

Social Security Department

Home Carer's Allowance Guideline

Gov 293

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Definitions

Care year – A period of 12 months commencing with –

- (a) the day for which the carer first receives home carer's allowance for their care of the cared for person; or
- (b) an anniversary of that day

Current care year – the care year in which the day on which any rule that is to be applied falls

Medical treatment – includes the performance of any such operation and the giving of any such treatment, advice or attendance as is usually performed or given by medical practitioners

Specialist medical treatment – medical treatment of a kind that is not generally available in Jersey and is arranged following a referral by a registered medical practitioner in Jersey.

Week – a period of seven days beginning with Monday

1. Introduction

With effect from the 1 January 2013 home carer's allowance came into force. This is a benefit under the Social Security (Jersey) Law 1974 and provides financial assistance to a person (the carer) who is caring for a severely disabled person (the cared for person). It also awards credits to the carer to safeguard their contribution record.

Prior to 1 January 2013 invalid care allowance was available for carers. This benefit and the legislation governing it ceased when home carer's allowance came into force.

All claimants in receipt of invalid care allowance on 31 December 2012 were moved to home carer's allowance from 1 January 2013 using transition arrangements. From 1 January 2013 no new claims to invalid care allowance can be accepted.

1.1 Entitlement to home carer's allowance

The carer is entitled to home carer's allowance for the care of the cared for person if the following circumstances apply;

- The carer must satisfy the relevant contribution conditions.¹
- The carer must be regularly and substantially engaged in caring for the cared for person.²
- The carer must have the main responsibility for providing the care to the cared for person.³
- The care must be provided in Jersey.⁴
- The carer must satisfy requirements for residency and presence in Jersey⁵
- The carer must not receive earnings for providing the care to the cared for person.⁶
- The carer's earnings must not exceed 75% of the lower monthly earnings limit.⁷
- The cared for person must satisfy requirements for residence and presence in Jersey.⁸
- The cared for person must meet the criteria for the income support rate payable in respect of the highest level of the personal care element of the impairment component. It is immaterial whether the cared for person is in receipt of income support.⁹

Generally, a carer who is over pensionable age is not entitled to home carer's allowance. However, there is an exception for a carer who was entitled to and claimed the allowance before they attained pensionable age.¹⁰

A carer can only receive home carer's allowance in respect of one cared for person at a time.¹¹

Only one carer can receive home carer's allowance in respect of the cared for person. If a cared for person has 2 or more carers, the carers can chose which of

¹ Article 18A(2)(b) Social Security (Jersey) Law 1974

² Article 18A(1)(a) of the Social Security (Jersey) Law 1974

³ Article 2(1)(b) Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁴ Article 2(1)(d) Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁵ Article 18A(2)(a) Social Security (Jersey) Law 1974

⁶ Article 18A(2)(d) Social Security (Jersey) Law 1974

⁷ Article 4 Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁸ Article 18A (3)(b) Social Security (Jersey) Law 1974

⁹ Article 18A (3)(a) Social Security (Jersey) Law 1974

¹⁰ Article 18A (4) Social Security (Jersey) Law 1974

¹¹ Article 18A (5) Social Security (Jersey) Law 1974

them is to claim the benefit although this is subject to agreement by a determining officer.¹²

2. Qualification criteria in detail

2.1 Contribution conditions

To be entitled to home carer's allowance the carer must satisfy the following contribution conditions¹³;

1. They have paid contributions prior to the end of the relevant quarter and the annual contributions factor derived from those contributions is not less than 0.5. This is also referred to as a Test of 2; **and**
2. They have either paid or been credited with contributions in respect of the relevant quarter and the quarterly contribution factor derived from these contributions is at least 0.33.¹⁴

The relevant quarter is the previous quarter but one before the quarter in which entitlement to home carer's allowance first arises.¹⁵

A married woman who has a married woman's election in operation at the time of her claim to home carer's allowance is treated as satisfying the contribution conditions regardless of her actual contribution record.¹⁶

Credits awarded for home responsibility protection (HRP) can be used when establishing if the carer satisfies the contribution condition in 2.¹⁷

2.2 Regularly and substantially engaged in caring

The carer is treated as regularly and substantially engaged in caring for the cared for person if they require the following assistance;¹⁸

1. The cared for person is under 18 years of age and requires assistance with the activities of daily life that substantially exceeds the assistance normally expected in the care of a person of the same age as the cared for person; **or**

The cared for person is at least 18 years of age and requires;

¹² Article 18A (6) Social Security (Jersey) Law 1974

¹³ Paragraph 3A(1) of Schedule 2 to the Social Security (Jersey) Law 1974

¹⁴ Article 7 Social Security (Home Carer's Allowance) (Jersey) Order 2012

¹⁵ Paragraph 3A(3) of Schedule 2 to the Social Security (Jersey) Law 1974

¹⁶ Paragraph 3A(2) of Schedule 2 to the Social Security (Jersey) Law 1974

¹⁷ Article 14(10) Social Security (Contributions) (Jersey) Order 1975

¹⁸ Article 2(1) Social Security (Home Carer's Allowance) (Jersey) Order 2012

- i. Frequent attention with bodily functions; **or**
 - ii. Continual supervision to avoid substantial danger to themselves or others
2. The carer must have the main responsibility for providing the assistance to the cared for person.
 3. The carer provides the cared for person with that assistance for a period or periods totalling not less than 35 hours per week **and**
 4. The assistance is provided by the carer to the cared for person in Jersey

2.3 Main responsibility for providing care

In order to be entitled to home carer's allowance the carer must have the main responsibility for providing the required assistance to the cared for person.

The person who has the main responsibility for the caring will be the person who is regularly and substantially engaged in caring. Therefore in assessing whether a person has the main responsibility for providing the required assistance consideration should be given to the number of hours the carer making the claim actually spends providing this assistance, what caring duties the carer undertakes, and the number or hours and caring duties, if any, other persons undertake for the cared for person.

