

G U E R N S E Y S T A T U T O R Y I N S T R U M E N T

1986 - No. 2

The Invalid Care Allowance (Guernsey) Regulations, 1986

Made the 6th January, 1986

Laid before the States , 1986

Coming into operation on the 6th January, 1986

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THE STATES INSURANCE AUTHORITY, in exercise of the powers conferred upon it by sections 2, 4, 5, 6, 9, 10, 13, 19 and 23 of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984^(a), hereby orders:-

PART I

INTERPRETATION

Interpretation

1.(1) In these Regulations, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"hospital" means any institution for the reception and treatment of persons suffering from illness or mental ailment, or a maternity home;

"illness" includes any injury or disability requiring medical treatment or nursing;

"in-patient" means a person admitted as an in-patient to a hospital;

"the Law" means the Attendance and Invalid Care Allowances (Guernsey) Law, 1984;

"mental ailment" has the meaning assigned to it by Article 1 of the Mental Treatment Law (Guernsey) 1939^(b);

and any other expressions have the same meanings as in the Law.

(a) Order in Council No. II of 1984.

(b) Ordres en Conseil Vol.XI, p.405; No.IX of 1979.

(2) Except where the context otherwise requires, any reference in these Regulations to any enactment or regulations shall be construed as including a reference to that enactment or those regulations, as the case may be, as amended, repealed, replaced or revoked by or under any other enactment or by any other regulations.

(3) The Interpretation (Guernsey) Law, 1948^(c), shall apply to the interpretation of these Regulations as it applies to the interpretation of a Guernsey enactment.

PART II

ENTITLEMENT TO INVALID CARE ALLOWANCE

Conditions of entitlement relating to residence and presence in Guernsey

2.(1) Subject to the following provisions of this Regulation, a person shall not be entitled to an invalid care allowance in respect of any day unless -

- (a) he is ordinarily resident in Guernsey; and
- (b) he is present in Guernsey on that day.

(2) For the purposes of paragraph (1)(b) of this Regulation, a person who is absent from Guernsey on any day shall be treated as being present in Guernsey -

- (a) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period of four weeks or such longer period as the Administrator may allow;
- (b) if his absence is temporary and for the specific purpose of caring for the severely disabled person who is also absent from Guernsey and where an attendance allowance or an increase of industrial disablement benefit where constant attendance is needed under the Social Insurance Law is payable.

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

3.(1) A person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person if, he is, or is likely to be, engaged and regularly engaged for at least thirty-five hours a week in caring for that severely disabled person; and a person shall

not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person unless he is, or is likely to be, engaged and regularly engaged for at least thirty-five 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 provided that the period during which he has ceased to satisfy those requirements has not exceeded four weeks; and for the purposes of this sub-paragraph two or more distinct periods separated by an interval not exceeding twenty-six weeks, or by two or more intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last period; or
- (b) that he has only temporarily ceased to satisfy them by reason of the absence of the severely disabled person from his usual place of residence for the purpose of undergoing medical or other treatment in a hospital or similar institution; and for the purposes of this sub-paragraph two or more distinct periods separated by an interval not exceeding twenty-eight days, or by two or more intervals shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period:

Provided that

- (i) such absence has not exceeded thirteen weeks;
- (ii) the absence of the severely disabled person was not intended to be permanent at the commencement of the absence.

(3) For the purposes of sub-paragraphs (a) and (b) of the last preceding paragraph an invalid care allowance shall be payable only if such an allowance is not payable to another person in respect of any such week.

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

4. (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 Authority is satisfied that he is receiving full-time education by attendance at an establishment recognised by the Authority 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.

Manner of electing the person entitled to an invalid care allowance where more than one person would be entitled to the allowance

5.(1) For the purposes of sub-section 5 of section 2 of the Law, an election shall be made by giving the Administrator a notice signed by the persons who but for that subsection 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 an 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 not to be treated as gainfully employed

6. For the purposes of section 2(1)(b) of the Law, a person shall be treated as gainfully employed in any week if in that week he is, or is likely to be, earning in excess of the weekly earnings below which a person under the provisions of Part III of the First Schedule to the Social Insurance (Classification)(Guernsey) Regulations, 1978^(d), is treated as a non-employed person.

Circumstances in which a person over the age of sixty-five years is to be treated as having been entitled to an invalid care allowance immediately before attaining that age

7. A person who has attained the age of sixty-five years shall, for the purposes of section 2(3)(b) of the Law, 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 paragraph (d) of sub-section (3) of section 2 of the Law.

Manner of determining income

8. (1) For the purposes of section 2(3)(c) of the Law, a person's current annual income for any year shall be deemed to be his total income.

(2) For the purposes of paragraph (1) of this Regulation a person's current annual income shall be taken to include the income less any amount received by way of attendance allowance or industrial disablement benefit, of his spouse, where they are living together, or of any other person where those persons are living together as husband and wife.

(3) For the purposes of paragraph (2) of this Regulation a husband and wife shall be taken to be living together unless they are separated in pursuance of an order of a Court of competent jurisdiction.

PART III

CLAIMS AND PAYMENTS

Manner in which claims are to be made

9. Every claim for an invalid care allowance shall be made in writing to the Authority on the form approved by the Authority for that purpose, or in such other manner, being in writing, as the Authority may accept as sufficient in the circumstances of any particular case.

Information to be given when making a claim

10. Every person who makes a claim for an invalid care allowance shall furnish such certificates, documents, information and evidence for the purpose of determining the claim as may be required by or on behalf of the Authority and, if reasonably so required, shall for that purpose attend at such office or place as the Authority may direct.

