

Commissioner's Advice to Inspectors

Direction 25

The Secretary of State directs that...

- (1) For the purposes of this direction, a qualifying benefit is either –
 - (a) income support; or
 - (b) income-based jobseeker's allowance; or
 - (c) pension credit.
- (2) A social fund payment under direction 4 shall only be awarded to an applicant if:
 - (a) the application is treated as made on a date upon which the applicant is in receipt of a qualifying benefit, or
 - (b) the application is treated as made on a date upon which the applicant is in receipt of payments on account of a qualifying benefit, such as may be made by the Secretary of State under regulation 2 of the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 and that date is not earlier than 18 August 2002 or
 - (c) the conditions set out in direction 4(a)(i) are satisfied at the date the application is treated as made and it is planned that the applicant will be discharged within six weeks of that date and is likely to receive a qualifying benefit upon discharge.
- (3) For the purposes of paragraph 2(a) above, and subject to paragraph (4) below, the applicant shall be treated as having been in receipt of a qualifying benefit from the date from which that benefit has been awarded.
- (4) For the purposes of direction 4(a)(ii) to (v) and direction 4(b), the applicant shall not be deemed to be in receipt of income-based jobseeker's allowance on one of the three waiting days prescribed by regulation 46(2) of the Jobseeker's Allowance Regulations 1996.

This Advice deals with how to interpret the eligibility conditions for CCGs.

1. Direction 25(2)(a)

"in receipt of a qualifying benefit"

R v. Social Fund Inspector and Secretary of State for Social Services, ex parte Davey October 19, 1998 (CO/1418/97) established that to be eligible for a community care grant the applicant must himself be both lawfully entitled to and in receipt of a qualifying benefit.

It is not sufficient that the applicant's partner receives a qualifying benefit that includes an amount for him. Generally, unless the claim is in his name, he is not eligible for a grant. The exception to this is where benefit is paid to a person appointed to act on the applicant's behalf. In this case, although the claim is made in the appointee's name, the applicant should be treated as being in receipt of benefit¹.

Direction 25(3) provides that for the purposes of Direction 25(2)(a) an applicant shall be treated as having been in receipt of a qualifying benefit from the date from which that benefit has been awarded:

- This clarifies that the focus in deciding questions of "receipt" for the purposes of Direction 25 is not on "physical" receipt of benefit, but on the award of benefit.
- It also clarifies that if qualifying benefit is backdated to cover the date upon which a social fund application was treated as made, this can allow an applicant to satisfy the conditions of Direction 25(2)(a).
- The provisions of Direction 25(3) expressly relate to Direction 25(2)(a). They do not relate to Direction 25(2)(b) and (c). Payments on account of qualifying benefit are not backdated, and Direction 25(2)(c) does not require actual receipt of qualifying benefit.

Inspectors should generally accept that where there is an award of benefit there is accompanying entitlement to that benefit. Decisions on entitlement are for the relevant benefit decision makers, rather than social fund decision makers. However, in some circumstances an award of qualifying benefit is removed in respect of a past period. This has retrospective effect for social fund purposes (*ex parte Davey*). So if an award of qualifying benefit is removed in respect of the date upon which an application was treated as made, an Inspector should find that although the applicant was in receipt of a qualifying benefit he was not entitled to that benefit, and so Direction 25(2)(a) is not met. If a grant has already been paid the Inspector should consider whether an overpayment decision is appropriate.

Disallowances and sanctions

JSA claimants to whom no jobseeker's allowance is payable, whether because they are under a disallowance or a sanction, are not "in receipt of a qualifying benefit" for the purposes of Direction 25. However sanctioned jobseekers to whom JSA is payable at hardship rate should be counted as "in receipt". (See paragraphs 2105 to 2107 of the Social Fund Guide.)