A further factor is whether the carer claiming home carer's allowance is also working and if so the times they work and what care provisions are made during the time they are at work and unavailable to care for the cared for person.

In the majority of cases the person with the main responsibility for caring is likely to be a person living in the same dwelling as the person requiring care or if this is not the case then they are more likely to be related to each other.

Therefore although neither is a requirement for entitlement to home carer's allowance, any situation where the person claiming as the carer is neither related to or living in the same dwelling as the cared for person should be considered carefully. This would particularly be the case if there were also relatives living in the same dwelling as the cared for person who are either not claiming or are unable to claim because they do not satisfy the eligibility criteria.

In considering who is entitled to home carer's allowance determining officer's should be aware that the person who actually has the main responsibility for caring may not satisfy the eligibility criteria for home carers allowance such as the contribution conditions or earnings limits, and so another person who does who assists with the

caring but is not the main carer may make an attempt to claim home carer's allowance.

Conversely should a situation arise where more than one person attempts to claim home carer's allowance in respect of the same cared for person, the determining officer must firstly determine, as detailed above, who has the main responsibility for caring for that person. Only then can a decision be made as to which of the carers, if either, is entitled to home carer's allowance. For further details on this aspect see **2.9**.

Example 1

Tracey and her daughter Ellen aged 6 live in a 2 bedroom rented flat. Ellen meets the relevant criteria for the personal care element and Tracey is available to attend to Ellen's care needs at night and during the afternoons but not the mornings as she works part time.

Jane, a friend and neighbour, helps out looking after Ellen in the mornings when Tracey is at work and also at other times when she needs to go to the shops or has an appointment.

Although Jane does provide care to Ellen at certain times she cannot be considered to have the main responsibility for caring for Ellen's as Tracey has this responsibility. Therefore only Tracey would be eligible to claim home carer's allowance.

Example 2

Stephen and Vera live together, Stephen works full time, and Vera does not work as she is aged 66. Vera's mother Jane aged 82 then moves in with them as she has been assessed as meeting the relevant criteria for the personal care element and requires care.

Vera is available during the day and night to attend to Jane's care needs and is therefore classed as having the main responsibility for caring for her.

Stephen and Vera's daughter Sally also visits on a daily basis and helps Vera with the care of Jane as and when she can. Sally does not work as she has a child aged 4.

Vera cannot claim home carer's allowance due to her age when she commenced being a carer. Therefore Sally submits a claim.

The DO determines that Vera has the main responsibility for Jane's care as they live in the same dwelling and Vera is available at all times to provide that care. Sally although assisting Vera does not have the main responsibility for care and

so is not eligible for home carer's allowance. Therefore no home carer's allowance is payable for the care of Jane.

2.4 Care provided in Jersey

The carer must provide care to the cared for person in Jersey to qualify for home carer's allowance.¹⁹

However there are specific circumstances where care that is temporarily provided outside Jersey is accepted;

- (a) When the carer is providing the required assistance to the cared for person whilst the cared for person is receiving specialist medical treatments as an out-patient in a hospital or similar institution outside Jersey;²⁰ or
- (b) When the carer is providing the required assistance to the cared for person outside Jersey for any other period.

In the case of (a) there is no time limit stipulated in the legislation. The requirement to be satisfied is that the absence is temporary. So the carer and cared for person must remain ordinarily resident in Jersey and their intention must be to return to Jersey after the specialist treatment.

In the case of (b) the time limit is a period or periods not exceeding 28 days in the aggregate in the current care year.²¹

2.4 Carer present in Jersey

The carer must be present in Jersey on any day for which they claim home carer's allowance.²²

However a carer who is absent from Jersey for any of the following reasons is treated as being present in Jersey;²³

- whilst the cared for person is receiving respite care as detailed in 4.2
- whilst the carer or cared for person is receiving specialist medical treatment as an in-patient or out-patient in a hospital or similar institution outside Jersey, as detailed in 4.2

¹⁹ Article 2(1(d)) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²⁰ Article 2(4)(a) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²¹ Article 2(4)(b) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²² Article 3(1) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²³ Article 3(2) Social Security (Home Carer's Allowance) (Jersey) Order 2012

- whilst the carer is absent from their place of employment, as detailed in 2.5

2.5 Earnings of the carer

If the carer receives earnings for the care of the cared for person they are not able to claim home carer's allowance for the care of that person.²⁴

Example

Simon and Veronica live together, both work full time and so neither qualify for home carer's allowance due to their earnings. They also have Simon's mother Theresa living with them and she meets the relevant criteria for the personal care element and requires care.

Simon and Veronica employ Jane to come to the house every day to provide care to Theresa during the time they are at work.

Jane is not entitled to home carer's allowance as although she is the only person providing care to Theresa she is being paid to provide that care.

A carer is however able to undertake any other work and still be entitled to home carer's allowance. The amount of hours they can work is not limited although they still have to satisfy the requirement to be providing care to the cared for person for at least 35 hours a week.²⁵

The amount the carer can earn in a relevant week is however restricted to 75% of the weekly equivalent of the lower monthly earnings limit.²⁶ This figure is usually increased from 1 January each year.

A carer who has earnings above the amount applicable to them is not entitled to receive any home carer's allowance for that relevant week.

The 'relevant week' is defined as a week which includes any day for which home carer's allowance is claimed.²⁷

However a carer is allowed to have earnings above this amount for any week, up to a maximum of 6 weeks in the current care year, if that week is one where the carer is absent from their place of employment with the approval of their employer.²⁸

Example

²⁴ Article 18A(2)(d) Social Security (Jersey) Law 1974

²⁵ Article 18A(2)(c) Social Security (Jersey) Law 1974

²⁶ Article 4(1) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²⁷ Article 4(2) Social Security (Home Carer's Allowance) (Jersey) Order 2012

²⁸ Article 4(3)(a) Social Security (Home Carer's Allowance) (Jersey) Order 2012

Peter is the carer of his mother Diane and he also has a part time job. Peter takes 2 weeks paid holiday with the approval of his employer. However during this two weeks he is also paid extra holiday pay. This amount together with his normal pay exceeds the 75% limit. However as this is for less than 6 weeks Peter continues to satisfy the earnings limit.

