. Backdating requests will be considered in line with the backdating policy.

3.0 Procedure

Procedural guidance can be found in the appendix

4.0 Source

Independent Living Fund 2006 Deed
Disability Rights Handbook
Trustees' Meeting 12 September 2007

5.0 Cross References

Run-off Payments Policy
Backdating policy

6.0 History Date Reviewed

19 June 2008
1 June 2010

Appendix

Procedure

Where a user's DLA/AA/CAA reduces/stops and the user is requesting a revision of decision or appealing against the reduction, evidence of this must be provided. In these circumstances, a user's normal award must cease from the date the user's DLA/AA/CAA is reduced/stopped, and a replacement award should be paid taking into account half of the actual rate of the care component of DLA/AA/CAA the user is receiving or no DLA/AA/CAA if it has been stopped

A replacement award letter should be sent to the user clearly informing them that if their appeal against the DLA/AA/CAA reduction is successful, the normal award will be calculated to reflect the reinstated rate of DLA/AA/CAA and will be paid from the date at which the original rate of DLA/AA/CAA was reinstated. The letter should make clear that where a decision to reinstate the rate of DLA/AA/CAA is backdated, any overpayment of the grant caused by the difference between the normal award and the replacement award due to the rate of DLA/AA/CAA, must be returned to the Fund.

If the revision of decision or first appeal is successful, the normal award will be recalculated and paid from the date the original rate of DLA/AA/CAA is reinstated. Any overpayment of the grant that is created should be referred to the Grant Recovery team in line with usual procedure.

Where a reduction in or cessation of DLA/AA/CAA is picked up by the ILF, the award should be suspended from the date DLA reduced or ceased. The user should be informed that if they choose to appeal to DWP or ask for the decision to reduce their DLA/AA/CAA to be revised, a replacement award can be paid pending the outcome of this process as long as evidence of the appeal or revision of decision is provided. Where a user is not appealing, they may request a Group 3 payment in line with the 'Change or Termination of Employment Costs' policy.

If the first appeal is unsuccessful, payments should be suspended and the user should be informed that their file will be closed 3 months

from the date of suspension unless evidence of a further appeal is provided.

In all cases, BFs should be set to periodically check the progress and outcome of an appeal.

Equality Impact Assessment

Screening Template

This preliminary impact assessment form is to help you screen your policy, project, function or new service. It should help you consider whether a full Equality Impact Assessment is required by looking at whether there is a potential negative or positive impact on any of the equality groups, if there is an opportunity to promote equality, and whether further data is needed.

Title of policy, project, function or service:

Disability Living Allowance (DLA) / Attendance Allowance (AA) / Constant Attendance Allowance (CAA) Appeals

Short description of aims and objectives

To explain the provisions relating to ILF awards when a user's qualifying rate of DLA (or AA/CAA) is reduced

Thinking about each group below, does (or could) the policy, project, service or function have an impact on members of each equality group? If so, how?

Equality Group	Yes – negatively	Yes – positively	Unclear	No impact
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Transgender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion or belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Socio-economic groups	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

What information or research has been considered in judging these impacts?

ILF Trust Deed (2006)

You should consider a full Equality Impact Assessment (EIA) if:

- (a) you feel one or more equality groups will be negatively impacted by the policy, project or service, or
- (b) there is an opportunity to promote equality and eradicate discrimination.

You may also consider further research if it is unclear, at this stage, what the impact may be.

Based on your findings, is a full EIA required?

Yes

No

Please provide a short summary of your decision-making below:

In order to be eligible for an ILF award, certain disability related benefits must be in payment at particular rates. The benefits concerned are Disability Living Allowance, Attendance Allowance and Constant Attendance Allowance. The rate of benefit a user receives is periodically reviewed by DWP. If the rate reduces then a person might cease to be eligible for an ILF award. The ILF Trust Deed contains provisions that allow for the temporary continuation of an award pending a decision review or formal appeal of the decision to reduce the rate of benefit.

This policy reflects the provisions made within the Trust Deed. The Trust Deed is one of the formal legal documents that govern the operations of the ILF. The content of this policy is a procedural explanation of mandatory provisions and does not include any decisions made by the Trustees or ILF management.

Notes:

- The completed EIA Screening Template should be sent to Jon Duckworth, User Liaison Manager for approval by the Equality Impact Assessment Board (EIAB).
- We will contact you with any comments or queries about the completed form.

**This form was
completed by:**

Michael Beacroft
