
STATUTORY INSTRUMENTS

1976 No. 409

The Social Security (Invalid Care Allowance) Regulations 1976

PART II

**MISCELLANEOUS PROVISIONS RELATING
TO INVALID CARE ALLOWANCE**

Prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons

3.—(1) For the purposes of section 37 of the Act (invalid care allowance) the prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons are—

- (a) a payment under section 61 of the Act (increase of disablement pension where constant attendance needed);
- (b) a payment such as is referred to in section 7(3)(b) of the Industrial Injuries and Diseases (Old Cases) Act 1975 (increase of an allowance under that Act where the person in respect of whom that allowance is payable requires constant attendance as a result of his disablement);
- (c) a payment under regulation 44 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975⁽¹⁾ in respect of the need of constant attendance;
- (d) a payment by way of an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension,

being a payment the weekly rate of which is not less than the amount specified in paragraph 7(a) of Part V of Schedule 4 to the Act.

(2) For the purposes of paragraph (1)(d) of this regulation “war disablement pension” means —

- (a) retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Ministry of Pensions Act 1916 the Air Force (Constitution) Act 1917, the Personal Injuries (Emergency Provisions) Act 1939, the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, the Polish Resettlement Act 1947, the Home Guard Act 1951 or the Ulster Defence Regiment Act 1969;
- (b) any retired pay or pension to which section 365(1) of the Income and Corporation Taxes Act 1970 applies, not being retired pay, pension or allowance to which sub-paragraph (a) of this paragraph applies; or
- (c) any payment which the Secretary of State has certified can be accepted as being analogous to any such retired pay, pension or allowance as is referred to in sub-paragraph (a) or (b) of this paragraph.

⁽¹⁾ (1975 I, p. 1979).

Circumstances in which persons are or are not to be treated as engaged or regularly and substantially engaged in caring for severely disabled persons

4.—(1) A person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person on any day in a week unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours a week in caring for that severely disabled person.

(2) A week in respect of which a person fails to satisfy the requirements of paragraph (1) of this regulation shall be treated as a week in respect of which that person satisfies those requirements if he establishes—

- (a) that he has only temporarily ceased to satisfy them; and
- (b) that (disregarding the provisions of this sub-paragraph) he has satisfied them for at least 14 weeks in the period of 26 weeks ending with that week and would have satisfied them for at least 22 weeks in that period but for the fact that either he or the severely disabled person for whom he has been caring was undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Circumstances in which persons are to be regarded as receiving full-time education

5.—(1) For the purposes of an invalid care allowance, a person shall not be treated as receiving full-time education for any period unless that period is one in respect of which the Secretary of State certifies that he is receiving full-time education by attendance at an establishment recognised by the Secretary of State as being, or as comparable to, a university, college or school.

(2) In determining the duration of a period of full-time education under paragraph (1) of this regulation, any temporary interruption of that education may be disregarded.

Prescribed relationships between severely disabled persons and persons engaged in caring for them

6.—(1) For the purposes of section 37(1)(c) of the Act (condition of entitlement to an invalid care allowance that the severely disabled person is either such relative of the person caring for him as may be prescribed or a person of any such other description as may be prescribed) the relationship which the severely disabled person is required to bear to the person caring for him is that of—

- (a) lineal descendant or ascendant in a direct line;
- (b) husband, wife, step-father, step-mother, step-son, step-daughter, brother, sister, half-brother, half-sister, step-brother, step-sister, aunt, uncle, nephew, niece; or
- (c) father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law.

(2) Any such relationship as is specified in paragraph (1) of this regulation shall be taken to include also any such relationship as would have subsisted if some person born illegitimate had been born legitimate.

Manner of electing the person entitled to an invalid care allowance in respect of a severely disabled person where, but for section 37(7) of the Act, more than one person would be entitled to an invalid care allowance in respect of that severely disabled person

7.—(1) For the purposes of the provision in section 37(7) of the Act which provides that where, apart from that section, two or more persons would be entitled for the same day to an invalid care allowance in respect of the same severely disabled person one of them only shall be entitled, being such one of them as they may jointly elect in the prescribed manner, an election shall be made by giving the Secretary of State a notice in writing signed by the persons who but for the said

provision would be entitled to an invalid care allowance in respect of the same severely disabled person specifying one of them as the person to be entitled.