A carer is also treated as satisfying the earnings limit for any week in the current care year during which the cared for person is;²⁹

- receiving respite care (up to an aggregate of 28 days)
- receiving medical treatment as an in-patient in a hospital in Jersey (up to an aggregate of 56 days) **or**
- receiving specialist medical treatment as an in-patient or out-patient in a hospital or similar institution outside Jersey (up to an aggregate of 56 days)

Example

Peter is the carer of his mother Diane and he also has a part time job. Diane goes into hospital in Jersey as an in-patient for an operation and is there for 28 days. During this period Peter negotiates with his employer to work extra hours and so his pay exceeds the 75% limit. However as this is for less than 56 days Peter continues to satisfy the earnings limit.

2.6 Cared for persons requirements

To be entitled to home carer's allowance the cared for person must have been ordinarily resident in Jersey throughout the period of 12 months ending with the day on which the carer would first receive home carer's allowance for their care.³⁰

For further guidance on establishing ordinary residence refer to **Appendix 1**.

The cared for person must also meet the criteria for the rate payable in respect of the personal care element of the impairment component of income support at level 3 (56 points or above). The cared for person does not have to be in receipt of income support.³¹

²⁹ Article 4(3)(b) Social Security (Home Carer's Allowance) (Jersey) Order 2012

³⁰ Article 5 Social Security (Home Carer's Allowance) (Jersey) Order 2012

³¹ Article 18A(3)(a) Social Security (Jersey) Law 1974

There may be many occasions where the cared for person has income in excess of that which would enable them to receive income support. This does not however stop their carer from claiming home carer's allowance. The important thing is that an income support impairment assessment must be done by the income support zone in order to establish whether the cared for person satisfies the criteria for a score of 56 points or above. If this is confirmed then a claim for home carer's allowance by the carer can then be processed.

If however the eligibility to the required level of the impairment component is not confirmed the home carer's allowance claim can be disallowed without any further checks on entitlement being required.

It would then be for the cared for person to request a reconsideration of the determination on the personal care element or if this has already been done, to appeal to the Income Support Medical Appeal Tribunal against that determination.

Should a claim to home carer's allowance be made which is disallowed because the cared for person is assessed at less than 56 points, and the decision is then changed, either at the reconsideration or appeal stage, which results in the cared for person being awarded 56 points or above, the date this decision is effective from is also the date it is effective for the home carer's allowance claim.

2.7 Over pensionable age

A person who has reached pension age cannot claim home carer's allowance unless they were entitled to the allowance for caring for the same cared for person before they reached that age and they had claimed the home carer's allowance before reaching that age.³²

Example 1

Mary who is 64 and not in receipt of an old age pension, claims home carer's allowance in respect of caring for her husband who satisfies the criteria for the impairment component of income support with a score of 70. This claim is allowed. When Mary then reaches the age of 65 if her old age pension entitlement is less than the rate of home carer's allowance she can choose to continue to receive home carer's allowance in preference to her pension.

Example 2

³² Article 18A(4) Social Security (Jersey) Law 1974

Rosemary has looked after her parents for many years but her father has only recently claimed and qualified for the impairment component of income support with a score of 75. Rosemary was aged 66 when this happened and so she cannot now claim home carer's allowance.

2.8 Only one home carer's allowance per carer

A carer can only receive one home carer's allowance in respect of one cared for person at a time regardless of the number of cared for persons they are caring for.

Example

Sam is the carer of his father who has been assessed as satisfying the criteria for personal care element of income support with 56 points. Sam claims and is awarded home carer's allowance as the carer of his father.

6 months later Sam's mother is also assessed at above 56 points and Sam becomes her carer also. However as Sam is already in receipt of home carer's allowance in respect of his father he is not able to claim again for the care of his mother.

2.9 More than one carer

A carer cannot claim home carer's allowance in respect of caring for a cared for person who already has someone else claiming home carer's allowance as their main carer.³³

If for any period more than one carer is entitled to claim home carer's allowance in respect of the same cared for person, the determining officer should decide which of them is to receive the allowance.³⁴

Although if the carers nominate one of them to receive the allowance and confirm this in writing the determining office should accept this decision unless there are good reasons for not doing so.

There is however no limit to the number of people in a household who may claim home carer's allowance for the care of different cared for persons.

³³ Article 18A(6) Social Security (Jersey) Law 1974

³⁴ Article 6 Social Security (Home Carer's Allowance) (Jersey) Order 2012

Example

Julie and Peter live in the same household as their son James and daughter Susan. Both James and Susan satisfy the criteria for the required level of the personal care element of the impairment component.

Julie and Peter do not work and Julie has been determined to be the main carer for James and Peter has been determined to be the main carer for Susan.

Julie is able to claim home carer's allowance for being the main carer of James and Peter is able to claim home carer's allowance for being the main carer of Susan.

3. Making a claim

3.1 Time limits for claiming

The legislation states that claims to home carer's allowance must be made within 3 months of the first day on which the conditions for the receipt of the benefit are satisfied.

If this is not done then the claimant cannot be paid home carer's allowance for any period more than 3 months before the date on which the claim was made.³⁵

However if the claimant can show good cause to the satisfaction of the determining officer for the delay in submitting the claim before the date they did the start date can be backdated to a maximum of 6 months from the date the claim was actually made.³⁶

3.2 Incorrectly completed claim forms

If a claim form is received and it is incorrectly completed it can be returned to the claimant.

