**Can an older person who has attained state pension credit age be awarded an amount in their minimum income guarantee if they satisfy the conditions for the payment of a disability premium in income support?**

The following sets out why we believe that an older single person who has attained state pension credit age but is below 75 years, and who is in receipt of a qualifying benefit for the disability premium of income support, should be awarded a disability addition when calculating their minimum income guarantee.

We believe similar arguments are possible for single people aged over this age for similar reasons but for the sake of brevity, will restrict our argument to this scenario presently.

**The Care Act 2014**

***Section 14 - Power of local authority to charge***

*(1) A local authority—*

*(a) may make a charge for meeting needs under sections 18 to 20, and*

*(b) where it is meeting needs because Condition 2 in section 18 or Condition 2 or 4 in section 20 is met, may make a charge (in addition to the charge it makes under paragraph (a)) for putting in place the arrangements for meeting those needs.*

*(7) A local authority may not make a charge under subsection (1) if the income of the adult concerned would, after deduction of the amount of the charge, fall below such amount as is specified in regulations; and the regulations may in particular (in reliance on section 125(7)) specify—*

*(a) different amounts for different descriptions of care and support;*

*(b) different amounts for different descriptions of support.*

This part of the Care Act allows a local authority to make a charge for meeting needs under its duties and powers contained elsewhere in the Act (including for carers) (sec.14(1)), **but** it may not make a charge under this power if the income of the adult concerned, after the charges are deducted, would mean that their income would fall below the amount specified in regulations (sec.14(7)).

**The Care and Support (Charging and Assessment of Resources) Regulations 2014**

**Regulation 2 – Interpretation**

*(1) “the adult” in relation to a financial assessment carried out by a local authority for the purposes of section 17(1), (3) or (4) of the Act means the adult or, as the case may be, the carer in respect of whom the authority is carrying out the financial assessment;*

The definition of “adult” contains no age restriction. Therefore, any reference to adult means anyone who is not a child.

*(2) Where reference is made in these Regulations to the application of a provision in the Income Support Regulations, any reference to “claimant” in the provision of the Income Support Regulations is to be construed as a reference to the adult concerned.*

**Regulation 7 - Minimum income guaranteed amount for other adults and carers whose needs are being met otherwise than by the provision of accommodation in a care home**

*7.—(1) Subject to paragraph (8), the amount specified for each week for the purposes of section 14(7) of the Act (“the minimum income guaranteed amount”) in relation to the adult concerned specified in paragraph (2), (3), (4), (5), (6) or, as the case may be, (7) is the aggregate of—*

This regulation starts off by stating that the amount referred to in sec.14(7) of the Care Act (highlighted above) in relation to an adult (as defined in the interpretation regulations as being the person subject to the financial assessment) is the aggregate (i.e. the total) of the amounts specified in the following paragraphs:

*(a) the amount specified in relation to that adult in that paragraph(1);*

*(b) where the adult concerned is responsible for, and a member of the same household as, a child, the amount of £82.95 in respect of each child; and*

*(c) any applicable premium under paragraphs (4) to (7).*

Para.a deals with the amount allowed for an “*adult”.*

Para.b deals with the amounts for dependent children.

Para.c deals with applicable premiums. Note it states “any” applicable premium with no reference to any age restrictions.

*2) Where the adult concerned is a single person and—*

*(a) is aged 18 or older but less than 25, the amount of £71.70;*

*(b) is aged 25 or older but less than pension credit age, the amount of £90.50;*

*(c) has attained pension credit age, the amount of £185.45.*

Paragraph 2, deals with the adult amount in reference to paragraph (a) above and has age-related amounts according to the age of the adult. It includes specific reference to a person who has attained pension credit age.

*(5) Where the adult concerned is a single person who is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—*

*(a) disability premium, the amount of the applicable premium is £39.85;*

*(b) enhanced disability premium, the amount of the applicable premium is £19.45.*

Paragraph 5 deals with an adult who is in receipt of income support and who is in receipt of a disability premium. It also makes explicit provision for an adult who, *if in receipt of income support*, would also be in receipt of a disability premium. An adult who has attained pension credit age, who receives a qualifying benefit, for example, DLA or AA, could be someone in this category. Note, the lack of age-specific provision as contained in paragraph 2 for example.

Note also:

(9) In this regulation—

*“the adult concerned” means—*

*(a) an adult who has needs for care and support under section 18, 19 or 20 of the Act other than the provision of accommodation in a care home;*

Again, there is no reference to any kind of age restriction here – the words “adult” mean any person who has needs for care and support.

**Income Support (General) Regulations 1987**

**Schedule 2 – Applicable Amounts**

**Paragraph 9 – Pensioner Premium (as currently amended)**

*9. The condition is that the claimant has a partner aged not less than the qualifying age for state pension credit but less than 75*

The above represents the latest wording of the schedule that dictates the award of a pensioner premium for income support. This condition has been amended from the original wording by regulation 29(5)(a) of the *State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002* ([SI 2002/3019](http://www.legislation.gov.uk/uksi/2002/3019/regulation/29/made)) (which inserted the requirement for a partner) and subsequently by regulation 3(3)(a) of the *Social Security (Equalisation of State Pension Age) Regulations 2009* ([SI 2009/1488](http://www.legislation.gov.uk/uksi/2009/1488/regulation/3/made)) (which amended the age of the partner).

These changes reflect the fact that people reaching state pension credit age can no longer claim income support and the measures to increase and equalise the state pension age.

What this means in practice is our single person cannot be paid a pensioner premium as they do not have a partner, aside from any question of IS entitlement.

Similar conditions also apply under paragraph 9A (pensioner premium for person 75 and over) and paragraph 10 (Higher pensioner premium), namely that to be entitled and therefore receive these premia, the single person must be part of a couple and the other partner must be above state pension credit age.

**Paragraph 11 Disability Premium**

*11(1) Subject to sub-paragraph (2), the condition is that –*

*(a) where the claimant is a single claimant or a lone parent the additional condition specified in paragraph 12 is satisfied…*

**Paragraph 12 Additional condition for the Higher Pensioner and Disability Premiums**

*12.—(1) Subject to sub-paragraph (2) and paragraph 7 the additional condition referred to in paragraphs 10 and 11 is that either—*

*(a) the claimant or, as the case may be, his partner—*

*(i) is in receipt of one or more of the following benefits: attendance allowance, disability living allowance, armed forces independence payment, personal independence payment, the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2012, mobility supplement, long-term incapacity benefit under Part II of the Contributions and Benefits Act or severe disablement allowance only where it is paid in respect of him…*

There appear to be no age limitations or restrictions placed upon the receipt of a disability premium in the relevant schedule, provided the basic conditions are met i.e. in receipt of a qualifying benefit as listed.

**Paragraph 5**

*5. Subject to paragraph 6, where a claimant satisfies the conditions in respect of more than one premium in this Part of this Schedule, only one premium shall be applicable to him and, if they are different amounts, the higher or highest amount shall apply.*

As highlighted above, **a single person** aged over state pension age but under 75 cannot receive any of the pensioner premiums but could, in theory, receive a disability premium if otherwise entitled to income support.

Thus we argue that paragraph 5 does not prevent the award of the additional amount under regulation 7(5) of the charging regulations, provided the qualifying conditions for a disability premium are met.