NHS
Business Services Authority

Vaccine Damage Payment Scheme

Principles of Medical Assessment

1. Introduction

This document outlines the quality standards expected within the Vaccine Damage Payment Scheme (VDPS) medical assessment reports. It also incorporates previous learning that may be useful to consider in the preparation of the Outcome Reports.

According to the Vaccine Damage Payment Act 1979 (VDPA 1979) subject to the fulfilment of conditions of entitlement being met, a payment shall be made if a person is, or was immediately before his death, severely disabled as a result of vaccination against any of the diseases to which this Act applies.

Disablement is assessed in accordance with the Social Security Contributions and Benefits Act 1992.

When originally passed, the VDPA 1979 defined severe disablement as in excess of 80%. From 16/06/2002, this was changed to being defined as disablement of 60% or more.

The VDPA 1979 provides for payments to be made for severe disablement as a result of the vaccine itself (actual substance). Claims arising from administrative errors are not covered under the VDPA 1979 and therefore are not eligible for consideration under the VDPS.

2. Core principles

When conducting a VDPS medical assessment and producing an Outcome Report there are core principles that should be demonstrated:

- Impartiality, fairness and objectivity
- Justification for the outcome must be robust and stand up to scrutiny
- Up to date evidence/information must be considered and comprehensively analysed
- Consideration of hierarchy of evidence/information must be applied consistently
- Approach must be professional, in line with GMC expectations.

3. Medical Assessment

All claims are assessed by a Medical Assessor (MA) following the principles within this document. Each case is considered on its own merits, by experienced MAs, all of whom are General Medical Council registered doctors with a licence to practise. MAs will consider clinical research, epidemiological evidence, and the current consensus of expert medical opinion[1] together with a claimant's application and available relevant evidence (e.g. medical records). A clinical assessment is made on whether it is more probable than not that the vaccine has caused disablement, and if so, whether that disablement is severe.

The legislation (and case law resulting from that legislation) requires that the assessments consider the length of time a person has been disabled and may be expected to continue to remain disabled due to the vaccine in decisions about whether or not they meet the necessary 60% disablement threshold. MAs should be looking at the claimant's future prognosis, on the balance of probabilities, when determining the extent of the disablement. Where a disability is likely to improve after what might be considered a short period of time,12 months might be considered a "reasonable period" for consideration, this can be factored into a determination of whether the threshold is met for the necessary 60% disablement, although 12 months is not a definitive cut off point per se.

Any unsuccessful claimant who experienced an unexpected or unforeseen deterioration, or failure to recover as anticipated, would be able to request a "reversal" of the outcome of their case under the VDPA 1979 – effectively meaning that the case is reassessed.

4.6.2 Future Deterioration

If a condition is likely to deteriorate, this must be stated with appropriate references quoted.

4.6.2.1Claimants who are not currently 60% disabled but are likely to become 60% disabled in the future (particularly common for children receiving vaccinations):

Claims should be awarded in circumstances where the assessor concludes that the necessary 60% disablement threshold is crossed having taking into account all relevant factors, including the Claimant's future prognosis (across the period of time that the person has suffered and may be expected to continue to suffer from the disability), even if the claimant is not considered 60% disabled at the point of assessment, as per the Court of Appeal judgment in SSWP v FG (John) [2017] EWCA Civ 61.

4.7 Advising causation and disablement in posthumous cases

The VDPA 1979 states that, subject to the fulfilment of conditions of entitlement being met, a payment shall be made if a person is, or was **immediately before his death**, severely disabled as a result of vaccination against any of the diseases to which the VDPA 1979 applies.

4.7.1 Causation is assessed in accordance with the principles of the VDPS above.

Where causation is accepted, the following process is followed in relation to assessing disablement.

4.7.2 Disablement assessment:

- Loss of faculty is stated.
- Reference to the Schedule 2 assessments is stated.
- A 60% disablement example from the Schedule 2 of the Social Security (General Benefit) Regulations 1982 (legislation.gov.uk). is quoted.

- Comparison is made to a person of the same age and sex.

4.7.3 Where the vaccine has, on the balance of probabilities, caused the death of the claimant.

- It is stated that disablement caused by the vaccine exceeds the 60% threshold at or immediately before death.
- It is not a requirement to ascribe a specific percentage to death.

4.7.4 Applying an offset in a posthumous case.

Where a claimant dies from an unconnected condition, but in the presence of a disability caused by the vaccine, then the relevant disablement assessment is completed according to the principles of the VDPS as stated above.