If a correctly completed claim form is then received within one month it may be accepted as having been received on the date it was first received.³⁷

3.3 Outstanding information

³⁵ Paragraph 8A of Part 1 of Schedule 2 to the Social Security (Claims and Payments) (Jersey) Order 1974

³⁶ Article 13 Social Security (Claims and Payments) (Jersey) Order 1974

³⁷ Article 8 of the Social Security (Claims and Payments)(Jersey) Order 1974

Any person who makes a claim to home carer's allowance must furnish such certificates, documents, information and evidence for the purpose of determining their claim as may be required by the determining officer.³⁸

If reasonably required the person shall also attend the department or other place as the determining officer directs to enable the required information to be obtained.³⁹

If a person has been requested to provide any missing information (certificates, documents, information or evidence) for the purpose of substantiating their claim, the person must provide that outstanding information within 4 weeks of receiving a written request to do so.⁴⁰

A person who fails to comply with such a request within the 4 weeks may have their claim closed without payment being made.

4. Payment of benefit

4.1 Time of payment of benefit

Home carer's allowance is paid at the standard rate of benefit⁴¹ monthly in advance on the first day of the month⁴². However from 1 August 2013 this will change to four weekly in advance.⁴³

If a claimant is only entitled for part of a month the daily rate payable is calculated at one thirtieth of the monthly rate.⁴⁴

In an emergency, payment of benefit may also be made in advance of a claim being fully validated or all the required information having been received.⁴⁵

If it is subsequently found that a person who was paid an emergency payment did not satisfy the criteria for entitlement to home carer's allowance then if it is also shown to the satisfaction of a determining officer that the person had not acted in good faith in all respects as to the obtaining and receipt of the emergency payment, the person is then liable to repay any amount paid to them.⁴⁶

³⁸ Article 7(1) of the Social Security (Claims and Payments) (Jersey) Order 1974

³⁹ Article 7(1) of the Social Security (Claims and Payments) (Jersey) Order 1974

⁴⁰ Article 15(1) of the Social Security (Claims and Payments) (Jersey) Order 1975 and a Ministerial Decision (MD-S-2012-0094)

⁴¹ Paragraph 2A of Part 1 of Schedule 1 Social Security (Jersey) Law 1974

⁴² Article 11(3B)(a) Social Security (Claims and Payments) (Jersey) Order 1974

⁴³ Article 11(3A) Social Security (Claims and Payments) (Jersey) Order 1974

⁴⁴ Article 11(3B)(b) Social Security (Claims and Payments) (Jersey) Order 1974

⁴⁵ Article 12(7) of the Social Security (General Benefits) (Jersey) Order 1975

⁴⁶ Article 12(7) of the Social Security (General Benefits) (Jersey) Order 1975

4.2 Absences from Jersey

Once in payment under certain circumstances the carer and/or the cared for person can be absent from Jersey and the home carer's allowance continue to be payable to the carer. The period of these absences is calculated using the current care year.

Respite care – The cared for person can receive up to an aggregate of 28 days respite care and the carer is still entitled to receive home carer's allowance. During this period the carer does not have to be present in Jersey.⁴⁷

Example

Sandy is the carer of her mother June. Between 1 and 25 August June goes into respite care. Sandy goes on holiday to Spain during this period and as this is less than 28 days Sandy continues to be entitled to received home carer's allowance

Carer or Cared for person receiving medical treatment outside Jersey – If the carer or cared for person is receiving specialist medical treatment as an in-patient or out-patient at a hospital outside Jersey whilst the other person remains in Jersey then the carer is still entitled to receive the home carer's allowance for an aggregate period not exceeding 56 days.⁴⁸

Example

Sandy is the carer of her mother June. Between 1 August and 3 September June is receiving specialist medical treatment as an in-patient at a hospital in the UK. During this period Sandy remains in Jersey. As this is less than 56 days Sandy continues to be entitled to received home carer's allowance

Cared for person a hospital out-patient outside Jersey – If the cared for person is receiving specialist medical treatment as an out-patient in a hospital outside Jersey temporarily and the carer is with them then provided that the carer continues to provide the required level of assistance to them the carer is entitled to receive the home carer's allowance. There is no time limit applicable to this situation the only requirement is that it must be a temporary absence.⁴⁹

Example

Sandy is the carer of her mother June. Between 1 August and 25 November June is receiving specialist medical treatment as an out-patient in a hospital in the UK. Sandy accompanies her and during this period continues to provide June with the required level of assistance. As they remain ordinarily resident in Jersey and are

⁴⁷ Article 2(3)(a) Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁴⁸ Article 2(3)(b) Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁴⁹ Article 2(4)(a) Social Security (Home Carer's Allowance) (Jersey) Order 2012

intending to return to Jersey after June's treatment finishes the absence is accepted as being temporary. Sandy therefore continues to be entitled to receive home carer's allowance during the whole of the absence from Jersey.

Any other absence – If the carer and cared for person are absent from Jersey together then provided that the carer continues to provide the required assistance to the cared for person the carer is still entitled to receive home carers allowance for an aggregate period not exceeding 28 days.⁵⁰

Example

Sandy is the carer of her mother June. Between 1 and 25 August Sandy and June go on holiday to Spain. During this period Sandy continues to provide June with the required level of assistance. As this is less than 28 days Sandy continues to be entitled to received home carer's allowance

4.3 Carers imprisonment

A carer in receipt of home carer's allowance continues to be entitled to that benefit whilst they are undergoing a period of imprisonment or detention in legal custody provided that it does not exceed 7 days.⁵¹

However the payment of any home carers allowance is suspended whilst the carer is undergoing a period of imprisonment or detention in legal custody.⁵²

Any carer who undergoes a period of imprisonment or detention in legal custody for a period of more than 7 days is not entitled to any home carers allowance for that period. They are therefore not entitled to the first 7 days of any such period.

