Disability Living Allowance 2000/2001
a guide for visually impaired people

Disability Living Allowance (DLA) is a benefit to meet the extra costs of disability. It is paid to people under 65 who have care needs or mobility problems. If you are over 65 you should claim Attendance Allowance. We have produced a separate ‘Attendance Allowance’ fact sheet. If you are under 65, and blind or partially sighted, you should qualify for DLA. This fact sheet will explain how to claim DLA successfully.

What is DLA?
DLA is a tax-free, non means-tested benefit. This means you can claim while you are working, studying or unemployed. DLA has no adverse effect on other benefits. In fact an award of DLA can often lead to an increase in certain means-tested benefits (see ‘DLA and other benefits’ below). DLA is comprised of two elements - a care component and a mobility component. The two higher rates of the DLA care component have the same rules as Attendance Allowance.

| care component paid at three weekly rates | higher | £53.55 |
|                                         | middle | £35.80 |
|                                         | lower  | £14.20 |
| mobility component paid at two weekly rates | higher | £37.40 |
|                                         | lower  | £14.20 |
How to claim
To claim DLA you must complete a self-assessment claim form (DLA1). You can get a DLA claim form by ringing the freephone Benefits Enquiry Line on 0800 882200. Alternatively, you can use leaflet DS704, available from your post office or local social security office, to send off for a claim pack. If you find the long claim form off-putting you should seek help from an advice centre. The Benefits Enquiry Line also offers a telephone form completion service. The Benefits Agency will fill in the form over the phone and send a Braille or large print transcript of your answers for you to sign.

Your claim can be decided without the necessity of a medical examination. However, the Benefits Agency has the power to request a medical report from your doctor, or invite you to undergo an examination.

The middle and higher care component
The middle rate of the care component is for people who need help either throughout the day or during the night. The higher rate of care is for people who need help both day and night. You must be ‘so severely disabled, physically or mentally’, that you require from another person:

- during the day
  i. frequent attention throughout the day in connection with your bodily functions, or
  ii. continual supervision throughout the day in order to avoid substantial danger to yourself or others
- at night
  i. prolonged or repeated attention in connection with your bodily functions, or
  ii. 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

\[1\] s 72(1) Social Security Contributions & Benefits Act (SSCBA) 1992
If you have recently lost your sight and haven’t learnt to adjust to your disability, then you may satisfy the daytime ‘continual supervision’ condition. If you have an additional disability, such as diabetes or epilepsy, the risk of fits or seizures may mean that you need continual supervision. If you only require supervision whilst performing certain tasks (e.g. bathing, cooking, or crossing roads), the supervision you need is unlikely to be ‘continual’. Blind people are more likely to qualify for the middle rate care component because they need ‘frequent attention throughout the day’. We now look at this daytime attention test in more detail.

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, sleeping, going to the toilet, moving around, taking medication, and so on. Furthermore, ‘bodily functions’ can also include sensory functions such as seeing, hearing and speaking. However, cooking, shopping, and 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, by describing something, or by giving verbal instructions.

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2 R(A)2/80
3 Mallinson v Secretary of State for Social Security, 21 April 1994
4 R(A)2/80
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 a reasonable level of social activity”. When you complete the DLA 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: checking your clothes are clean and matching; checking that your face, hands and nails are clean; checking make-up; checking your hair is correctly groomed; administering medicines.

• 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 clothes.

• household activities: locating household objects; reading the labels on containers, tins, cassette boxes, record covers; reading magazines and newspapers; describing television pictures.

• 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.

You should be able to identify other times, such as work or study, where you require someone to assist you with seeing. Be warned that the Benefits Agency 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.

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5 R(A)3/86
6 Secretary of State for Social Security v Fairey (aka Halliday), 21 May 1997
7 CA/780/91
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 other domestic tasks which are commonly done by one person for the benefit of another.”

The Benefits Agency sometimes assumes 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. Some 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.”

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.

Childcare
Looking after a young child is another area of dispute. We believe that if a parent needs sighted help to wash, dress, feed and play with his/her child that is attention with the bodily function of seeing which is reasonably required. Two Commissioners agree with this. However, in another case the Commissioner thought this help is “too remote” to be attention. So, if possible try to show you qualify regardless of such help.

Passing the frequency test

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8 AOG paragraph 77101
10 CDLA/267/94
12 CSDL A/314/97
In order to satisfy the daytime attention condition, the help you need must be both ‘frequent’ and spread at intervals ‘throughout the day’. The help 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 can need help checking 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.

