Welfare Rights Conference 2026

Child disability payment and ‘severe mental impairment’

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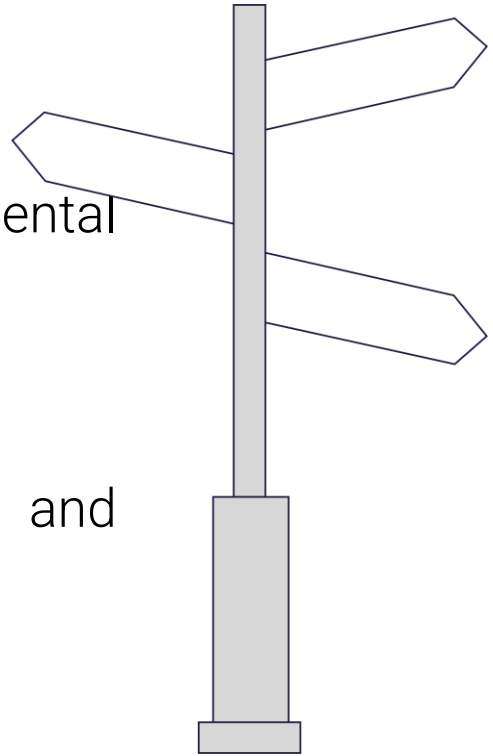
What we are looking at

- Child disability payment (CDP) and severe mental impairment (SMI) – an overview
- The law – rules and caselaw
- The law – a round-up
- SMI in practice – guidance, evidence, claims and challenges



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CDP and SMI – an overview
Rules in reg 13 'CDP Regs' (SSI 2021/174)

Route for automatic qualification for the higher rate of the mobility component (ie, no walking test involved)

- Must be aged at least 3
- Must be entitled to the higher rate of the care component

AND

- Have 'a **severe mental impairment** and **severe behavioural difficulties**'

Requirements for those include:

- 'a state of arrested development' or 'incomplete physical development of the brain', resulting in 'severe impairment of intelligence or social functioning' (severe mental impairment)
- 'disruptive', 'extreme' behaviour, 'regularly' requiring another person to 'intervene' and is so 'unpredictable' that needs watching over whilst awake (severe behavioural difficulties)

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The law – 'severe mental impairment' Regulation 13(7)

Will have severe mental impairment if has:

'…a severe impairment of intelligence and social functioning resulting from –

(a) a state of arrested development as a result of the failure the individual's brain to grow or develop in the way normally expected, or

(b) A deficiency in the functionality of the brain as a result of its incomplete physical development'

[*regulation 12(5) DLA Regulations refers to 'a state of arrested development or incomplete development of the brain, which results in severe impairment of intelligence and social functioning*']

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‘Arrested development’ (1)
Guidance from Social Security Scotland

‘may apply in cases involving arrested emotional or functional development which has a physical cause’...eg, ‘following trauma/neglect, global development delay, in some cases…Autism Spectrum Condition and/or ADHD…’

‘…Whether or not an individual who has one of the conditions listed has arrested development of the brain needs to be considered on a case-by-case basis. For example, just because an individual has experienced trauma doesn’t mean their development will be arrested. However, severe cases of abuse/trauma can affect how an individual’s brain forms and functions.’

Child Disability Payment decision making guide

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‘Arrested development’ (2)
Recent (DLA) caselaw

PM (by his appointee) v SSWP [2025] UKUT 85 (AAC)

- Re Reg 12 DLA and SMI rules - claimant with ADHD

- In general, Secretary of State accepted that a person with ADHD is capable of having ‘arrested or incomplete development of the brain’

- In the present case, Secretary of State’s medical evidence was that the child’s ‘intellectual disability’ was ‘possibly the strongest marker of arrested or incomplete brain development’ (had ‘autistic features’ with learning disabilities and ‘low IQ’)

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‘Arrested development’ (2)
Recent (DLA) caselaw

UT judge: ‘*I am satisfied on Dr Foreman’s report that a person with ADHD is suffering from a state of arrested development or incomplete physical development of the brain*’

However

- ‘*It is anticipated that cases in which a person with ADHD alone…’ also meets the requirements to have severe impairment of intelligence and social functioning and severe behavioural problems ‘…are likely to be relatively rare*’ [on the facts claimant in this case *did* satisfy that and so the SMI route applied]

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The law – 'Severe behavioural difficulties' Regulation 13(8)

Wiil have severe behavioural difficulties:

'…if the individual exhibits disruptive behaviour which-

(a) is extreme,

(b) regularly requires another person to intervene in order to prevent or reduce the likelihood of physical injury to the individual or another person, and

(c) is so unpredictable that another person requires to be awake and watching over the individual while the individual is awake'.

['intervening' relates to providing 'care and support' or 'treatment' provided to the individual – 13(9)]

[*DLA reg 12(6) refers to 'physically restrain' rather than 'intervene']*

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‘Severe behavioural problems’ Recent (DLA) caselaw

TC by NC v SSWP [2025] UKUT 356 (AAC)

- Re Reg 12 DLA SMI rules – claimant with global delay and autistic spectrum disorder
- Accepted that he had ‘arrested or incomplete development of the brain’ and ‘severe impairment of intelligence and social functioning’
- Would run off; climb; had ‘meltdowns’; pinch adults and children – tribunal wrongly said behaviour was not ‘extreme’ or ‘unpredictable’
- ‘*In my experience of hearing SMI appeals it is often the need to satisfy regulation 12(6)(c) which is the stumbling block to a successful appeal. A relevant question to be asked in such cases is e.g. can the child be left alone in a room to watch TV? If they can, then the appeal will fail, regardless of the degree of disability*’

