

Commissioner's Advice to Inspectors

Direction 49

Section 140(4)(4)(aa) of the Social Security Contributions and Benefits Act 1992 as amended by the Social Security Act 1998 states:

"that in circumstances specified in the direction an application for an award of a community care grant may be treated as an application for an award of a crisis loan, and vice versa;"

Direction 49 states:

“(1) Where an applicant applies for a crisis loan and the information supplied by the applicant in support of the application indicates that a grant may be appropriate, the decision maker may determine the application as an application for a grant, provided there is no application for a crisis loan, or for a grant, to meet the same need which is being considered by a decision maker, or by a social fund inspector, as at the date of determination.

(2) Where an applicant applies for a grant and the information supplied by the applicant in support of the application indicates that a crisis loan may be appropriate, the decision maker may determine the application as an application for a crisis loan, provided there is no application for a crisis loan, or a grant, to meet the same need which is being considered by a decision maker, or by a social fund inspector, as at the date of determination.”

This Advice deals with the use of the powers provided by Direction 49.

1. General approach

Direction 49 allows a decision maker to make a decision on both a community care grant and a crisis loan, if appropriate. This is a discretionary power and where discretion exists it must be exercised reasonably.

Direction 49 does not allow for a conversion from one type of application to another. To change the type of application would require express legislation. There is only one application by the applicant but Direction 49 allows a decision maker to go on and determine a second application as well.

A decision is always required on the primary application; this is the type of payment for which the applicant has actually applied.

2. When is it appropriate to use Direction 49 and determine the other type of payment?

There is no requirement to treat an application for a community care grant as an application for a crisis loan, or vice versa, in every case.

Direction 49 should normally be used if the information supplied by the applicant in support of his application indicates that the other type of payment may be appropriate. This will normally be if on the face of the information provided:

- An award of the other type of payment will clearly result i.e. a community care grant payment will be made on a crisis loan application, and vice versa. Or,
- There is a clearly arguable case for the other type of payment, even if this does not result in a payment. This is likely to be less frequent.

3. When is it not normally appropriate to use Direction 49 and determine the other type of payment?

It is not normally appropriate to use Direction 49 and determine the other type of payment in the following circumstances:

- Solely because the applicant has asked for, or said he would be willing to accept, the other type of payment.
- Where the same reason is appropriate for the refusal of an award of both a community care grant and crisis loan, for example an excluded item.
- Solely because the applicant is not eligible for the type of payment for which he has applied.
- Where there is not a clearly arguable case for the other type of payment based on the information supplied by the applicant.

4. Separate application for the same need already under consideration

Decision makers cannot use Direction 49 and determine the other type of payment if, at the date of determination, there is a separate application for either type of

payment for the same need under consideration by any other decision maker, including an Inspector.

The date of determination is usually the date of the Inspector's decision. However it could also be the date of the Reviewing Officer's or Decision Maker's decision in some cases. For example, the date of the Reviewing Officer's determination could be used where the applicant would be disadvantaged by the wrong decision having been made by the Reviewing Officer if the date of the Inspector's determination is used.

5. How do Inspectors know when the Reviewing Officer has used Direction 49 and determined the other type of payment?

In reviewing the use of Direction 49, the Inspector is not looking at the merits of the case. He is looking at whether, as a matter of fact, the Reviewing Officer has used Direction 49 and gone on to determine the other type of payment. In deciding this, the Inspector should expect to see an award of the other type of payment, a clear statement that Direction 49 has been used and/or clear reasoning based on the circumstances of the particular case and the directions relevant to that case, rather than general statements that could relate to any case.

Amended Advice and Support Notes Effective from 27 March 2006