

Support Notes on Commissioner's Advice

Direction 4(a)(iii)

1. "Family"

The view that a pregnant woman and her expected child can, once the pregnancy has reached 24 weeks, be regarded as a family was expressed by the IRS's former legal advisor, Trevor Buck. He reached this conclusion for the following reasons:

- (i) It is generally considered that a foetus of 24 weeks is viable.
- (ii) The law now defines a still-birth as one occurring where there has been at least 24 weeks gestation. (See *Still-Birth (Definition) Act 1992*, section 1(1), amending *Births and Deaths Registration Act 1953*, section 41. The 1992 Act came into force on October 1, 1992).
- (iii) The *Abortion Act 1967*, was amended by the *Human Fertilisation and Embryology Act 1990*, introducing a 24 week limit to terminations of pregnancies on "social grounds".
- (iv) Section 2 of the *Still-Birth (Definition) Act 1992* ensures that mothers suffering stillbirths within the new (24 week) definition are entitled to receive:
 - a) maternity allowance - s.35(6) *Social Security Contributions and Benefits Act 1992*;
 - b) statutory maternity pay - s. 171 (1) of the same act.
- (v) There have been consequential amendments made to the (regulated) Social Fund which ensure that a maternity expenses payment can be made for a still-birth if it occurs after the 24 weeks of pregnancy. (See: *Social Fund Maternity and Funeral Expenses (General) Regulations 1987*, SI No 48 1, section 3 (interpretation).

This view is now reflected in the Secretary of State's Guidance, paragraph 2758.

"and his family"

The view that, in order to qualify under Direction 4(a)(iii), the applicant must have a family, and the award must ease exceptional pressures on both him and them, is the long-standing position of the IRS. In the *Healey* Judicial Review, the judge explicitly confirmed this interpretation.

Where the applicant and his family live in the same household or where there is a caring relationship between them, any easing of pressure on one member of the family will almost always lead to an easing of pressure on the other members of the family.

Example: Ms K is 19 and lives with her father and two teenage brothers in a two bedroom house. She is pregnant and has begun to outgrow her clothes.

She applies for a grant for maternity clothes.

Direction 4(a)(iii) is met. As a result of her pregnancy and the overcrowding in the house, both she and her family are under exceptional pressures. Although an award for clothing for her would not directly ease the pressures on her family, it would do so indirectly because they all live in the same house.

However where the applicant and his family are barely in contact with each other, it is possible that an award might ease pressures on him without easing the pressures on them at all.

The Secretary of State's guidance (para 2790) addresses the breakdown of relationships:

"A CCG may be awarded to help an applicant move to different accommodation where the applicant was formerly part of a couple with or without children and where the relationship has recently ended. In these circumstances, remember any award must ease the pressures on both the applicant **and** his family".

In the case of a couple without children, where the relationship has broken down, the Inspector must be satisfied that the applicant and his former partner can be reasonably regarded as "family", and that an award will ease exceptional pressures on both parties.

2. Exceptional pressures

The pressures on the applicant and his family may be of any sort: social, financial, legal, behavioural, family or health-related, for example.

Remember that whilst some factors in themselves may not constitute exceptional pressures, they may contribute to the whole picture, e.g. high outgoings, debts and ineligibility for loans. It is important to remember that many applicants will not have recourse to a loan due to the changes in the scheme since April 1999. In borderline cases, the fact that a budgeting loan cannot be paid may have an impact.

Where there are physical and/or mental health problems Inspectors should consider what impact these have on daily life, and whether the applicant and his family are under exceptional pressures.

Objectivity and subjectivity

The Inspector should consider what most people would think of the circumstances and whether they would think they were under exceptional pressures. On the other hand, it is important to remember that people react differently to similar situations. The applicant's view of the level of pressure on him and his family is also significant.

Fact-finding and evidence

Careful fact-finding is vital in 4(a)(iii) decisions, as in all others. The Inspector should look objectively at the circumstances, drawing conclusions and

reasonable inferences from the evidence. Where the applicant has left blank the section of the SF300 that asks about exceptional pressures, this should not be used against him when the weight of evidence suggests that exceptional pressures do exist.