5. Contribution liability and credits

A carer in receipt of home carer's allowance is excepted from liability to pay social security contributions. They are also entitled to be awarded credits for any day they are excepted from this liability.⁵³

6. Overlapping benefits

The following benefits payable under the Social Security (Jersey) Law 1974 overlap with home carer's allowance. As such they cannot both be received for the same period and must therefore be adjusted;⁵⁴

⁵⁰ Article 2(4)(b) Social Security (Home Carer's Allowance) (Jersey) Order 2012

⁵¹ Article 10(4) Social Security (General Benefits) (Jersey) Order 1975

⁵² Article 11 Social Security (General Benefits) (Jersey) Order 1975

⁵³ Article 9A Social Security (Contributions) (Jersey) Order 1975

- Short Term Incapacity Allowance
- Long Term incapacity Allowance
- Incapacity Pension
- Insolvency Benefit (notice pay component)
- Maternity Allowance
- Survivors Allowance
- Survivors Pension
- Old Age Pension
- Any Pension paid out of the public funds of a country or territory outside Jersey

Any Pension paid out of the public funds of a country or territory outside Jersey includes any old age pension or survivor's pension whether or not this is paid under the terms of a reciprocal agreement.

In making the adjustment the claimant is always paid the benefit that is payable at the highest or higher rate. If the overlapping benefits are all payable at the same rate then only one of them is paid.

If an overlapping benefit payable at a rate that is less than HCA has already been paid then the rate of HCA must be adjusted by this amount for the period they overlap.

The overlapping benefits rules do not include maternity grant or death grant and any benefit paid other than under the Social Security (Jersey) Law 1974. Therefore the following can be received at the same time as home carers allowance without adjustment;

- Christmas Bonus
- Cold Weather Bonus
- Food Cost Bonus
- Gluten Free
- Medical Benefit
- Income Support
- TV Licence Benefit

7. Transition arrangements

⁵⁴ Article 1 Social Security (Overlapping Benefits) (Jersey) Order 1975

This applies only to a carer who was entitled to invalid care allowance on 31 December 2012 for the care of a severely disabled person and had claimed invalid care allowance on or before that date.⁵⁵

7.1 Eligibility criteria

The carer is treated as satisfying the following requirements that apply to home carer's allowance;

- to be present in Jersey **and**
- the contribution conditions

The cared for person is also treated as satisfying the residency requirements that apply to home carers allowance.

The carer is also treated as satisfying the requirements applicable to home carers allowance for their being regularly and substantially engaged in caring for the cared for person.

However this last rule only applies until the first time the carer's entitlement to home carer's allowance is reviewed after 1 January 2013. At that and any subsequent reviews the actual requirements applicable to home carers allowance for the carer to be regularly and substantially engaged in caring for the cared for person then apply to them.

7.2 Over pensionable age

When considering if a carer over pensionable age is entitled to home carers allowance the requirement for them to have been entitled to and claimed before reaching that age is also treated as being satisfied if they were entitled to and claimed invalid care allowance.

7.3 Overlapping benefits

A carer who was on 31 December 2012 in receipt of invalid care allowance and survivors benefit is entitled to receive home carers allowance and survivors benefit at the same time without adjustment.

8. Appeals

⁵⁵ Article 54B Social Security (Jersey) Law 1974

Any appeal against a reconsideration decision of a second determining officer on the question of whether the;

- carer is regularly and substantially engaged in caring for the cared for person
or
- the cared for person meets the criteria for the rate payable in respect of the personal care element of the impairment component of income support at level 3 (56 points or above)

is heard by the Income Support Medical Appeal Tribunal.⁵⁶

This Tribunal is constituted with a legal chair, a medical practitioner and a person with experience of dealing with the needs of disabled persons in a professional or voluntary capacity or because they are themselves disabled.

Appeals on any other matter are heard by the Social Security Tribunal. This Tribunal is constituted with a legal chair and 2 lay persons.⁵⁷

However there is currently no right of appeal against any decision on whether the contribution conditions for any benefit are satisfied, or otherwise relating to a person's contributions.⁵⁸

9. Exceptional circumstances payments

The income support scheme includes the provision for the Minister to make a discretionary payment to anyone ordinarily resident in Jersey, whether or not they satisfy the eligibility criteria for income support.⁵⁹

These discretionary powers are very carefully controlled by guidelines that the Minister lays down and they are only used in exceptional circumstances. This provides a way in which individuals in Jersey in genuinely difficult situations can seek financial help through the Income Support system.

Determining officers should therefore be aware of this when dealing with any claim to home carer's allowance that does not satisfy the eligibility criteria but where the claimant's circumstances are exceptional.

⁵⁶ Article 33(9)(a) Social Security (Jersey) Law 1974

⁵⁷ Article 33(9)(b) Social Security (Jersey) Law 1974

⁵⁸ Article 33(5)(a) Social Security (Jersey) Law 1974

⁵⁹ Article 8 Income Support (Jersey) Law 2007

If the determining officer is in any doubt they should refer the case to their line manager who will then arrange for the case to be discussed with the relevant staff in income support.

Appendix 1 – Guidance on ordinarily resident and residence

This has been taken from Chapter 2 of the Income Support Determining Officers Guideline.

Ordinarily resident

General meaning

2011 Ordinarily resident should be given its ordinary meaning so that a person must be habitually resident and normally resident apart from temporary or occasional absences of long or short duration.

2012 Ordinary residence means

1. residence in a place with some degree of continuity, apart from accidental or temporary absence **or**

2. residence according to the way in which a person's life is usually ordered.

(2013 – 2022)

Lawful residence

2023 A person who is unlawfully in Jersey cannot be resident in Jersey.

(2024 – 2033)

Deciding ordinary residence

2034 There is no statutory definition of what is ordinarily resident. Each case must be decided on its own facts. Whether an individual is resident (see DOG 2123) or ordinarily resident in Jersey is primarily a question of fact and degree. A person who is not resident in Jersey will generally not be ordinarily resident in Jersey.