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Some important older caselaw (1)
Re DLA and SMI – severe mental impairment

NMcM v SSWP (DLA) [2014] UKUT 312 (AAC): Both 'arrested development' and 'incomplete development of the brain' refer to 'the brain' (but accepted that brain continues developing into early adulthood)

CDLA/1678/1997: Accepted that autism arises out of a state of arrested or incomplete development of the brain (but on facts claimant's intelligence was not severely impaired)

R(DLA) 1/00 – IQ test not a definitive measure of 'severe impairment of intelligence' – should also take account of 'insight and sagacity', and of 'ability to function in real life situations'

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Some important older caselaw (2)
Re DLA and SMI – severe behavioural problems

SSWP v MG (DLA) [2012] UKUT 429 (AAC):

- Disruptive behaviour - 'structured environment' such as a special school may mean the behaviour is reduced at school, but if a teacher is ready to intervene because of a risk, that is relevant and 'unpredictability' can still be apply
- Meaning of 'regularly' requiring intervention and restraint – need not be constantly, continuously or all of the time – but must be needed indoors not just outdoors
- Meaning of 'extreme' – the behaviour must be extremely disruptive – must result from the severe mental impairment

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The law – a round-up

- Test requires both severe mental impairment *and* severe behavioural difficulties – *and* entitlement to higher rate care
- Severe 'mental impairment' refers to problems with growth or development *of the brain*, or the functionality *of the brain*
- No list of relevant conditions or diagnoses
- Medical view is that autism/asd involves arrested or incomplete development of the brain; now also that, in general, that can also apply to ADHD and potentially to global delay, trauma/neglect – but will be fact and evidence dependent
- Test of severe 'behavioural difficulties' more likely to be the 'stumbling block' in some cases – likely to be very fact and evidence dependent

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Severe mental impairment in practice

- Does the child meet the criteria for an award of high rate care?
- Does the child meet the criteria for having a severe mental impairment of intelligence and social functioning?
- Does the child meet the criteria for having severe behavioural difficulties?
- Is a current award at risk if you are asking for a review?

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Do they have an impairment of intelligence? Extracts from decision makers guide

- IQ of 55 or less is generally accepted as a “severe impairment of intelligence”
- However, should primarily consider their level of ‘useful intelligence’ in matters such as:
- Understanding of the impact of their behaviour
- Understanding the risk of danger or hazards
- Developmental milestones
- Awareness of where they are or of what time it is
- Experience short and long-term memory difficulties.

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Do they have an impairment of social functioning? Extracts from decision makers guide

- An individual may have a severe impairment of social functioning if they:
- Are unable/limited ability to speak
- Are unable/very limited ability to to read or write
- Have limited/no understanding of the impact of their behaviour on others
- Have limited/no ability to understand danger or hazards, such as eating dangerous objects or touching hot objects
- Have not been toilet trained by an age when most children will have been
- Cannot engage in play or co-operation with others
- Behave violently and injure themselves or others.

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Arrested development or incomplete physical development? Extracts from decision makers guide

- Number of congenital conditions present at birth that impact on the proper development of the brain in the womb and following birth, that may be documented in the individual's supporting information
- Information provided by the individual or in supporting information does not have to confirm a physical defect in the brain.
- Not required for the individual to provide results of a brain scan or any other relevant tests.

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Arrested development - Extracts from decision makers guide

- Common conditions where an individual might meet the criteria for arrested development are:
- trauma / neglect / sexual abuse
- when an individual has a diagnosis of an attachment disorder like Reactive Attachment Disorder or Disinhibited Social Engagement Disorder
- global developmental delay
- in some cases, neurodevelopmental conditions, such as Autism Spectrum Condition and/or ADHD
- some severe cases of mental illness.

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Incomplete physical development - Extracts from decision makers guide

- Incomplete physical development of the brain involves a failure of the brain to grow properly and focuses on the fact that the brain is not functioning as expected.
- Conditions which indicate the brain has not developed as expected include:
- Lissencephaly
- Microgyria
- Holoprosencephaly.

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Severe behavioural difficulties – Extracts from decision makers guide

- Must be extreme, regularly require intervention and be unpredictable
- Examples of extreme behaviour include disruptive, aggressive, hyperactive behaviours
- Examples of intervention include physical intervention, medical intervention, changes to the environment, preventative/calming or reactive strategies
- Examples of unpredictable include attempting to leave the house, hurting themselves or others, run into the road, touch hot objects

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How to evidence the criteria is met and barriers

- Attendance at additional support needs school
- Extra support at school/nursery
- Assessment reports/lack of diagnosis
- Child and Adolescent Mental Health Services involvement
- Evidence from other services the child accesses
- *In my experience of hearing SMI appeals it is often the need to satisfy regulation 12(6)(c) which is the stumbling block to a successful appeal. A relevant question to be asked in such cases is e.g. can the child be left alone in a room to watch TV? If they can, then the appeal will fail, regardless of the degree of disability'*

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Help for advisers

CPAG Welfare Rights

Advice by telephone:
0141 552 0552

Monday to Thursday, 10am - 4pm,
Friday 10am – 12 noon.

Advice by email:
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New Welfare Benefits Handbook

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It also provides practical guidance on overpayments, deductions from benefits to third parties, how to challenge benefit decisions, and provides the expertise needed to maximise clients' income, carry out comprehensive benefits checks, support claims and deal confidently with problems when they arise.

We've also produced a wall chart (available in A2 and A4) which give quick and handy access to the benefit rates for 2026/27.

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