Attendance Allowance 2000/2001
a guide for visually impaired people

What is Attendance Allowance?
Attendance Allowance is a benefit for people over 65 who have care or supervision needs. Attendance Allowance is non-means tested, non-contributory and non-taxable, and does not adversely affect other benefits. In some cases Attendance Allowance will give entitlement to extra income support, housing benefit or council tax benefit. Attendance Allowance will usually mean extra cash in your pocket whatever your circumstances. Attendance Allowance is paid at two weekly rates:

- lower rate £35.80
- higher rate £53.55

Who can claim?
Anyone over 65 can claim Attendance Allowance. If you are under 65 you should claim Disability Living Allowance (see our DLA fact sheet). If you are over 65 and still getting DLA you cannot claim Attendance Allowance as well. If you are registered as blind or partially sighted you are not automatically entitled to Attendance Allowance. However, recent court decisions have made it easier for blind and partially sighted people to qualify.

Residential and community care
If you enter residential care your Attendance Allowance will usually stop after 4 weeks. However, if you pay the care home fees yourself, even if you previously received local authority funding, you may be able to receive Attendance Allowance. This is a complex legal area so you should contact us for further advice.
If you have ‘preserved rights’ because you entered residential care before 31.3.92, you can also receive Attendance Allowance.

If you are paying for community care services (e.g. home care charges), you may find that your local authority charges Attendance Allowance recipients more. You should, however, still be better off overall.

**How do I claim?**
To claim Attendance Allowance you must obtain claim form DS2. You get the claim pack by sending off leaflet DS702 which is available from a post office or Benefits Agency. Alternatively, you can ring the Benefits Enquiry Line on 0800 882200 and you will be sent a claim pack.

The DS2 is a self-assessment form. Do not be put off by the length of the form. If you need help completing it you should ask a local advice centre. The Benefits Enquiry Line also offers a telephone form completion service. The Benefits Agency will complete the form over the phone and will send you Braille or large print transcripts of your answers. It may not be necessarily for you to see a Benefits Agency Doctor. However, the Benefits Agency may write to your doctor, or ask you to undergo a medical examination.

**What are the qualifying conditions?**
To qualify for lower rate Attendance Allowance you must satisfy either the day or the night condition. To qualify for the higher rate you must satisfy both the day and the night condition.1

**day condition**
- a) you require frequent attention throughout the day in connection with your bodily functions, or
- b) continual supervision throughout the day in order to avoid substantial danger to yourself or others

**night condition**
- a) you require, from another person, prolonged or repeated attention in connection with your bodily functions, or
- b) 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

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1 section 64 Contributions and Benefits Act 1992
Daytime attention
The help you need only counts as ‘attention’ if it is closely connected with your ‘bodily functions’. The term ‘bodily functions’ includes physical functions such as washing, dressing, eating, going to the toilet, walking, getting out of chairs, and so on. Furthermore, ‘bodily functions’ can also include sensory functions such as seeing, hearing and speaking. However, cooking, shopping or other domestic tasks are not bodily functions.

Before 1994 the Benefits Agency did not accept that the assistance that blind people need could count as ‘attention’. However, in the Mallinson judgment, the House of Lords decided that guiding or reading to a blind person is ‘attention’ with the bodily function of ‘seeing’. The Lords ruled 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.”

A sighted person, therefore, provides ‘attention’ by acting as your eyes. Attention is defined as a close and intimate service carried out in the disabled person’s presence, involving personal contact – either physical contact or contact by the spoken word. Therefore, you can provide attention to a blind person by guiding or reading to them, but also by describing something, or giving verbal instructions.

When will I require help with seeing?
In order for help with seeing to count as attention it must be ‘reasonably required’, but it does not need to be ‘medically required’. Whether something is ‘reasonably required’ depends on your individual circumstances. The Benefits Agency should consider “whether the attention is reasonably required to enable the severely disabled person as far as reasonably possible to live a normal life”. The assessment should take into account “such attention as may enable the claimant to carry out

2 R(A)2/80
3 Mallinson v Secretary of State for Social Security, 21 April 1994
4 R(A)2/80
5 R(A)3/86
6 Secretary of State for Social Security v Fairey (aka Halliday), 21 May 1997
a reasonable level of social activity”. When you complete the Attendance Allowance claim form you should list all the help you need to undertake social, recreational, or leisure activities. If you are visually impaired you may need help with ‘seeing’ in the following situations:

- **personal attention:** sorting clothes and checking they are clean and matching; checking that your face, hands and nails are clean; checking that make-up is correctly applied and hair is correctly groomed; identifying and reading medicine containers and measuring dosages

- **mealtimes:** checking food is fresh; identifying where food is on a plate; cutting up food and de-boning chicken or fish; checking if food or drink is spilt on your clothes

- **household activities:** reading correspondence; locating household objects; reading the labels on containers

- **outside the home:** avoiding everyday obstacles and crossing roads; identifying bank notes and checking change; reading shop receipts, labels and price tags; guiding in shops, pubs and restaurants; guiding when exercising

Be warned that the DSS may argue that a particular need for help can be met by a ‘simpler method’, e.g. a guide dog, a low vision aid or a Braille marking. 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 be read with magnification.