2035 The DO is not bound by the decision of the Income Tax Department on whether a person is ordinarily resident in Jersey.

2036 In deciding whether a person is ordinarily resident the DO should consider all the guidance set out in this chapter.

(2037 – 2046)

Residence in Jersey

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2047 A person must have taken up residence in Jersey, the intention to become resident is insufficient. However, a person may become ordinarily resident in Jersey immediately upon arrival if that is where that person intends to make a home for an indefinite period.

2048 A person who has taken up residence in Jersey and intends to settle in Jersey may still be ordinarily resident in Jersey during a stay in another country.

(2049 – 2058)

Settled purpose

2059 Ordinary residence requires a settled purpose. A person may have only one or several reasons for being in a country. For example a person may be in Jersey because of education, work, health, family or merely love of the place.

2060 For a person to be accepted as having a settled purpose a sufficient degree of continuity must be shown.

(2061 – 2070)

A person must reside somewhere

2071 Other than a nomad, it is impossible that a person does not have ordinary residence anywhere at all.

(2072 – 2077)

Nature of accommodation

2078 The nature of the accommodation is an important factor. For example, a person staying in a hotel for a month is normally regarded as a visitor. A person who stays for a prolonged period in the home of a relative in Jersey, whilst on a visit from another country, may be held not to be ordinarily resident in Jersey.

2079 A person who makes a home in a hotel may be ordinarily resident even if the stay is only temporary. A finding of ordinarily resident is even more likely if the home is not a hotel or lodgings but premises owned or rented by the person.

(2080 – 2089)

Possessions

2090 An important factor is what happens to a person's house and furniture whilst living elsewhere.

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- 2091** If they are retained it is likely that the person is ordinarily resident there and not anywhere else despite any length of time in any other place.
- 2092** However, if they are not retained it is likely that the person will be ordinarily resident in the other place despite any shortness of time.

(2093 – 2102)

Becoming ordinarily resident or continuing ordinary residence

- 2103** It is easier to establish that a person has continued to be, or resumed being, ordinarily resident in a country (especially the country of origin) rather than acquiring an alien ordinary residence.

(2104 – 2109)

Links with previous country of residence

- 2110** The DO should not place too much emphasis on the links a person may still have with a former country, for example, bank accounts or links with an employer.

(2111 – 2115)

Intention to return

- 2116** An intention to return to the country from which a person originally came is not significant if the interim period is of some length.

Example 1

A person who visits Jersey for several months every summer but each winter returns to a home abroad, would not be ordinarily resident in Jersey.

Example 2

A person who has settled abroad for health reasons for 1 $\frac{3}{4}$ years is ordinarily resident in the other country.

Example 3

A family who settles in Jersey for education purposes for two years may be ordinarily resident in Jersey.

(2117 – 2122)

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Resident in Jersey

Meaning of reside

2123 DO's should refer to the dictionary definition of reside when deciding if a person is resident in Jersey. Reside means

1. to dwell permanently or for a considerable time
2. to have one's settled or usual abode **or**
3. to live in, or at, a particular place.

(2124 – 2129)

Meaning of residence

2130 Residence means

1. the place where an individual eats, drinks **and** sleeps or where his family eat, drink and sleep **and**
2. resting, dwelling or having an abode in a place.

2131 Residence is different from ordinary residence (see DOG 2011 - 2022). Ordinary residence means residence in a place with some degree of continuity apart from accidental or temporary absence.

(2132 – 2141)

Resident in more than one place

2142 A person may reside at several places or be resident in more than one country at the same time. This could occur where a person has a permanent home in two countries and regularly spends equal parts of the year in each country.

2143 If a person has their main residence in Jersey but is not living in Jersey then they can still be treated as ordinarily resident (see DOG 2192- 2203).

(2144 – 2153)

Short stays in Jersey

2154 A person is not resident in Jersey if that person

1. is a short stay visitor (see DOG 2172)
2. has come to Jersey for an operation **or**
3. has come to Jersey for short term medical treatment.

(2155 – 2164)

Intention

- 2165** A person is resident in Jersey for the period spent here where that person came to Jersey with the intention of residing here but had to return to a former home after a short stay. This is not the same as a person who comes to Jersey for a holiday and their intention is to return home at the end of that holiday.

(2166 – 2171)

Permanent residence

- 2172** It is not possible to be permanently resident in Jersey without being resident here. However, a fixed purpose for that residency must be established before a person can be held to be permanently resident.

Example

A person leases a flat in Madeira and spends each winter there. That person stays with a relative in Jersey during the summer with the likelihood of inheriting the house in Jersey, upon the latter's death. That person is not permanently resident in Jersey.

(2173 – 2178)

Present in Jersey

- 2179** A person who is present in Jersey is not necessarily resident in Jersey. However, a person cannot be resident in Jersey without having been physically present in Jersey.
- 2180** To be present in or to be "in" a place means to be physically there on the day or period in question. It is not the same as being resident in a place.
- 2181** A person may be resident in a place without being present there and vice versa.

Example

A Jersey tourist on a fortnight's holiday in Majorca is not present in Jersey but is resident in Jersey.

A person cannot be both present in and absent from Jersey. But in prescribed circumstances, a person absent from Jersey may be treated as if still present in Jersey.

