

Commissioner's Advice on Capital Resources (BL Cases)

Direction 9

(1) Where:

(a) the applicant, or his partner, is aged 60 or over and the total capital resources of the applicant and his partner exceed £2000; or

(b) the applicant is, or if he has a partner, both are aged under 60 and the total capital resources of the applicant and his partner exceed £1000

any budgeting loan which would but for this direction be awarded shall be awarded only if, and to the extent that, the amount of the award is more than the excess.

(2) Subject to paragraph (3) in this direction, 'total capital resources' shall be calculated in accordance with -

(a) where the applicant or his partner is in receipt of income support, Chapter VI (capital) of Part V of, and Schedule 10 to, the Income Support (General) Regulations 1987;

(b) where the applicant or his partner is in receipt of income-based jobseeker's allowance, Chapter VI (capital) of Part VIII of, and Schedule 8 to, the Jobseeker's Allowance Regulations 1996;

(c) where the applicant or his partner is in receipt of state pension credit, Part III (income and capital) and Schedule V to the State Pension Credit Regulations 2002.

(3) For the purposes of paragraph (2), any payments made from the Family Fund to the applicant or to his partner or children, shall be disregarded in calculating the total capital resource.

This advice deals with how to apply the capital rules set out in Direction 9 to budgeting loan applications. It applies to budgeting loan applications made on or after 3 April 2006.

1. Introduction

Section 140(1A)(b) of the Social Security Contributions and Benefits Act 1992, as amended, requires decision makers in determining whether to make an award of a budgeting loan to the applicant, or the amount or value to be awarded, to have regard to the existence of resources from which the need may be met. Direction 9 sets out how decision makers should treat applications where the applicant and any partner have capital resources.

2. *Order of consideration*

The capital rules set out in Direction 9 represent one of the final considerations in the decision making process. This is evident from the fact that Direction 9(1) links its operation to ‘any budgeting loan which would but for this direction be awarded’.

3. *The effect of capital resources on decision outcomes*

Any capital held by the applicant and any partner in excess of the relevant allowance (£1000 if both the applicant and any partner are under 60, £2000 in other cases) will reduce by the amount of the excess any budgeting loan award that would have been made, but for Direction 9.

Direction 9 relates to capital held by the applicant and any partner. Capital held by children should be ignored¹. Direction 9(3) also provides that Family Fund payments should be ignored.

For the calculation of total capital resources, Direction 9 refers decision makers to the legislation on capital in the Pension Credit, Income Support and Jobseeker’s Allowance regulations. These are detailed, technical regulations, which cover many different sorts of capital ranging from the most liquid (cash) to capital assets which could take a long time to realise (e.g. real estate), to notional capital (capital which someone does not now have, but is deemed to have). Accordingly, excess capital may prevent or reduce a budgeting loan award despite the fact that the capital is only notional or may take time to liquidise. The regulations set out numerous types of capital which should be disregarded.

4. *Capital Below the Direction 9 Limits*

The direction says nothing explicitly about how decision makers should treat capital below the direction 9 limits. However, it seems clear that the intention of the direction is that savings below the direction 9 limits should not affect the amount an applicant can get from the fund. The Secretary of State’s Guidance supports this view (paragraph 61 of Part 4 of the Social Fund Guide).

Therefore, decision makers should not refuse to make an award, or reduce an award, because of savings below the direction 9 limits. These resources should not be regarded as resources from which the need may be met.

Agreed at Quality Forum 12/06/02

Effective from 09/10/02

Amendment agreed at Quality Forum 02/10/03

Amendment effective from 14/10/03

Revisions agreed at the Quality Forum 12 September 2007

Revisions effective from 12 September 2007

¹ See paragraph 63 of Part 4 of the Social Fund Guide