**Domestic duties**

Although you may need a lot of help with ‘domestic duties’, such as cooking and shopping, the Benefits Agency may not count this as attention. The official guidance to Benefits Agency 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

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7 CA/780/91
other domestic tasks which are commonly done by one person for the benefit of another.”

The problem with the Benefits Agency’s approach to this issue is the assumption that all domestic assistance is “done by one person for the benefit of another”. But what if you do your own cooking or shopping, and need a sighted person to help you accomplish these tasks? For example you may need someone to guide you to the shops or read cooking instructions to you. We think that this should count as attention. Several Social Security Commissioners support this approach. For example, one commissioner has ruled 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, despite decisions such as this, the Benefits Agency continues 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.

Passing the frequency test
The help you need must be both ‘frequent’ and spread at intervals ‘throughout the day’. Attention should not just be needed at the beginning, middle and end of the day but during the periods in between as well. A diary of your daily routine may help to illustrate the pattern of your needs. Remember you may need to check your clothes and appearance several times a day, e.g. after meals or going to the toilet. Similarly, locating everyday objects is, in itself, an ongoing requirement. Rather than concentrating on activities you do infrequently (e.g. visiting the doctor) you should dwell on routine, daily activities. For example, reading newspapers and following TV programmes can take up several hours each day.

8 AOG paragraph 77101
10 CDLA/267/94
What does ‘continual supervision’ mean?
You will satisfy the continual supervision condition if you need someone to keep an eye on you to prevent the risk of substantial danger. You may satisfy the supervision condition if:

- you suffer from fits or seizures as a result of diabetes or epilepsy
- you are at risk of accidents due to dementia, memory loss, confusion or dizzy spells
- you are prone to falls indoors as well as outdoors
- you 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 (e.g. using a cooker, crossing a road, or having a bath) then it is not ‘continual’. If, however, you cannot predict when the risk of harm may arise (e.g. you are prone to fall in any situation), then you may qualify. 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.

Filling in the claim form
You are assessed for Attendance Allowance on the help you need, not what you actually get. You can still get Attendance Allowance even if you do not have a carer. If you struggle to accomplish tasks on your own you should explain what these difficulties are. 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, 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 ‘help with seeing’ checklist will help you identify the relevant points. If you have additional disabilities you should use our ‘visual impairment and additional disabilities’ checklist. The checklists are best used as a guide to filling in the form, but you could attach it as a supplement that can be attached to the claim form.

If in doubt - appeal!
If you are not happy with the decision about Attendance Allowance there is a two-tier appeal procedure:
• firstly: you should ask the Benefits Agency to look at the decision again. This is called a ‘revision’. You will have the opportunity to send additional evidence, but must do this within a month. You will receive a written explanation of the decision.

• secondly: 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. You can opt for an oral hearing where you can present your case directly and take a representative. If you do not want an oral hearing your case will be decided by a ‘paper’ appeal. If you want to appeal we strongly advise you to seek assistance from an advice agency. If you think you satisfy the daytime attention condition you should also read our briefing paper, ‘Taking Mallinson cases to tribunal’.

If you miss the time limit you may be able to ask the Benefits Agency to ‘supersede’ its last decision. You can do this if your disability gets worse and for other specific reasons. We recommend contacting an advice agency to help you do this.

What happens if I am awarded Attendance Allowance?
If you have a carer s/he may be able to get Invalid Care Allowance. To claim it your carer has be under 65 and earning less than £50 per week. However, your carer getting this allowance can affect your benefits, so you should seek advice before claiming. For more information or a claim pack ring 01253 856 123.

You may qualify for these allowances:

• higher pensioner premium: this premium is an additional element of income support, housing benefit and council tax benefit. If you are over 80 or registered blind you will automatically get the premium. If you are aged 60-79 and partially sighted, you can qualify for the premium through Attendance Allowance. Contact your local social security or housing benefit office to ensure that you are getting the premium.

• severe disability premium: this premium can dramatically boost your income if you claim income support or housing/council tax benefit. You may gain an extra £40.20 a week income support if you qualify for severe disability premium. You are eligible for the premium if you are:
i. getting Attendance Allowance, and
ii. no-one gets invalid care allowance to look after you, and
iii. there are no ‘non-dependants’ living with you.

Our ‘Income Support for Pensioners’ fact sheet explains these rules in more detail.

• exemption from non-dependant deductions: if you are registered blind or get Attendance Allowance, no deductions will be made from your income support or housing/council tax benefit if you have a non-dependant (e.g. an adult child) in your household. You should check with your local social security or housing benefit office to ensure no deductions are made.

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

Conclusion
This fact sheet is only a brief guide to how visually impaired people can benefit from Attendance Allowance. It is not a complete or exhaustive statement of law. For further information about Attendance Allowance or any of the other benefits mentioned in this fact sheet contact your local advice centre, Citizens Advice Bureau or:

Welfare Rights Office
Action for Blind People
14-16 Verney Road
London SE16 3DZ

Tel. 020 7732 8771
Fax. 020 7639 0948
E-mail: info@afbp.org
Website: www.demon.co.uk/afbp

welfare rights training

Action for Blind People can provide in-house training courses on welfare benefits.
Contact our Welfare Rights Office for further details.
1 April 2000