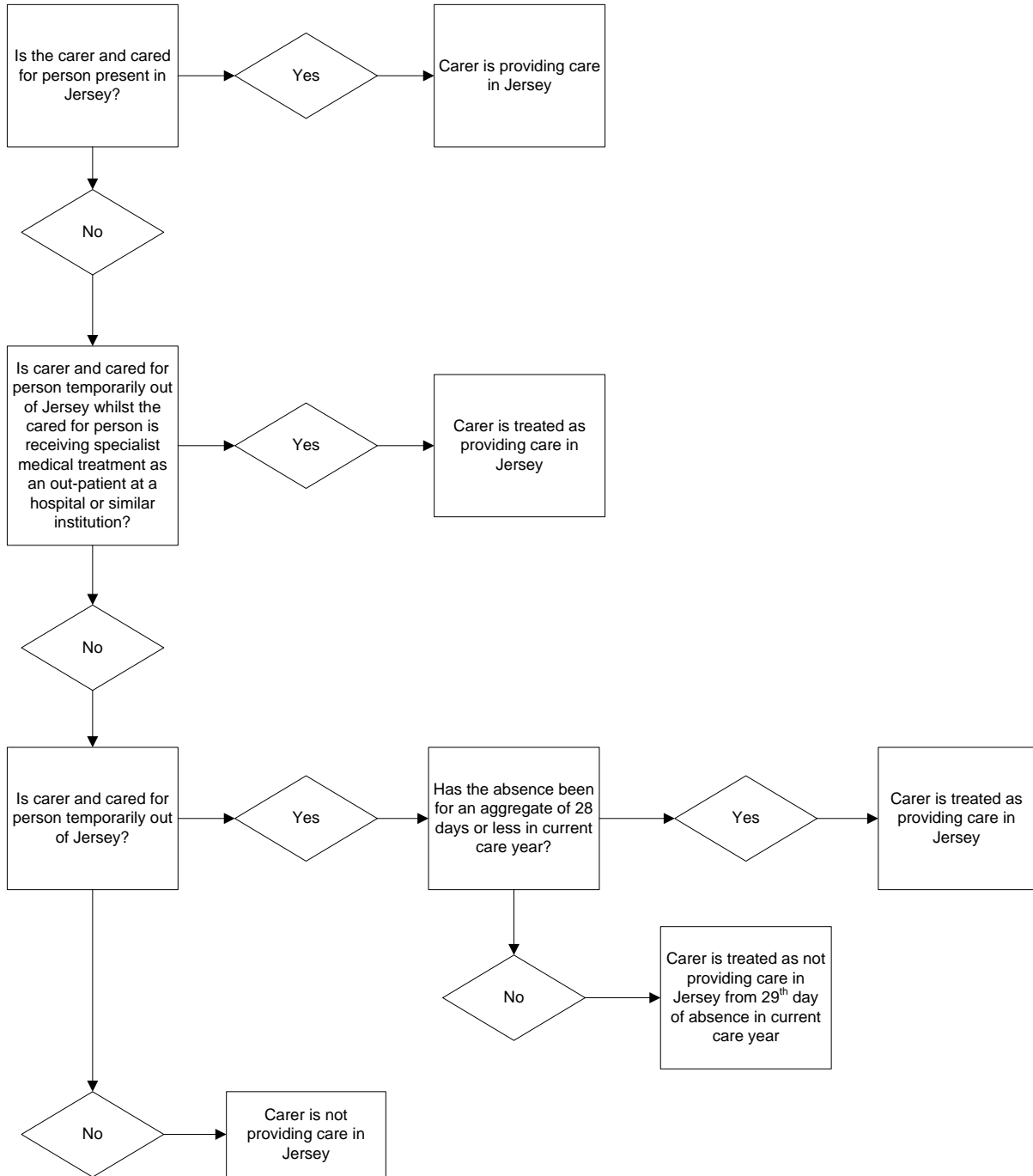
Note: See DOG Chapter 10 for further guidance on the affects of absence from Jersey has on entitlement to various IS components.

(2182 – 2191)

