

CLAIMING WELFARE BENEFITS AS A RESULT OF A MEDICAL INJURY

There are a whole range of welfare payments and other forms of assistance that are potentially available from the Department for Work and Pensions to people who have suffered injury.

Some benefits are only payable to people who have paid sufficient national insurance contributions through deductions from their earnings that entitle them to make a claim. Other benefits are non contributory and do not depend on the claimant having satisfied a given level of national insurance contributions. Some benefits (both contributory or non contributory) are means tested and will only be payable if the claimant's income and other resources available to him or her fall below a given monetary level.

It is a very complicated system.

The benefits that are most likely to be relevant to people who have suffered injury as a result of clinical negligence are set out below. However, this is not intended to be a comprehensive list of all benefits that may be available in any particular case. If you wish to be advised fully as to all of the benefits to which you are entitled in the individual circumstances of your own case, we will be happy to introduce you to a Welfare Benefits Adviser.

Benefits for illness or incapacity

Statutory Sick Pay. Most employees are entitled to receive Statutory Sick Pay from their employer if they are absent from work due to sickness or disablement. It is a flat rate cash payment, which is made by the employer. The maximum period of entitlement is twenty eight weeks in any one period of incapacity for work. Periods of incapacity for work separated by no more than eight weeks are linked. It is not paid for the first three days of absence from work but does not depend upon the person having paid national insurance contributions. It is not means tested.

Incapacity Benefit. This is a cash benefit, which is paid in the form of flat rate weekly payments. The benefit is not payable for the first three days of a period of incapacity. For the first twenty eight weeks of incapacity it is only payable to persons who are not entitled to receive Statutory Sick Pay, for example those people who have been unemployed or who are self employed. It is a contributory benefit that is not means tested, but is in the process of being replaced by Employment and Support Allowance (see below).

Income support

This is a weekly benefit, which is payable to people who do not have enough money to live on. It is a non contributory benefit, which depends solely on a person's means and is therefore means tested. It is a cash benefit that pays to a claimant the difference between a family's or a single claimant's weekly net income and the net amount that the government believes is required to meet his, her or their assessed needs for basic living expenses. However, Income Support on the grounds of incapacity for work is in the process of being replaced by Employment and Support Allowance (see below).

Benefits payable as a result of bereavement

Bereavement Payment. This is a single tax free lump sum, which is payable immediately on bereavement in order to offset any financial problems resulting from the death of a spouse who is living with the deceased person at the time of his or her death. Entitlement depends upon the contribution record of the deceased spouse. It is not means tested.

Widowed Parent's Allowance. This is a cash benefit, which is paid as a weekly allowance to a person if the death of a spouse has left that person with a child to look after. Entitlement depends upon the contribution record of the deceased's spouse. It is not means tested but is taxable.

Bereavement Allowance. This is a cash benefit, which is paid as a weekly allowance for a period of up to 52 weeks to a person who was aged 45 or over but under 65 when his or her spouse died. It is not payable in addition to the Widowed Parent's Allowance, but will become payable when that benefit ends. Entitlement depends upon the contribution record of the deceased spouse. It is not means tested but is taxable.

Assistance and benefits payable to people who are disabled

Disability Living Allowance. This is a tax free cash benefit paid in the form of a flat rate weekly allowance. It is not means tested and is a non contributory benefit, which is paid in two components.

Firstly, there is a care component, which is payable to Claimants who, because of disability, need help with personal care to avoid danger to themselves or to others and who also require assistance in preparing and cooking meals.

Secondly, there is a mobility component, which is payable to those who have difficulty in walking or cannot walk at all.

The care component is paid at one of three weekly rates depending upon the severity of the disablement and the mobility component is paid at one of two rates, again depending upon the severity of the disablement.

Employment and Support Allowance

This is a combined contribution based and means tested benefit that was introduced for all new claims from October 2008. It replaces all the incapacity related benefits, other than Statutory Sick Pay, including Incapacity Benefit and Income Support paid on the grounds of incapacity for work. It is based on a test of “limited capability for work” and those who satisfy that test are placed in one of two groups: those assessed as able to take part in “work related activities” and those more seriously disabled who are assessed as having “limited capability for work related activity”.

Assistance with buying or hiring a car or electric wheelchair

Motability. This is an independent organisation set up by the government, which helps people who are in receipt of the higher rate mobility component of the Disability Living Allowance by putting money towards obtaining cars or wheelchairs. It has arrangements with motor manufacturers and insurers and uses a finance company named Motability Finance Limited through which it can provide car hire and hire purchase schemes on favourable terms to disabled people. The full amount of the mobility payment must be paid to Motability. The disabled person will not have to pay any maintenance or servicing charges. It is not means tested.

