

2003 No. 43

GUERNSEY

The Attendance Allowance (Guernsey) Regulations, 2003

Made

12th December, 2003.

Laid before the States

Deemed to have come into operation

4th April, 2003.

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THE STATES INSURANCE AUTHORITY, in exercise of the powers conferred upon it by sections 1, 4, 5, 6, 9, 10, 13, 19 and 23 of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, as amended¹, 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 I of the Mental Treatment Law (Guernsey) 1939²;

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

(2) Except where the context otherwise requires, any reference in these Regulations to any enactment or regulation shall be construed as including a reference to that enactment or those regulations, as the case may be, as amended, repealed, replaced or revoked by or under any other enactment or by any other regulations.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, 1948³, shall apply to the interpretation of these Regulations as it applies to the interpretation of a Guernsey enactment.

¹ Ordres en Conseil Vol. XXVIII, p. 353; Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993; No. VI of 1999; No. X of 2003.; and Ordinance No. XIV of 1993 (Tome XXVI, p. 177).

² Ordres en Conseil Vol. XI, p. 405; No. IX of 1979.

³ Ordres en Conseil Vol. XIII, p. 355.

PART II
ENTITLEMENT TO ATTENDANCE ALLOWANCES

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 attendance allowance in respect of any day unless -

- (a) he was born in Guernsey or has been ordinarily resident in Guernsey during the five years immediately preceding that day; and
- (b) he has been present in Guernsey for a period of, or periods amounting in the aggregate to, not less than twenty-six weeks during the twelve months immediately preceding that day; and
- (c) he is present in Guernsey on that day.

(2) For the purposes of paragraph (1)(b) and (c) 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 being treated for an illness or disability which commenced before he left Guernsey, subject to the satisfaction of the condition laid down in sub-paragraph (a) of this paragraph;
- (c) if he is a member of the Forces, a mariner or an airman within the meanings assigned to them in the Schedule to the Family Allowances (Guernsey) (Qualifications) Regulations, 1977,⁴ or
- (d) if he is living with a person mentioned in the last preceding paragraph and is the spouse, son, daughter, father, father-in-law, mother or mother-in-law of that person.

(3) Where a person who has not attained school-leaving age does not satisfy the conditions imposed in sub-paragraph (a) of paragraph (1) of this Regulation he shall be deemed to have satisfied that condition if it has been satisfied by one or other of his parents.

Modification of section 1(1) of the Law in relation to entitlement to attendance allowance by persons who have not attained school-leaving age

3. Section 1(1) of the Law shall have effect in relation to a person who has not attained school-leaving age subject to the modification that in addition to the conditions provided in paragraphs (a) and (b) of that sub-section there shall be applied a further condition that the attention or supervision shall be substantially in excess of that normally required by a person who has not attained school-leaving age of the same age and sex.

Attendance allowance not payable in certain cases in respect of persons in hospital

4. Subject to Regulation 6 of these Regulations, an attendance allowance shall not be payable to a person for any period during which he is an in-patient in a hospital in circumstances in which the cost of the accommodation or services is or may be borne wholly or partly out of public funds.

⁴ S.I. 1977 No. 4.

Attendance allowance not payable in certain cases in respect of persons in accommodation other than hospitals

5. Subject to Regulation 6 of these Regulations, an attendance allowance shall not be payable to a person for any period during which he is living in accommodation provided for him in circumstances in which the cost of the accommodation or services is or may be borne wholly or partly out of public funds.

Exceptions from Regulations 4 and 5

6. (1) Where a person is entitled to an attendance allowance in respect of the period immediately before he entered any accommodation mentioned in Regulation 4 or 5 of these Regulations, those Regulations shall not apply in respect of the first four weeks of any period during which he is living in such accommodation.

(2) For the purpose of paragraph (1) of this Regulation -

(a) two or more distinct periods separated by an interval not exceeding twenty-eight days, or by two or more such 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; and

(b) any period or periods to which Regulation 4 or 5 of these Regulations refers shall be taken into account and aggregated with any period to which the other of them refers.

Manner of determining income

7. (1) For the purposes of section 1 (4) (b) of the Law, a person's current annual income for any year shall be:

(a) his net assessable income under the Income Tax (Guernsey) Law, 1975^(e) for the year of charge contemporaneous with that year less life assurance and retirement annuity relief; or

(b) such amount as the Authority deems proper, having regard to all the circumstances of the case, in relation to the relevant year, where the Authority is satisfied that it is just and equitable to disregard the actual income.

(2) For the purposes of paragraph (1) of this Regulation a person's current annual income shall be taken to include the income of his spouse, where they are living together or of any other person where those persons are living together as husband and wife, and, in the case of a child, shall be taken to include -

(a) the income of the person liable to maintain the child and the income, less any amount received by way of attendance allowance or industrial disablement benefit, of the spouse of that person, where that person and his spouse are living together; or

(b) the income of the person liable to maintain the child and the income 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.

