

Support Notes on Commissioner's Advice Income Resources (CCGs)

1. Order of consideration.

Reasons behind this order of consideration

Previous IRS best practice argued that the existence of resources could affect priority. However the existence of resources does not feature in the list of considerations that should affect priority contained in Paragraph 2026 of the Secretary of State's Guidance. This paragraph, which sets out the order of consideration for CCGs, was quoted with approval by the judge in the *Taylor JR*. In his judgement he said he would "find it difficult to imagine" any circumstances in which it would be appropriate to depart from this order.

The paragraph does not specify at which point income resources should be considered, but it makes sense to consider them at the same point as capital resources.

Implications of this order of consideration

If an item would be very important in meeting the aims of Direction 4, and have a significant and substantial impact in improving the applicant's circumstances, then it will normally be high priority. However where the evidence shows that the applicant has sufficient resources to buy a particular item for himself straightaway, then *despite the fact that the item is high priority and that the budget can meet high priorities*, the inspector may decide not to make an award.

This approach not only sits better with the Guidance, and with the *Taylor* judgement. It is also more transparent, and makes it clearer to the applicant precisely why an item is being refused.

2. Which resources are relevant?

IS premiums

The judgement in the *McKim JR* made clear that the inspector was not wrong to have regard to the applicant's income resources. However the main issue in the case concerned Attendance Allowance. The issue of how IS premiums should be treated was not addressed.

Extra benefits or income

Examples of types of income which, according to this Advice, can sometimes be regarded as resources from which the need may be met include:

- The care component of DLA
- Attendance Allowance
- Other income that is disregarded for IS/ income-based JSA purposes (such as earnings of up to £15 for a lone parent who is getting IS).

The requirement to disregard the mobility component of DLA is a matter of law, not evidence. Even if the evidence shows that the applicant has no special mobility costs, it should still be disregarded.

3. Burden of proof.

The main aim of DLA (Care) is to help the person pay for care (e.g. from social services). However, disabled people often have other additional costs as a result of their disabilities. So, even if the DLA is not spent on care, we should not infer, without evidence, that it is a resource from which the applicant can meet the need for which he has applied.

4. Surplus income.

When comparing the applicant's income and expenditure, the Inspector should not carry out a detailed "totting up" exercise. The judge in *McKim* warned against such an approach. What is required is a 'broad comparison'.

If income resources are to be used to refuse an award, the applicant must be able to buy the item straightaway from his surplus income. If the applicant would have to save up over a period of weeks to buy the item, then it will not normally be appropriate to refuse an award because of resources.

If a need has high priority, it is by definition urgent. The applicant will usually need to meet his need straightaway, and advising him to save up for the item will not be very helpful. Also, even though the applicant has extra benefits, his income is still likely to be, in general terms, low. It is therefore likely to be difficult, to say the least, for him to save up over a period of time, to buy an item.

Example: Mr A applies for a grant for a cooker (£300) and saucepans (£20) for himself and his three children. He gets higher rate DLA Care, and the papers show that about £40 per fortnight of this is available to meet his needs. The Inspector finds that Mr A has an urgent need for all the items he has requested. She makes an award of £300 for the cooker. However she does not make an award for saucepans because she concludes from the evidence that Mr A could buy these himself using the resources available to him.

Seeking information

Generally, Inspectors should only seek information where there is a clear gap in the existing evidence that needs resolving.

If the applicant has additional income, but there is no evidence to suggest that it is likely to be able to meet his need, Inspectors should not go on "fishing expeditions" to seek it. Where there is no evidence about how the applicant uses his income resources, the Inspector's starting point should be that these resources are not available to meet the need (see Advice).

However where the available evidence puts the Inspector on notice that there may be additional income from which the need may be met, it may sometimes be appropriate to seek further information.

Example: Ms B is disabled and receives DLA (Care) at the highest rate. She applies for a washer/dryer and bedding. In the section of the grant application form on care needs she says that her son provides all her care needs free of charge. This statement raises the question of whether her DLA is available to meet her general needs. It would not be appropriate to conclude from this information alone that the DLA can be so used- it may well be used up by other costs. However the Inspector is on notice that there may be resources available to meet her need for bedding, so it may be appropriate to make enquiries. If, on the other hand, her request had been for a washer/dryer only, there would be no point in seeking information because the amount of surplus would not be sufficient to meet the need.

When Inspectors do make further enquiries about an applicant's expenditure, they should be up front about why they want to know. They should not ask leading questions that could be seen as trying to trap the applicant into a response that would damage his case.

5. Further note: Commenting on the applicant's expenditure

Where the evidence shows that the applicant's expenditure equals or exceeds his income, the Inspector should take this to mean that there are no income resources available to him to meet the need. The Inspector should not make any judgements about whether what the applicant chooses to spend his money on is "necessary" or "sensible". While the Inspector might not, if on a low income, choose to spend his own money in the way the applicant has done, this decision is for the applicant and not for the Inspector.

Commenting on how someone lives his life, or spends his money, is not generally appropriate and is likely to cause offence. Inspectors should therefore avoid doing this. They should not suggest or imply that the applicant ought to divert money from a "less important" need in order to pay for the item he has requested from the Social Fund.