
STATUTORY INSTRUMENTS

1992 No. 3147

The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations 1992

PART IV

DISABILITY BENEFITS

7.—(1) In regulation 9 of the Social Security (Disability Living Allowance) Regulations 1991⁽¹⁾ (“the Disability Living Allowance Regulations”) (persons in certain accommodation other than hospitals), paragraph (3) shall be omitted.

(2) In regulation 10 of those Regulations (which relates to persons in hospital and certain other accommodation)—

- (a) in paragraph (1), for the words “subject to paragraphs (2) and (3)” there shall be substituted the words “subject to the following provisions of this regulation”;
- (b) after paragraph (5), there shall be inserted the following paragraphs—

“(6) Regulation 8 or as the case may be regulation 9 shall not apply in the case of a person who is residing in a hospice and is terminally ill where the Secretary of State has been informed that he is terminally ill—

- (a) on a claim for the care component,
- (b) on an application for a review of an award of disability living allowance, or
- (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, disability living allowance.

(7) In paragraph (6) “hospice” means a hospital or other institution other than—

- (a) a health service hospital (within the meaning of section 128 of the NHS Act of 1977⁽²⁾) in England or Wales;
- (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978⁽³⁾) in Scotland;
- (c) a hospital maintained or administered by the Defence Council; or
- (d) an institution similar to a hospital mentioned in any of the preceding subparagraphs of this paragraph.

(8) Regulation 9 shall not apply in any particular case for any period during which—

- (a) the person for whom the accommodation is provided—
 - (i) is not entitled to income support,
 - (ii) is not entitled to housing benefit, or

⁽¹⁾ S.I. 1992/2890; regulation 9 is amended by S.I. 1992/2869.

⁽²⁾ 1977 c. 49; section 128 was amended by paragraph 77(d) of Schedule 1 to the Health Services Act 1980 (c. 53) and section 26(2)(c) of the National Health Service and Community Care Act 1990 (c. 19).

⁽³⁾ 1978 c. 29; section 108(1) was amended by paragraph 19(22)(b) of Schedule 9 to the National Health Service and Community Care Act 1990.

- (iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member, and
- (b) the whole of the cost of that accommodation is met—
- (i) out of the person’s own resources, or partly out of his own resources and partly with assistance from another person or a charity; or
- (ii) on his behalf by another person or a charity.”.
- (3) Where a person has a preserved right, regulations 9 and 10 of the Disability Living Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (1) and (2) of this regulation had not been made.
- (4) For the purposes of paragraph (3) but subject to paragraph (5) a person has a preserved right where—
- (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984(4) as a residential care home or a nursing home; or
- (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
- (i) except in a case to which head (ii) applies—
- (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
- (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
- (ii) where throughout the period of his absence he was receiving free hospital treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(5), 52 weeks.
- (5) Paragraphs (3) and (4) shall cease to apply to a person who has a preserved right where he is absent from a home such as is mentioned in paragraph (3)(a) and that absence exceeds a period of—
- (a) except in a case to which sub-paragraph (b) applies—
- (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
- (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
- (b) 52 weeks where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital InPatients) Regulations 1975.
- (6) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

Amendments relating to attendance allowance

8.—(1) In regulation 7 of the Social Security (Attendance Allowance) Regulations 1991(6) (“the Attendance Allowance Regulations”) (persons in certain accommodation other than hospitals), paragraph (2)(7) shall be omitted.

(4) 1984 c. 23.

(5) See regulation 2(2) of S.I. 1975/555, as amended by S.I. 1987/1683.

(6) S.I. 1991/2740; the relevant amending instrument is S.I. 1992/703.

(2) In regulation 8 of those Regulations⁽⁸⁾ (which relates to persons in hospitals and in certain other accommodation)—

- (a) in paragraph (1), for the words “subject to paragraph (3)” there shall be substituted the words “subject to the following provisions of this regulation”; and
- (b) after paragraph (3), there shall be added the following paragraphs—

“(4) Regulation 6 or, as the case may be, regulation 7 shall not apply in the case of a person who is residing in a hospice and is terminally ill where the Secretary of State has been informed that he is terminally ill—

- (a) on a claim for attendance allowance,
- (b) on an application for a review of an award of attendance allowance, or
- (c) in writing in connection with an award of, or a claim for, or an application for a review of an award of, attendance allowance.

(5) In paragraph (4) “hospice” means a hospital or other institution other than—

- (a) a health service hospital (within the meaning of section 128 of the NHS Act of 1977⁽⁹⁾) in England or Wales;
- (b) a health service hospital (within the meaning of section 108(1) of the NHS Act of 1978⁽¹⁰⁾) in Scotland;
- (c) a hospital maintained or administered by the Defence Council; or
- (d) an institution similar to a hospital mentioned in any of the preceding subparagraphs of this paragraph.

(6) Regulation 7 shall not apply in any particular case for any period during which—

- (a) the person for whom the accommodation is provided—
 - (i) is not entitled to income support;
 - (ii) is not entitled to housing benefit; or
 - (iii) is not a member of a married or unmarried couple for whom an amount is included for income support purposes in the weekly applicable amount of the other member; and
- (b) the whole of the cost of the accommodation is met—
 - (i) out of his own resources, or partly out of his own resources and partly with assistance from another person or a charity;
 - (ii) on his behalf by another person or a charity.”.

(3) Where a person has a preserved right, regulations 7 and 8 of the Attendance Allowance Regulations shall apply in his case as if the amendments set out in paragraphs (1) and (2) of this regulation had not been made.

(4) For the purposes of paragraph (3) but subject to paragraph (5) a person has a preserved right where—

- (a) on 31st March 1993, he was living in a home registered under the Registered Homes Act 1984⁽¹¹⁾ as a residential care home or a nursing home; or

(7) Paragraph (2) was amended by S.I. 1992/703 and 2869.

(8) Regulation 8 was amended by S.I. 1992/703 and 2869.

(9) 1977 c. 49; section 128 was amended by paragraph 77(d) of Schedule 1 to the Health Services Act 1980 (c. 53) and section 26(2)(c) of the National Health Service and Community Care Act 1990 (c. 19).

(10) 1978 c. 29; section 108(1) was amended by paragraph 19(22)(b) of Schedule 9 to the National Health Service and Community Care Act 1990.

(11) 1984 c. 23.

- (b) he would have been living in such a home on that date but for an absence which, including that day, does not exceed—
 - (i) except in a case to which head (ii) applies—
 - (aa) where the person was before his absence a temporary resident in the home, 4 weeks, or
 - (bb) where the person was before his absence a permanent resident in the home, 13 weeks, or
 - (ii) where throughout the period of his absence he was receiving free hospital treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(**12**), 52 weeks.
- (5) Paragraphs (3) and (4) shall cease to apply to a person who has a preserved right where he is absent from a home such as is mentioned in paragraph (3)(a) and that absence exceeds a period of—
 - (a) except in a case to which sub-paragraph (b) applies—
 - (i) 4 weeks, where the person was before his absence a temporary resident in the home, or
 - (ii) 13 weeks, where the person was before his absence a permanent resident in the home; or
 - (b) 52 weeks where throughout the period of absence the person was receiving free in-patient treatment within the meaning of the Social Security (Hospital InPatients) Regulations 1975(**13**).
- (6) For the purposes of this regulation, a person is a permanent resident where the home in which he resides is his principal place of abode, and a temporary resident where it is not.

(12) See regulation 2(2) of S.I. 1975/555, as amended by S.I. 1987/1683.

(13) See regulation 2(2) of S.I. 1975/555, as amended by S.I. 1987/1683.