Appendix 2 – Flow Charts

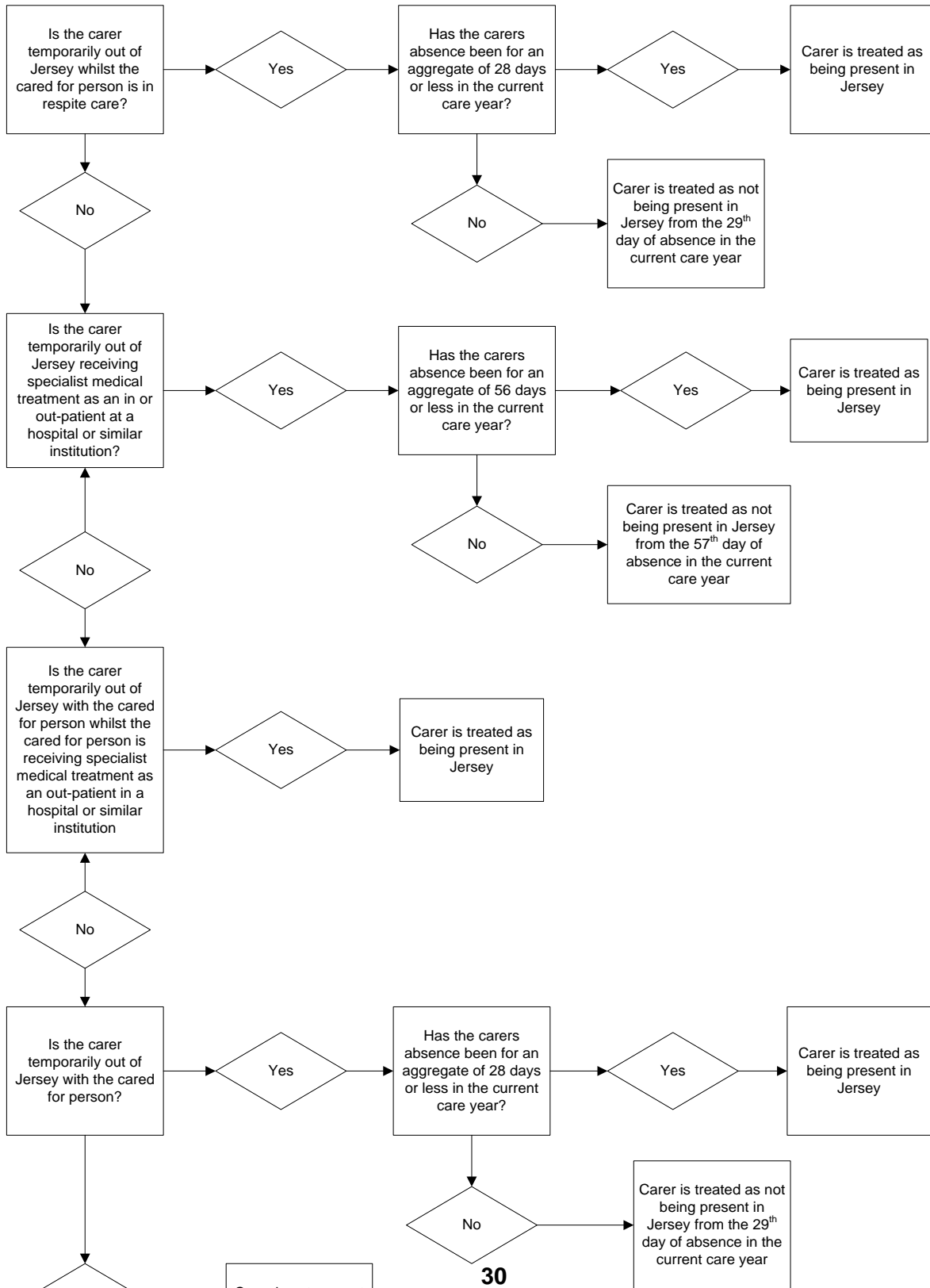
Home Carer's Allowance

Care Provided in Jersey



Home Carer's Allowance

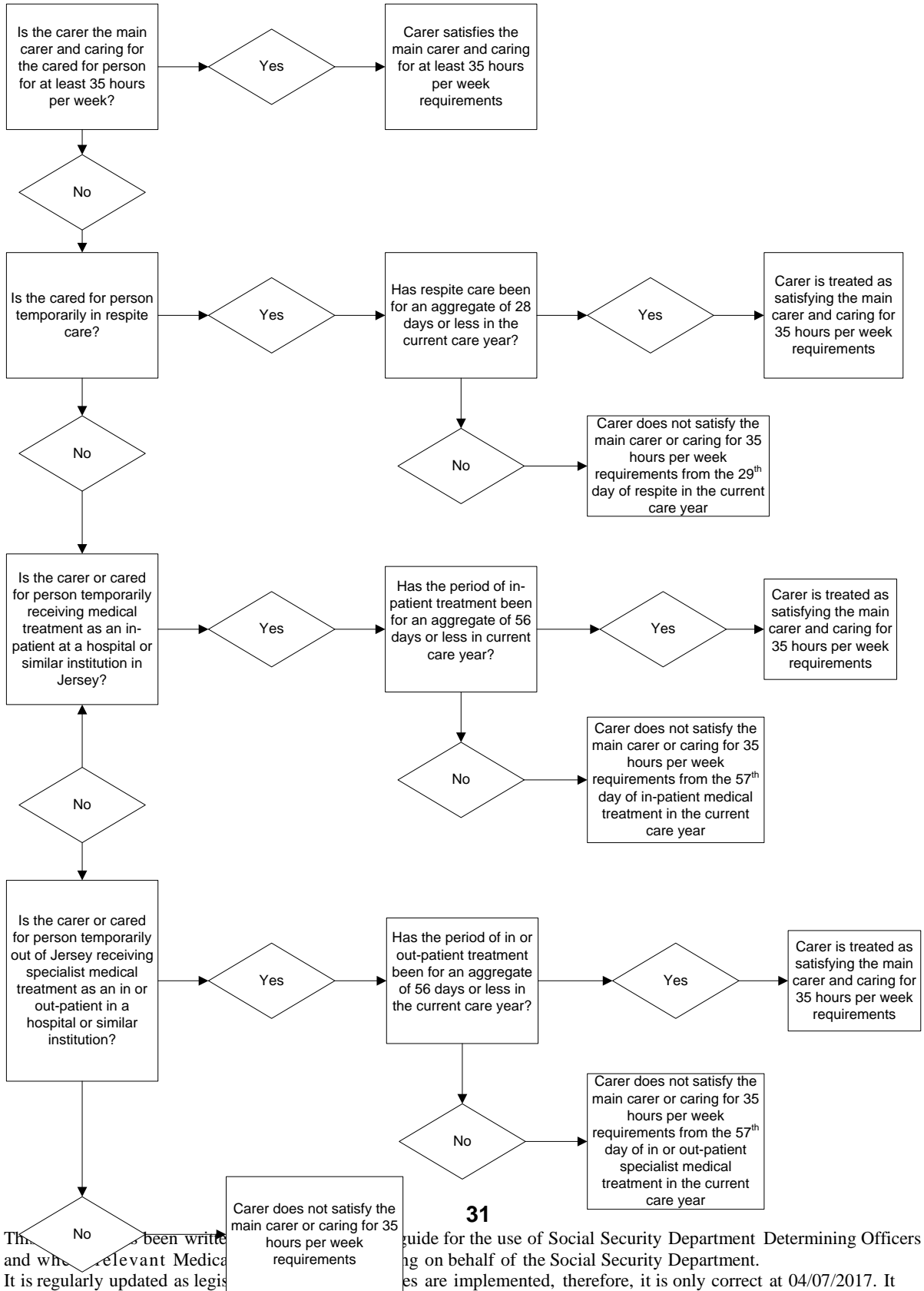
Carers Absence From Jersey



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Home Carer's Allowance

Main Carer and Caring for 35 hours Per Week Requirements



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