(2) An election under paragraph (1) of this regulation shall not be effective to confer entitlement to invalid care allowance either for the day on which the election is made or for any earlier day if such day is one for which an invalid care allowance has been paid in respect of the severely disabled person in question and has not been repaid or recovered.

Circumstances in which a person is or is not to be treated as gainfully employed

8.—(1) For the purposes of section 37(1)(b) of the Act (condition of a person being entitled to an invalid care allowance for any day that he is not gainfully employed) a person shall not be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded £6 and, subject to paragraph (2) of this regulation, shall be treated as gainfully employed on every day in a week if his earnings in the immediately preceding week have exceeded £6.

(2) There shall be disregarded for the purposes of paragraph (1) above a person's earnings—

- (a) for any week which under paragraph (2) of regulation 4 of these regulations is treated as a week in which that person satisfies the requirements of paragraph (1) of that regulation;
- (b) for any week as an employed earner if that week is one throughout which he is absent from the employment by virtue of which he is an employed earner with the authority of his employer; and
- (c) in the week immediately preceding the week in respect of which that person (if his earnings in the said immediately preceding week were disregarded) would first become entitled to an invalid care allowance in respect of a severely disabled person.

(3) The Social Security Benefit (Computation of Earnings) Regulations 1974(2), as amended(3), except regulations 5 to 7 thereof, shall apply in relation to invalid care allowance as they apply in relation to invalidity pension.

Conditions relating to residence and presence in Great Britain

9.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of section 37(4) of the Act (person not to be entitled to an invalid care allowance unless he satisfies prescribed conditions as to residence or presence in Great Britain) in relation to any person in respect of any day shall be—

- (a) that he is ordinarily resident in Great Britain; and
- (b) that he is present in Great Britain; and
- (c) that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than 26 weeks in the 12 months immediately preceding that day.

(2) For the purposes of paragraph (1)(b) and (c) of this regulation, a person who is absent from Great Britain on any day shall be treated as being present in Great Britain—

- (a) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 4 weeks; or
- (b) if his absence is temporary and for the specific purpose of caring for the severely disabled person who is also absent from Great Britain and where attendance allowance or a payment specified in regulation 3(1) of these regulations is payable in respect of that disabled person for that day.

(2) (1974 III, p. 7017).

(3) There is no amendment relevant for the purposes of this regulation.

(3) For the purposes of paragraphs (1)(b) and (c) of this regulation, a person shall be treated as having been present in Great Britain on a day if on that day he is—

- (a) a merchant seaman within the meaning of the Family Allowances (Qualifications) Regulations 1969⁽⁴⁾, as amended⁽⁵⁾; or
- (b) a member of the forces within the meaning of those regulations; or
- (c) living with such a member of the forces and is that member's spouse, son, daughter, father, father-in-law, mother or mother-in-law.

Circumstances in which a person over pensionable age is to be treated as having been entitled to invalid care allowance immediately before attaining that age

10. A person who has attained pensionable age shall for the purposes of section 37(5) of the Act be treated as having been entitled to an invalid care allowance immediately before attaining that age if immediately before attaining it he would have satisfied the conditions for entitlement to that allowance but for the provisions of the Social Security (Overlapping Benefits) Regulations 1975⁽⁶⁾, as amended⁽⁷⁾

Invalid care allowance for persons over retiring age

11. Where a person is entitled to an invalid care allowance immediately before he attains retiring age he shall not be disentitled to that allowance after he attains that age by reason only of the fact that he is not caring for a severely disabled person or no longer satisfies the requirements of section 37(1) (a) or (b) of the Act.

Increase of invalid care allowance for child dependants

12.—(1) For the purposes of increases of invalid care allowance for child dependants under section 49 of the Act, the prescribed circumstances in which a beneficiary is entitled to such an increase for any period shall be as set out in the following paragraphs of this regulation.