The lower rate care component
If the help you need with seeing does not amount to ‘frequent attention’ you may still qualify for the lower rate care component. To qualify you must be “so severely disabled physically or mentally, that either:

i. you require attention from another person in connection with your bodily functions for a significant portion of the day, (whether during a single period or a number of periods), or

ii. you cannot prepare a cooked main meal for yourself if you have all the ingredients.”

Attention for a ‘significant portion of the day’ means that your daily help must add up to at least ‘an hour or thereabouts’ in total. If you only need help in the dark or in poor light, you may qualify in this way. Alternatively, you should qualify through the ‘cooking test’.

The test of whether you can prepare a ‘cooked main meal’ is entirely hypothetical. This means that even if you don’t normally cook for yourself you ought to qualify. Equally, if you only prepare snacks or warm up pre-cooked meals (e.g. in a microwave) you can still pass the test. If you rarely cook you should ask yourself whether you could perform a complete range of cooking-related tasks if you tried. You should mention the problems you might have if you attempted the following tasks:

- reading: recipes, instructions, sell-by dates, markings on weighing scales and measuring jugs, settings on cookers, etc.

13 s72(1) SSCBA 1992
14 CDLA/85/1994
• identifying ingredients: distinguishing between different tins and packages
• monitoring cooking: determining cooking time, ensuring pans don't boil over or burn out, checking if food is properly cooked
• ensuring hygiene and safety: handling knives, opening tins, ensuring food is fresh and properly cleaned, dealing with spilt liquid or broken glass, avoiding burns and scalds, etc.

The mobility component
You are eligible for the higher mobility component if, as a result of your disability:

i. you are unable to walk, or
ii. you are virtually unable to walk, or
iii. the exertion required to walk constitutes a serious danger to your life or could lead to a serious deterioration in your health, or
iv. you are a double amputee, or
v. you are deaf and blind, or
vi. you are severely mentally impaired with severe behavioural problems and you qualify for the highest rate DLA care component.

Blind people who need guidance cannot qualify on the grounds that they are ‘unable’ or ‘virtually unable to walk’. Therefore, if sight loss is your only disability, you are unlikely to be eligible for the higher mobility component. If walking short distances causes you pain or severe discomfort then you could qualify for higher mobility.

Deaf and blind mobility
You qualify for the higher rate mobility component if you are “both deaf and blind” and, as a result, are “unable, without the assistance of another person, to walk to any intended or required destination while out of doors”. You have to show that you are both 100% disabled from blindness and 80% disabled from deafness.

15 s73 SSCBA 1992 and reg 12 DLA Regs 1991
16 R(M)1/84
17 reg 12 DLA Regs 1991
You are treated as 100% disabled from blindness if you are “unable to do any work for which eyesight is essential”. This is the same definition as is used for blind registration. Therefore, if you are on the blind register, or if your sight loss is such that you could be registered as blind, you should be treated as 100% disabled.

In order to establish your degree of deafness your hearing will be measured by an audiogram test. You will be treated as 80% disabled through deafness if your average hearing loss is more than 87 decibels at 1, 2 and 3 kHz in each ear. Until 1995 you were treated as 80% disabled if you were “unable to understand a simple instruction shouted from 1 metre”. The audiogram assessment takes no account of the effects of background noise, such as traffic, or hearing aid use. If you fail the audiogram test, but believe you would have passed the old ‘shouted instruction’ test, you should contact us.

The lower mobility component
If visual impairment is your only disability you should qualify for the lower mobility component. This is because the lower mobility test relates to the need for guidance or supervision in unfamiliar places. It is not a test of your physical capacity to walk, nor is it an assessment of your ability to operate on familiar routes. The claim pack does not make this clear, but the law says you qualify if you are:

“able to walk but are so severely disabled physically or mentally that, disregarding any ability you may have to use routes which are familiar to you on your own, you cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.”

If you are registered blind you should have no difficulty passing this test. If you are partially sighted you will usually qualify but it is worth mentioning the following mobility problems:

- avoiding obstacles: parked cars, lamp-posts, dustbins, bollards, overhanging trees, other pedestrians

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18 R(DLA)3/95
19 s64 National Assistance Act 1948
20 Adjudication Officer’s Guide paras 77389-92
21 s73(1)(d) SSCBA 1992
• tripping over: loose kerb and paving stones, roadworks, uneven road surfaces, potholes, steps, etc.

• crossing roads: knowing when traffic is coming or roads are clear, anticipating cyclists, judging the speed of cars

• following directions: reading maps, road/street signs, bus numbers/destinations, timetables, etc.

