

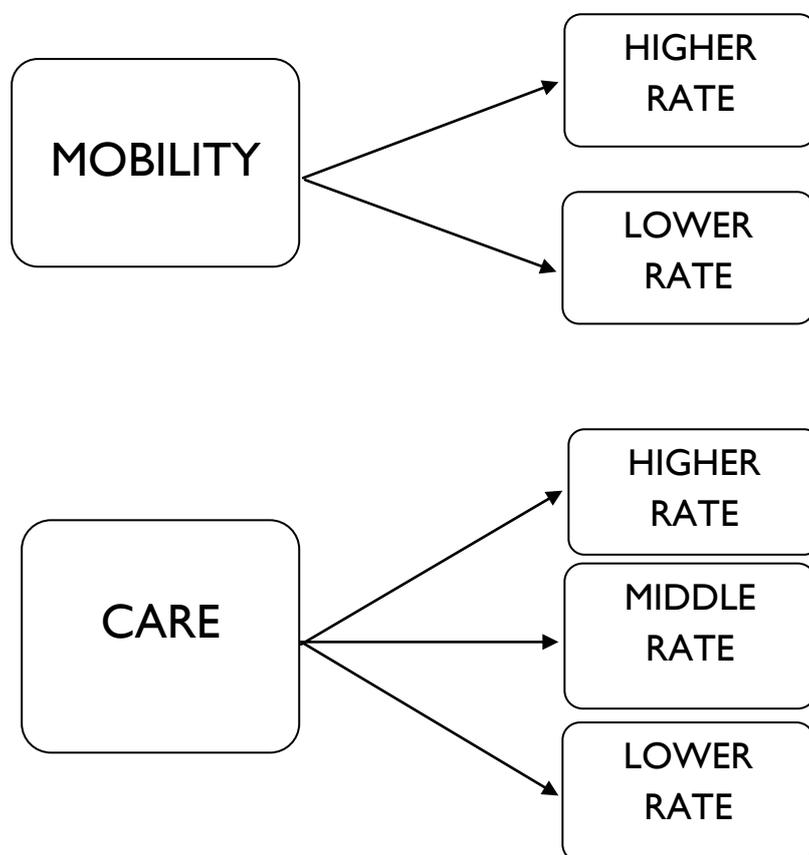
Disability Living Allowance – Do you qualify?

Disability Living Allowance is a social security benefit intended for adults and children with a long-term illness or a disability. The rules for the allowance are in relation to difficulties with mobility and care. There is no requirement for either payment to be made in respect of actual expenses nor for anyone to actually be providing help. Some components of the allowance must be claimed before the age of 65 (but can continue if claimed before this age).

Disability Living Allowance does not count as income for the purposes of other benefits, is tax free, and can be paid in addition to other benefits or if you are working.

Mobility and Care components

Disability Living Allowance is a benefit made up of five components; two for mobility and three for care. An award can be made of either one mobility and / or one care component.



The components of Disability Living Allowance

Mobility component rules

Higher rate mobility

This applies where someone has a physical disablement and cannot walk at all or either of the following applying:

- They are **‘virtually unable to walk’** – this is the phrase used in the law. Speed, distance, time and manner of walking can be looked at. The limits of ability to walk without experiencing ‘severe discomfort’ due to walking are what are being considered.

A decision maker or tribunal will usually be interested in what makes walking so uncomfortable for you, after what distance you must stop, and how long before you can set off again. If you have to repeatedly stop and rest due to being in severe discomfort then the distance walked between each of these intervals should be your assessed walking distance for the test.

Unfortunately, many people are excluded as the test is very restrictive. Those who can only walk 200 or even 100 yards before having to stop would quite rightly regard themselves as having very limited walking ability. However they would likely not qualify for the higher rate mobility component. In practice, in most cases, the test has effectively become a ‘50 yard’ test unless the speed of walking or the persons gait is exceptionally restrictive.

- Where **‘the exertion required to walk would constitute a danger to life or would lead to a serious deterioration in health’**. This can apply where someone may have, for example, extremely severe cardiac or lung problems or has been advised to limit their walking for some other reason.

There are also routes to qualifying if someone has no legs or feet (even if they can walk with prosthetic limbs), have a severe visual impairment, are both deaf and blind, or have both a severe mental impairment and severe behavioural problems.

Lower rate mobility

The test here is different to the higher rate. It does not necessarily relate to physical difficulties with walking alone. The focus is on whether help is needed with supervision or guidance in order to get around when in unfamiliar areas. The law for this section refers to those who **‘....cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time’**.

Qualifying for the lower rate involves being able to demonstrate why it is usually a requirement that someone guide or supervise you due to your illness or disability. The test is more than being accompanied by another person out of choice. It must be clear what guidance or supervision the other person is providing and why this enables you to get out when you could not normally do so otherwise.