^(e) Ordres en Conseil Vol. XXV p. 124.

PART III
CLAIMS AND PAYMENTS

Manner in which claims are to be made

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

Medical reports attaching to a claim

9. (1) Every person who makes a claim for an attendance allowance shall obtain a medical report, in the form approved by the Authority, from a medical practitioner and if necessary for the purpose of obtaining such a report shall present himself for examination by a medical practitioner.

(2) If a medical report required in accordance with the provisions of the foregoing sub-paragraph is not received within three months or, such other period as the Administrator may allow in any particular case, the claim shall be deemed to be made on the day on which the report is received.

Information to be given when making a claim

10. Every person who makes a claim for an attendance 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 signature or 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 Regulations 9 and 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. (1) Subject to the provisions of these Regulations, an attendance allowance shall be paid weekly in advance in such manner as may be determined by the Authority or in such manner as the Administrator may in any particular case direct.

(2) Where -

(a) an attendance allowance is payable for a period that begins immediately after one in which by reason of the application of Regulation 4 or 5 of these Regulations the allowance is not payable; and

(b) it is expected that within thirteen weeks of that allowance becoming payable it will again, by reason of the application of any such Regulation, cease to be payable;

the allowance shall be payable at the daily rate of one-seventh of the weekly rate and shall be paid in such manner as may be determined by the Authority or in such other manner as the Administrator may in any particular case direct.

(3) Weekly sums on account of an attendance allowance shall be payable on Mondays.

(4) Where an award made in accordance with the provisions of the Law or Regulations is effective from a day in the week other than a Monday, payment of an attendance allowance under that award shall not commence until the Monday next following that day.

(5) Where an award made in accordance with the provisions of the Law or Regulations is terminated on a day in the week other than a Sunday, payment of an attendance allowance under that award shall not cease until the Sunday next following that day.

Beneficiary unfit to deal with an attendance allowance

14. (1) In the case of any person to whom an attendance allowance is payable, where it appears to the Authority that it is necessary so to do for the purpose of protecting the interests of that person, the Authority may appoint any other person to receive and deal with the allowance or such part thereof as the Authority thinks fit.

(2) The Authority may at any time in its absolute discretion revoke any appointment made under this Regulation.

(3) Any person appointed under this Regulation may, on giving the Authority one month's notice in writing of his intention so to do, resign his office.

(4) Subject to the provisions of the Attendance Allowance (Duties of Appointees) Regulations, 2002⁵, the receipt of any person appointed under this Regulation shall be a good discharge to the Authority for any sum paid to him by virtue of his appointment.

(5) Any person appointed under this Regulation shall apply any sum received by him by virtue of his appointment for the benefit of the person in respect of whom he was appointed to receive such sum.

(6) A person who has not attained the age of eighteen years shall not be capable of being appointed to act under this Regulation.

⁵

S.I. 2002 No. 3.

Persons unable to act

15. (1) In the case of any person to whom an attendance allowance is payable or who is alleged to be entitled to an attendance allowance or by whom or on whose behalf a claim for an attendance allowance has been made, and who is a person unable for the time being to act, where such person has no guardian, the Authority may, upon written application being made to it, appoint a person to exercise on behalf of that person who is unable to act any right to which that person may be entitled under the Law and to receive and deal with any sums payable on behalf of such person.

(2) Any such appointment by the Authority shall terminate on the day immediately prior to the date on which the Authority is notified that a guardian has been appointed.

(3) A person who has not attained the age of eighteen years shall not be capable of being appointed to act under this Regulation.

(4) The Authority may at any time in its absolute discretion revoke any appointment made under this Regulation.

(5) Any person appointed under this Regulation may, on giving the Authority one month's notice in writing of his intention so to do, resign his office.

(6) Anything required by these Regulations to be done by or to any such person as aforesaid who is for the time being unable to act may be done by or to the guardian, if any, or by or to the person appointed under this Regulation to act on his behalf, and, subject to the provisions of the Attendance Allowance (Duties of Appointees) Regulations, 2002, the receipt of any person appointed under this Regulation shall be a good discharge to the Authority for any sum paid.

Claims on behalf of a child

16. Where a guardian has not been appointed by a Court of competent jurisdiction to act on behalf of a child, the Authority may for the purposes of Regulation 15 of these Regulations appoint a person to act on behalf of that child in accordance with the following provisions:-

- (a) in the case of a child living with his parents, his mother;
- (b) in the case of a child to whom sub-paragraph (a) of this paragraph does not apply and who is living with one parent, that parent;
- (c) in any other case -
 - (i) a person with whom the child is living or the person having care or control of the child; or
 - (ii) where there is not such person, the Authority may appoint such person as it deems fit having regard to all the circumstances of the particular case.