• operating under different lighting conditions: in the dark, in overcast conditions, in artificial light, bright sunlight

Even if you normally travel in unfamiliar places on your own, you may still require guidance or supervision ‘most of the time’. If you are travelling on unfamiliar routes, you cannot predict when you will need help to cross a road, or when you need to ask directions. It is therefore reasonable for you to have someone with you on journeys of this sort.

Children and DLA
If you are claiming for a child you should be aware of the special rules for children under 16.

care component for children
The cooking test does not apply if your child is under 16. Children must satisfy the care or supervision conditions and in addition they must show that either:22

i. they have requirements substantially in excess of the normal requirements of a child of the same age, or

ii. they have substantial requirements which a younger child in normal health would have but which a healthy child of the same age would not have.

mobility component for children
The mobility component is only paid from age 5 onwards. Disabled children under 16 applying for the lower mobility component must show that either:23

i. they require substantially more guidance or supervision than a non-disabled child of the same age, or

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22 s72(6) SSCBA 1992
23 s73(4) SSCBA 1992
ii. non-disabled children of the same age would not require such
guidance or supervision.

There is a specific claim form for children (DLA1 Child) which asks
questions about development, therapy, and communication. If you are
claiming for your child you should read our ‘DLA for visually impaired
children’ fact sheet.

Challenging a decision
If you are not happy with the decision about your DLA 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 to ‘supersede’
its last decision. You can do this is if your disability gets worse and for
other specific reasons. We recommend contacting an advice agency to
help you do this.

Checklists
Action for Blind People has produced a series of useful checklists relating
to the various disability tests in the DLA system. These are best used as
prompts to ensure all relevant details are included in your claim form, but
you can attach them to your claim as a supplement. We have produced
checklists for ‘help with seeing’, ‘visual impairment and additional
disabilities’, ‘the cooking test’, ‘diabetes’ and ‘night-time assistance’.
Periodic checks of your benefit
If you are awarded DLA the Benefits Agency will sometimes check your benefit. This means that the Benefits Agency may contact you by visit or postal questionnaire to see if your circumstances have changed. You should therefore keep copies of our fact sheets and checklists in case you are contacted.

DLA and other benefits
If you get the middle or higher care component and have a carer s/he may be able to get Invalid Care Allowance. To claim it your carer has to 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 also gain entitlement to other allowances and services:

- **premiums**: if you get DLA you can also get extra ‘premiums’ to increase your income support, income-based jobseeker's allowance, housing benefit and council tax benefit. An award of DLA at any rate will give entitlement to a disability premium, a higher pensioner premium (aged 60 plus) or a disabled child's premium (where DLA is for a dependant child). You should check with your local social security or housing benefit office to ensure that the appropriate premium has been awarded.

- **severe disability premium**: this premium can substantially boost your income support, income-based jobseeker's allowance, or housing/council tax benefit. You must:
  i. receive the middle or higher rate of DLA care and
  ii. have no carer receiving invalid care allowance and
  iii. be living alone.

  You can still count as ‘living alone’ if you live with a person who is registered blind; on Attendance Allowance or middle/higher DLA care; aged under 18; a temporary resident; or a landlord, tenant, lodger, joint-tenant or co-owner. Seek advice if you think you may qualify.

- **exemption from non-dependant deductions**: if you get DLA care component, then no deductions will be made from your income support, income-based jobseeker's allowance, housing benefit or council tax benefit if you have a non-dependant (e.g. an adult child) in your household. Deductions are made because non-dependants are
expected to contribute towards housing costs. You should check with your benefit office to ensure no deductions are made.

- road tax exemption: people on the higher mobility component of DLA can claim exemption from vehicle excise duty (road tax). Ring the Benefits Agency on 0845 7 123 456 for a claim form.

- grants for draftproofing and loft insulation: people on DLA can now apply for grants from the Home Energy Efficiency Scheme to pay for draftproofing and loft insulation. Ring Eaga Ltd on freephone 0800 181667 for more information.

- independent living fund: severely disabled people on higher rate DLA care component can apply to this fund. Payments are discretionary and applications must be made through social services.

- Christmas bonus: if you are awarded DLA at any rate you will get the £10 Christmas bonus. There is no need to claim as the bonus is paid automatically.

If you have not yet claimed any of the above benefits you should not wait until the outcome of the DLA claim. These benefits should be claimed at the same time as DLA is claimed. This is because the rules for backdating benefit claims are now very restrictive.

Conclusion
Please bear in mind that this fact sheet is just a brief guide to DLA and how visually impaired people can benefit. It is not a complete and exhaustive statement of law. For further information about DLA or any of the other benefits mentioned earlier, ask your local welfare rights unit, Citizens Advice Bureau or contact:

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.

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