Amendment of claim forms

11. (1) If, owing to the absence of due signature, a claim is defective at the date of its receipt by the Authority, the Authority shall refer the claim to the

claimant, and if the form is returned duly signed within one month from the date on which it is so referred, the Authority shall treat the claim as if it had been duly made in the first instance.

(2) If on receipt of a claim it is defective owing to the absence of due signature or further information is required and on request of the Authority it is not received within one month of the date of the request for such signature or such information, the claim shall be deemed to be made on the day the signed form or such information is received.

Time for making and entertaining claims

12. Subject to the provisions of Regulation 11 of these Regulations, a claim shall be deemed to have been made on the day on which it is received at the office of the Authority and shall only be entertainable under these Regulations as from that date.

Time and manner of payment

13. An invalid care allowance shall be payable on Mondays for the care provided during the week preceding and shall be payable in such manner as may be decided from time to time by the Authority, or in such other manner as the Administrator may in any particular case determine.

Payments on death

14. (1) On the death of a person who has made a claim for an invalid care allowance or who is alleged to have been entitled to an invalid care allowance, the Authority may appoint such person as it may think fit to proceed with or to make a claim for the allowance, and the provisions of these Regulations shall apply subject to the necessary modifications to any such claim.

(2) Subject to the provisions of paragraph (6) of this Regulation, any sum payable by way of an invalid care allowance which is payable under an award on a claim proceeded with or made under paragraph (1) of this Regulation may be paid or distributed by the Authority to or amongst persons claiming as personal representatives, legatees, next of kin, or creditors of the deceased (or, where the deceased was illegitimate, to or amongst other persons).

(3) The receipt of any such person who has attained school-leaving age shall be a good discharge to the Authority for any sum so paid.

(4) Subject to the provisions of paragraph (5) of this Regulation, any sum payable by way of an invalid care allowance to the deceased, payment of which he had not obtained at the date of his death, may, unless the right thereto was already extinguished at that date, be paid or distributed to or amongst such persons as are mentioned in the foregoing paragraphs of this Regulation.

(5) Paragraphs (2) and (4) of this Regulation shall not apply in any case unless written application for the payment of any such sum is made to the Authority within six months from the date of the deceased's death or within such longer period as the Authority may allow in any particular case.

(6) The Authority may dispense with strict proof of the title of any person claiming in accordance with the provisions of this Regulation.

Notification of change of circumstances

15. Any person to whom an invalid care allowance is payable or by whom a claim for invalid care allowance has been made shall inform the Authority in writing, as soon as reasonably practicable, if -

- (1) the person in respect of whom there is payable an attendance allowance or an increase of industrial disablement for constant attendance and for whom the invalid care allowance is payable or a claim has been made:-
 - (a) no longer requires attention or supervision to the same extent as when the award was allowed or the claim made; or
 - (b) is admitted to hospital or commences to live in accommodation provided for him in circumstances in which the cost of the accommodation is or may be borne wholly or partly out of public funds; or
 - (c) leaves Guernsey.
- (2) he leaves Guernsey and is not treated as being present in Guernsey in accordance with Regulation 2(2) of these Regulations; or
- (3) he undergoes any other change in circumstances which might reasonably be expected to affect his right to an invalid care allowance.

PART IV

DETERMINATION OF CLAIMS AND QUESTIONS

Application of certain provisions of the Social Insurance
(Determination of Claims and Questions) (Guernsey)
Regulations, 1978, in relation to the Tribunal

16. The provisions of Regulations 2, 3, 7, 8 and 9 of the Social Insurance (Determination of Claims and Questions) (Guernsey) Regulations, 1978^(e), shall apply in relation to the consideration and determination of any claim or question by the Tribunal under the Law as they apply in relation to the consideration and determination of any claim or question by the Tribunal under the Social Insurance Law.

PART V

MISCELLANEOUS

Modification of sections 81, 82 and 83 of the Social
Insurance Law for the purposes of the Law

17 .(1) Section 81 of the Social Insurance Law shall have effect as provided by section 13 of the Law subject to the deletion of subsection (3) thereof and the substitution in subsection (6) thereof of the reference to subsection (2) of section 79 of that Law by a reference to subsection (2) of section 12 of the Law.

(2) Section 82 of the Social Insurance Law shall have effect as so provided as if for the reference in subsection (1) thereof to subsection (2) of section 79 of that Law there were substituted a reference to subsection (2) of section 12 of the Law.

(3) Section 83 of the Social Insurance Law shall have effect as so provided subject to the deletion of subsection (2) thereof.

Extent

18. These Regulations shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation

19. These Regulations may be cited as the Invalid Care Allowance (Guernsey) Regulations, 1986.

Commencement

20. These Regulations shall come into force on the 6th day of January, 1986.

Dated this 6th day of January, 1986.



President of the States Insurance Authority
for and on behalf of the Authority

EXPLANATORY NOTE

(This Note does not form part of the Regulations, but is intended to indicate their general purport).

Part I of these Regulations deals with interpretation.

Part II provides for the conditions of entitlement to an invalid care allowance relating to residence and presence in Guernsey; the disqualification for receipt of an attendance allowance of hospital in-patients and persons accommodated elsewhere at the cost, wholly or partly, of public funds; and the manner of determining the income of a person for the purpose of section 2(3)(c) of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, (which excludes from entitlement to an invalid care allowance persons whose current annual income exceeds such amount as the States shall from time to time by Ordinance determine).

Part III contains provisions relating to claims for an invalid care allowance and the payment of an invalid care allowance.

Part IV and Part V contain provisions governing the determination of claims and questions by the Social Insurance Tribunal (which also acts as the appeals tribunal in relation to claims for invalid care allowances).