Waiting days

Direction 25(4) states that applicants making new claims for JSA shall not be deemed to be in receipt of income-based JSA if their grant application is made on one of the three "waiting days". However, this part of the direction applies only "for the purposes of

¹ The numberless "General" direction that acts as a preface to the rest of the Secretary of State's Directions in the Social Fund Guide explicitly states that where benefit is not paid directly to a person, but to an appointee acting on his behalf, that person shall nevertheless be treated as being in receipt of benefit.

direction 4(a)(ii) to (v) and direction 4(b)". For the purpose of Direction 4(a)(i), applicants are deemed to be in receipt of JSA on their waiting days. If, therefore, an applicant applies for a grant on one of his waiting days, he is eligible to be considered for a payment under Direction 4(a)(i), but not under any other part of Direction 4.

2. Direction 25(2)(b)

Direction 25(2)(b) introduces a new basis for eligibility for applicants receiving payments on account of a qualifying benefit. An applicant will be eligible under this part of the direction if:

- The application is treated as made *on or after 18 August 2002; and*
- on that date (on or after 18 August 2002) the applicant is in receipt of *payments on account of a qualifying benefit.*

Direction 25(2)(b) is the only part of the direction under which receipt of payments on account of a qualifying benefit can lead to eligibility for a grant. Under Direction 25(2)(a) and (c) an applicant must be in receipt of a qualifying benefit or likely to receive a qualifying benefit, respectively.

"in receipt of payments on account of a qualifying benefit"

Ex parte Davey concerned Direction 25(2)(a), however, it provides some assistance in relation to the interpretation of Direction 25(2)(b). Applying the principles of *ex parte Davey* to Direction 25(2)(b), an applicant must satisfy the following conditions:

- He must have been in receipt of payments on account of a qualifying benefit; and
- He must have been lawfully in receipt of the above payments, that is, the Secretary of State must have lawfully decided to make the payments, and the applicant must not have obtained the payments fraudulently.

It is not sufficient that the applicant's partner receives payments on account of a qualifying benefit that includes an amount for him. Generally, unless the claim is in his name, he is not eligible for a grant. The exception to this is where benefit is paid to a person appointed to act on the applicant's behalf. In this case, although the claim is made in the appointee's name, the applicant should be treated as being in receipt of benefit.

Inspectors should generally accept that where there is an award of payments on account of a qualifying benefit, the applicant is lawfully in receipt of those payments. However, in some circumstances there may be an adjudication that the applicant is not lawfully in receipt. This has retrospective effect for social fund purposes (*ex parte Davey*). So if such an adjudication is made in respect of the date upon which the social fund application was treated as made, an Inspector should find that although the applicant was in receipt of a payment on account of a qualifying benefit, he was not lawfully in receipt of that benefit, and so Direction 25(2)(b) is not met. If a grant has already been paid the Inspector should consider whether an overpayment decision is appropriate.

3. Direction 25(2)(c)

Scope

Only applicants who meet the conditions of Direction 4(a)(i) can be eligible under Direction 25(2)(c). However, if Direction 25(2)(c) is satisfied, the Inspector may go on to consider an award under all parts of Direction 4.

Dates

The phrase “within six weeks” is linked to the date the application is treated as made. Therefore, for this part of the direction to be met, it must be planned that the applicant will be discharged from institutional or residential accommodation in which he is receiving care within six weeks of the date his social fund application is treated as made. Inspectors should calculate the six week period from the day after the application is treated as made (SFG 2103). (To do otherwise would mean trying to establish the exact timings for planned discharges in order to calculate the six week period.)

“Likely to receive a qualifying benefit upon discharge”

The wording of the direction focuses on whether, at the time the application is made, the applicant is *likely* to receive a qualifying benefit on discharge. Whether he *actually* receives such a benefit on discharge is not relevant. This means that where an unexpected turn of events prevents an applicant being awarded a qualifying benefit, which at the time of his application he was likely to receive, this turn of events would not affect his eligibility for a grant.

An Inspector must decide whether it was likely the applicant would receive a qualifying benefit upon discharge, upon the basis of facts existing at the time the application was treated as made. If facts existing at the time the application was treated as made, come to light after the making of the application, the Inspector should take account of these in reaching his decision on what was likely. He should not, however, take account of new facts arising from changes in circumstances following the date upon which the application was treated as made, in deciding eligibility under Direction 25(2)(c).