Payments on death

17. (1) On the death of a person who has made a claim for an attendance allowance or who is alleged to have been entitled to an attendance 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 (5) of this Regulation, any sum payable by way of an attendance 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 personal representatives, legatees, next of kin, or creditors of the deceased (or, where the deceased was illegitimate, to or amongst other persons).

(3) Subject to the provisions of the Attendance Allowance (Duties of Appointees) Regulations, 2002, 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 attendance 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

18. Where any person in respect of whom an attendance allowance is payable or in respect of whom a claim for an attendance allowance has been made -

- (a) no longer requires attention or supervision to the same extent as when the award was allowed or the claim made;
- (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;
- (c) leaves Guernsey and is not treated as being present in Guernsey in accordance with Regulation 2(2) of these Regulations;
- (d) undergoes any other change in circumstances which might reasonably be expected to affect his right to an attendance allowance;

that person (or any person appointed to act on his behalf) shall inform the Authority in writing, as soon as reasonably practicable and shall furnish the Authority, in such manner as the Authority may direct, with such information as it may require.

PART IV
DETERMINATION OF CLAIMS AND QUESTIONS

Review of decisions

19. (1) Any decision of the Administrator may be reviewed within a period of 3 months from the date on which the notification of that decision was communicated to the claimant.

(2) Any decision of the Administrator or the Tribunal may be reviewed at any time by the Administrator or, on a reference from the Administrator, by the Tribunal, if -

(a) the Administrator or the Tribunal is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(b) there has been any relevant change of circumstances since the decision was given.

(3) A request for review shall be made to the Administrator in writing.

(4) A decision given on a review under this regulation, and a refusal to review a decision thereunder, shall be subject to appeal in like manner as an original decision, and the provisions of the Law and these regulations shall, with the necessary modifications, apply in relation to a decision given on such a review as they apply to the original decision of a question.

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

20. The provisions of Regulation 2, 3, 7, 8 and 9 of the Social Insurance (Determination of Claims and Questions) (Guernsey) Regulations, 1978,⁶ 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
DEEMED SATISFACTION OF THE DISABLEMENT CONDITIONS

Dialysis in renal failure

21. (1) Subject to paragraph (3) a person who suffers from renal failure and is undergoing the treatment specified in paragraph (2) shall be deemed to satisfy the conditions:

(a) in section 1 (1)(a) of the Law if he undergoes dialysis by day;

(b) in section 1 (1)(b) of the Law if he undergoes dialysis by night.

(2) The treatment referred to in paragraph (1) is that of undergoing renal dialysis two or more times a week and which either:

(a) is of a type which normally requires the attendance or supervision of another person during the period of dialysis; or

(b) because of the particular circumstances of his case requires another person to attend during the period of dialysis in connection with the bodily needs of the person undergoing dialysis or in order to supervise that person in order that he avoids substantial danger to himself.

⁶ S.I. 1978, No. 20.

(3) A person shall not be deemed to satisfy the disablement conditions if the treatment is provided, at public expense:

- (a) in a hospital or similar institution; or
- (b) is out-patient in a hospital or similar institution and
- (c) takes place with the assistance or supervision of any member of staff of that hospital or institution.

Terminal illness

22. (1) A person who is terminally ill shall be deemed to satisfy and be likely to satisfy both the disablement conditions in section 1(1) of the Law.

(2) A person who is terminally ill shall be entitled to receive an allowance, subject to Regulations 12 and 13, from the date of his claim for the remainder of his life.

(3) A person shall be "terminally ill" at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

(4) Where a person purports to be making a claim for an allowance under this regulation on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.

PART VI MISCELLANEOUS

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

23. (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.

Repeal

24. The Attendance Allowance (Guernsey) Regulations, 1986⁷ are hereby repealed.

Extent

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

⁷ S.I. 1986 NO. 4; S.I. 1977 No 4; S.I. 1997 No. 1.

Citation

26. These Regulations may be cited as the Attendance Allowance (Guernsey) Regulations, 2003.

Commencement

27. These Regulations shall be deemed to have come into force on the 4th day of April 2003

Dated this 12th day of December, 2003.



O D Le Tissier,

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).

These regulations have been reissued in consequence of the changes in the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, which transferred the determination of claims from a Medical Board to the Administrator, thus allowing for appeals to be made to the Tribunal against decisions relating to a claimant's degree of disability. With the consequential changes are incorporated improved measures for the payment of an allowance to the terminally ill and for persons receiving home dialysis.

Part I of these Regulations deals with interpretation.

Part II of these Regulations provides for the conditions of entitlement to an attendance allowance relating to residence and presence in Guernsey; modification of section 1(1) of the Law in relation to entitlement by persons who have not attained school-leaving age; 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 1 (4) (b) of the Attendance Allowance and Invalid Care Allowances (Guernsey) Law, 1984 (which excludes from entitlement to an attendance 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 attendance allowance and the payment of an attendance allowance.

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