Attendance allowance

This is paid to people aged 65 or over who are severely mentally or physically disabled and require frequent attention or continual supervision. It is a non contributory benefit that is not means tested.

Working tax credit

This benefit is administered by H.M. Revenue and Customs and is paid through the claimant's pay packet if they are employed or directly from H.M. Revenue and Customs if they are self employed. It is available to persons who are working more than 16 hours per week either in an employed or self employed capacity but who are disadvantaged in obtaining employment because of some physical or mental disablement. It is means tested.

The Independent Living (1993) Fund

This provides cash help for severely disabled people aged between 16 and 66 years of age. It is administered by a charitable trust that has been established by the government. The fund provides a cash payment to enable services that are provided by local authorities to disabled people to be topped up and thereby to assist a disabled person to continue to live at home. To be eligible a claimant must be either living alone or living with another person who is unable to provide care. It is means tested.

Carer's Allowance

This can be claimed by people aged under 65 who spend at least 35 hours a week caring for a disabled person. It is a cash benefit paid at a weekly flat rate. It is non contributory and is not means tested. The claimant must be regularly and substantially engaged in caring for a severely disabled person.

The Disability Discrimination Act 1995

This makes it unlawful for employers with 20 or more staff to discriminate against current or prospective employees with disabilities. Employers may have to make reasonable adjustments if their employment arrangements or premises substantially disadvantage a disabled employee.

Disabled people who believe that they have been discriminated against may take their case to an Employment Tribunal.

Employment benefits and assistance

Jobcentre Plus is an Executive Agency within the Department for Work and Pensions that has the responsibility to help the unemployed seek work. As part of its function it provides help to all disabled persons in finding and keeping jobs. In particular it has disability employment advisers and placement assessment and counselling teams (known as PACTS) who are able to provide specialist help and advice to disabled people on employment matters.

PACTs will carry out assessments to identify a disabled person's aptitude and abilities and advise how these can best be used or developed to improve the prospects of finding or retaining work. Employment rehabilitation programmes are then designed individually to meet the specific employment related needs that have been identified during the assessment and which are preventing the disabled person from taking up employment or entering vocational training. Supported placement schemes then provide job opportunities for people with severe disabilities.

People attending employment rehabilitation programmes may be eligible for payment of an allowance.

Financial assistance may also be available to enable employers to adapt their premises or equipment so as to enable them to employ disabled people.

Assistance is also available to employers who have genuine doubts about the ability of a specific disabled person to do a particular job. In these circumstances a grant can be paid to the employer for an initial period of trial employment.

Other assistance

There are also a number of welfare, health and social services that are available to disabled people. In particular, disabled people are entitled to free medical treatment under the National Health Service including rehabilitation, physiotherapy, occupational therapy and similar therapies.

The Social Services department of local authorities are required to provide a variety of services such as day centres, home helps (although there may be a charge), meals on wheels (again there may be a charge) and laundry services.

The Disabled Living Foundation is a charitable trust that receives government assistance in order to provide practical up to date information and advice on all aspects of disability, especially regarding the provision of aids and equipment. The address is 380/384 Harrow Road, London, W9 28U. Telephone 0845 130 9177.

NHS Prescriptions. Under the National Health Service a fixed rate charge is made for all prescriptions. Nonetheless, people who are in receipt of income support or disabled persons tax credit and persons who are prevented by continuing physical disability from going outside their home without assistance or who suffer from certain specified medical conditions are entitled to free prescriptions.

Travel costs to and from hospital. A person may be able to claim all or part of the cost of travelling to and from a NHS hospital for either in patient or out patient NHS treatment. It is a means tested benefit. Repayment is made by the hospital.

A person who has severe mobility problems may apply to their local authority for a Disabled Persons Badge which will entitle them to park a motor vehicle "free of charge" near to shops, public buildings and other facilities. This used to be known as the "Orange Badge Scheme" but the badges are now blue.

The Department for Work and Pensions has a telephone service, which provides free confidential advice and help with regard to all benefits that are available to disabled people and their carers. The telephone number is 0800 882200 and it is open from 8.30 am to 6.30 pm on Monday to Friday and 9 am to 1pm on Saturdays.

A similar service is available from H.M. Revenue and Customs in relation to the Working Tax Credit. Their telephone help line number is 0845 033 3900.



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Obviously, if we succeed in obtaining compensation for you in connection with your claim you will have to disclose the amount of the compensation to the Department for Work and Pensions and you will probably then lose any further entitlement to any benefits that are means tested. You may also have some or all of the benefits recouped under the Compensation Recovery scheme. See the section of this Guide headed “Repaying Welfare Benefits If Your Claim Succeeds”.