(2) The weekly rate of an invalid care allowance for any period for which the beneficiary has a family which includes a child or children shall be increased in respect of that child, or each respectively of those children, by the appropriate amount specified in relation to that allowance in column (2) or (3) of Part IV of Schedule 4 to the Act.

(3) A child of the family of a woman for the time being residing with the beneficiary is to be treated for the purposes of this regulation as a child of the beneficiary's family if the child—

- (a) is an illegitimate son or daughter of theirs; or
- (b) was born not less than 6 months before the day for which the increase provided by paragraph (2) above is claimed and was wholly or mainly maintained by the beneficiary throughout the 6 months ending immediately before that day.

(4) Where a person is entitled to receive payment of an amount by way of an increase of an invalid care allowance under the foregoing paragraphs of this regulation, that increase shall not be payable unless one of the following conditions is satisfied—

- (a) that the child in question is living with the beneficiary; or
- (b) that the requisite contributions are being made to the cost of providing for the child.

(5) The condition specified in paragraph (4)(b) above is to be treated as satisfied if, but only if—

(4) (1969 I, p. 543).

(5) There is no amendment relevant for the purposes of this regulation.

(6) (1975 I, p. 1918).

(7) There is no amendment relevant for the purpose of this regulation.

- (a) such contributions are being made at a weekly rate not less than the amount referred to in paragraph (4) above—
 - (i) by the beneficiary, or
 - (ii) where the beneficiary is one of two spouses living together, by them together; and
- (b) where an allowance under the Family Allowances Act 1965 is payable in respect of the child as a child of the beneficiary's family, the contributions are over and above those required for the purposes of satisfying section 3(2) of that Act or (as the case may be) the Schedule to that Act, paragraph 1(1), proviso.

(6) Where a person is entitled in respect of a child to a guardian's allowance under section 38 of the Act, the amount (if any) payable to that or any other person by way of invalid care allowance in respect of children of any family shall be such, and such only, as would be payable if the first-mentioned child were not included or treated as included in any family.

(7) Any sum or sums paid by a person by way of contribution towards the cost of providing for two or more children included or treated as included in that person's family, shall be treated as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of those children so as to secure as large a payment as possible by way of invalid care allowance in respect of them.

Increase of invalid care allowance for adult dependants

13.—(1) For the purposes of increases of invalid care allowance for adult dependants under section 49 of the Act, the prescribed circumstances in which a beneficiary is entitled to such an increase for any period shall be as set out in paragraph (2) of this regulation.

(2) The weekly rate of an invalid care allowance shall be increased by the amount specified in relation to that allowance in column (4) of Part IV of Schedule 4 to the Act for any period during which the beneficiary is residing with—

- (a) his wife and she is not engaged in any one or more employments from which her weekly earnings exceed that amount; or
- (b) some female person (not being a child) who—
 - (i) has the care of a child or children of the beneficiary's family within the meaning of regulation 12 of these regulations being a child or children in respect of whom he is entitled to an increase of an invalid care allowance or would be so entitled but for the provisions of any regulation for the time being in force under the Act relating to overlapping benefits;
 - (ii) is not undergoing imprisonment or detention in legal custody;
 - (iii) is not engaged in any one or more employments (other than her employment by the beneficiary in caring for a child or children of his family) from which her weekly earnings exceed that amount;
 - (iv) is not absent from Great Britain, except for any period during which she is residing with the beneficiary outside Great Britain and for which the beneficiary is entitled to an invalid care allowance.

(3) A person who is entitled to an increase of an invalid care allowance under paragraph (2)(a) above shall not be entitled to an increase of that benefit under paragraph (2)(b) above.

Application of the Social Security (General Benefit) Regulations 1974 to invalid care allowance

14. The provisions of the Social Security (General Benefit) Regulations 1974⁽⁸⁾, as amended⁽⁹⁾, specified in column (1) of Schedule 1 to these regulations, the subject matter of which is described in column (2) of that Schedule, shall, with any necessary modifications, apply to invalid care allowance as they apply to invalidity pension.

⁽⁸⁾ (1974 III, p. 8113).

⁽⁹⁾ There is no amendment which relates expressly to the subject matter of these Regulations.