Care component rules

There are three care components. These generally increase from the lower to the higher in line with increasing amounts of care needs. It is important to realise what is being looked at in the Disability Living Allowance rules before applying or thinking about asking for a higher rate. In the rules there is no requirement that anyone is actually providing help. However, you will need to show that it would be reasonable for you to have help from someone due to your illness or disability. There are three issues that are considered in the rules:

- **Attention in connection with personal care needs** – The rules only consider *personal* care needs not *domestic* needs. Unfortunately this generally rules out help given to clean your home, deal with domestic chores, do shopping, etc. Help given does count though if it is in connection with your body and senses (the law refers to the phrase '*bodily functions*'). Help does not have to be just practical physical help; it can also include prompting and motivation too.
- **Supervision to avoid hazards or danger** – it must be reasonable for someone to be around to avoid substantial danger to yourself or others.
- **Preparing and cooking a main meal for one person**

Lower rate care

There are two ways to qualify for this:

- 1) **Needing attention for a '*significant portion*' of the day** - This is generally taken to mean at least an hour during the day. This time can be in one period (for example, help with getting up in the morning) or in several periods. It is the time needed that is important for this test. If all the times during a day when you need help add up to an hour or more then you could qualify. In this sense it may be helpful to imagine using a stopwatch to add up all the times you need help.
- 2) **The cooking test** - This involves considering whether you could prepare and cook a meal for one person given the raw ingredients. It does not matter whether you cook or not; it is whether you could that matters. No set meal is listed in the rules but generally you should consider whether you could peel and chop two kinds of vegetables, put these into small pans, put something under a grill and safely get the meal together onto a plate. You would be expected to make some concessions to make things easy for yourself, for example, using a slotted spoon to lift things out of a pan and sit at a chair or stool to prepare or cook the food. If you can only cope with heating up convenience foods or making snacks due to your disability or illness this should not count as cooking.

Middle and Higher rate care

The middle rate is payable when a day **or** night test is met. The higher rate is payable when a day **and** night test is met. There are four tests involved:

1) Daytime attention

You require **'frequent attention throughout the day'** - The test here is less about the total time needed but more about the numbers of times help is needed and when these times occur. Help must not only be frequently needed but this need must occur throughout the day. If help were only needed at, for example, the beginning and end of the day, this test would not be satisfied. It may be helpful to keep a list of typical times during a day when help is needed and what the help is for.

2) Daytime supervision

You require **'continual supervision throughout the day in order to avoid substantial danger'** – the test here is whether or not, ideally, it would be reasonable for you to have someone with you during the day just in case they are needed to help you (or others) to avoid substantial danger. You have to be able to show that there is a risk you face and that this could lead to harm. If supervision is only needed in some situations, is considered only very unlikely, or if there is nothing that the person supervising you could do to prevent harm then the test will not be satisfied.

3) Night-time attention

You require **'prolonged or repeated attention' during the night** – this test can be satisfied where your illness or disability requires that you repeatedly need assistance or require assistance for one or more prolonged periods (generally assumed to be at least 20 minutes). The help needed must be care of a sufficiently close personal nature. Getting someone to make a cup of tea, for example, would likely not count, but help getting out of bed likely would count.

4) Night-time supervision

You require **'another person to be awake for a prolonged period or at frequent intervals'** – this test requires someone to be awake to watch over you in order for you to avoid substantial danger to yourself or others.

Qualifying periods for Disability Living Allowance

As Disability Living Allowance is intended to assist those with long term illnesses or disabilities there are two qualifying periods which have to be satisfied, before and after your claim. These apply either on a new claim or when asking for an increase in an existing award:

- Before the claim

You must satisfy the relevant disability tests for the 3 months before your claim. (If you are 65 or over and already claim Disability Living Allowance then the relevant period is 6 months, as for Attendance Allowance).

- After the claim

You must be expected to satisfy the relevant disability tests for 6 months after your claim.

There are exceptions to these qualifying periods where the person claiming is considered terminally ill.

Existing awards

It is important to realise that the whole of an existing award can be looked at again if you ask for an increase in your award. As this can result in you losing your award or having it reduced it is important to weigh up the possible risks against the possible gains. It is arguably only worth asking for a higher rate from an existing award where there has been a change of circumstances for the worse and:

- i) The existing level of award is considered safe, ***and***,
- ii) The conditions for a higher level of an award are clearly satisfied.

Awards of Disability Living Allowance can be very variable. Different approaches taken by different decision makers or tribunals or different evidence given by doctors can result in differing awards. Even where you have had an award for years and have definitely suffered a deterioration in your health you should follow the approach above in order to keep your existing award as safe as possible.

Children

When a claim is made for a child they have to be able to not only meet the usual rules but it must also be shown that they have care or supervision needs which are '***substantially in excess***' of that normally required by a child of that age.

The higher rate mobility component can only be claimed from age 3 and the lower rate mobility component can only be claimed from age 5.

From age 16 onwards children would normally claim in their own right unless they have an appointee.

Summary - Questions to consider

The following questions should be considered before making a claim for Disability Living Allowance:

- 1) Do I need help from someone for a least an hour a day with my personal care needs?
- 2) Could I prepare and cook a simple meal for myself if I had to?
- 3) Do I need help with personal care at many times during the day?
- 4) Do I need help with personal care during the night repeatedly or for long periods?
- 5) Should I be continually supervised during the day in order to stay safe?
- 6) Should I be watched over during the night in order to stay safe?
- 7) Is my ability to walk without experiencing severe discomfort so limited that either:
 - I have to stop before walking 50 yards, or
 - I have severe restrictions due to walking speed or gait, or
 - I am at risk of a life threatening danger, or serious deterioration in my health through walking?
- 8) Am I unable to go to unfamiliar places without another person present to guide or supervise me?
- 9) (Additionally, for claims for children only) Does the child need care or supervision, which is substantially in excess of that normally required by a child of their age who does not have a disability or illness?

In most cases, if none of the above apply, then you will be unlikely to qualify as you do not meet the requirements.

Remember, in all of the above questions the onus is on you to demonstrate that you have the stated difficulties or requirements. Evidence from doctors or other people helping you can provide useful background information and support but it is evidence of your day-to-day life at home and getting around that is most relevant.