

Independent Review Service

February 2001 Issue 14

The Digest of Decisions

Inside:

Cases 14.1 - 14.13



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Independent Review Service
for the Social Fund

Introduction

February 2001 Issue 14

This edition of the Digest focuses on issues involving access to Social Fund loans. The budgeting loan scheme is primarily a fact-based process. However, this remains within the overall context of a discretionary scheme. The first two case examples illustrate how access to budgeting loans can be affected by use of discretion.

Through the IRS commitment to quality we continually look at issues that cause difficulties for our customers. We reassess whether our approach to such issues is consistent and addresses all relevant factors in an ever-changing environment. One such issue which we have recently re-evaluated is our approach to crisis loan applications made for items. The case examples in 14.3 -14.8 provide an illustration of crisis loan best practice.

Another issue which can have a great effect on access to crisis loan payments is the provisions of Direction 17. This sets out complex rules on whether crisis loans can be paid where a customer is in a trade dispute, or is subject to a sanction, disallowance, or other such restriction on their income. These lengthy rules can often be confusing. However, it is important that they are applied consistently and accurately to ensure that those who should have access to crisis loans get the correct outcome to their application at the earliest opportunity. The final five case examples in this edition explore some of the issues involved with Direction 17. Readers may find it helpful to read the Journal article in this edition, concerning Direction 17, before referring to the Digest case examples.

Any further suggestions or comments about the Digest can be sent to the editorial team at the IRS address. Readers of the Digest are encouraged to circulate and reproduce copies to allow a wider circulation.

The next issue of the Digest will include an updated index showing where to locate each of the topics addressed in this and previous editions.

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Budgeting loans - Budgetary considerations - Discretion

Application Details

Mrs R applied for a £600 budgeting loan (BL) on 15 June 2000. She was pregnant and lived with three dependant children. She had received Income Support for at least three years and had a Social Fund debt of £350. In April 2000 the district where Mrs R lived had been given a new allocation for its Social Fund loans budget. By the end of May 2000 the budget was underspent by about 16% compared with the Area Decision Maker's (ADM) planned spending profile.

The Benefits Agency's Decision

The Reviewing Officer (RO) correctly noted that Mrs R's unborn child could not be taken into account in the initial criteria when deciding weighting. The RO went on to decide that no BL award could be made, even counting the unborn child in the assessment unit under the wider criteria. In this decision no mention was made of the state of the extra loans allocation, nor of the budget underspend.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO's decision did not take account of all relevant circumstances. She explained that the weighting and priority rating were right. However, the RO had not exercised discretion taking account of the underspent state of the budget.

The SFI went on to note the continued 16% underspend in the district loans budget compared with profiled spending for June 2000. Taking this into account she calculated the maximum possible BL in Mrs R's case, increasing the ADM's guidance suggestion by 16%. After doubling Mrs R's BL debt (see case 10.3) this left £583.72. Mrs R had applied for only slightly more. In view of the healthy state of the district budget the SFI used discretion to award the full £600 BL requested.

Comment


Since April 1999 the BL scheme has been fact based. The Secretary of State's guidance (paragraph 6024 [4.00]) emphasises that there is no discretion to vary the selection of the specified personal circumstances, the treatment of the applicant's particular position under each of those personal circumstances, or the priority given to variations in different applicant's circumstances.

However, BLs remain within the discretionary part of the Social Fund and discretion is applied primarily when taking account of the budget. Direction 40 shows that the Decision-Maker, RO and SFI have to decide the amount of the award taking into account:

- the guidance; and
- the state of the budget.

Direction 32(4) requires the RO to take account of any relevant changes in the ADM's guidance.

The indication from the wording of these directions is that any changes in guidance, or any under or over spends in the budget, can and should be taken into account. This shows that discretion has been exercised rather than routinely applying guidance. Whether an award is then made will depend on the evidence in the individual application.

In Mrs R's case the evidence was that the budget was significantly underspent. In light of that evidence the SFI was satisfied that a BL award was appropriate, using discretion. In other cases the budget may be overspent. This needs to be taken into account when deciding whether to limit the amount to be awarded. 

Budgeting loans -

Revised Area Decision Maker's guidance - Discretion

Application Details

Mr L applied on 19 July 2000 for a £680 budgeting loan (BL). He was a single person living with his brother. Both Mr L and his brother received income-based Jobseekers Allowance (JSA). Mr L had received JSA for at least three years. At the time of his application he owed £226.76 in outstanding BLs.

At the time Mr L made his application the Area Decision Maker's (ADM) guidance was that the maximum BL debt available for a single person in receipt of Income Support or income-based JSA for six months was £296. A short time later the ADM guidance was revised increasing the maximum BL debt for a single person in receipt of a qualifying benefit for six months. Evidence showed that the loans budget spending was roughly as the district office had planned.

The Benefits Agency's Decision

The Reviewing Officer (RO) corrected a factual error in the Decision Maker's decision. He then went on to use his discretion by deciding to use the earlier ADM guidance, rather than the revised guidance. He found that the earlier guidance would result in a higher award in Mr L's personal circumstances. Under the earlier guidance, the RO could make no award under the initial criteria, so was then able to consider the wider criteria. This resulted in a £138.48 BL award for Mr L. However, using the revised ADM guidance only £67.70 would have been awarded to Mr L as a BL under the initial criteria. The RO used the earlier guidance which resulted in a more favourable outcome for Mr L.


The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) explained that the RO's decision in Mr L's application had been reached correctly and remained right in all the circumstances. She confirmed that the RO had appropriately exercised his discretion taking account of all the things required by law.

Comment

Direction 53 addresses the issue of what to award in BL applications. Decision Makers, ROs and SFIs have to determine the maximum possible BL for the applicant taking account of Direction 40 and ADM's guidance. They should also take account of whether the budget position supports the guidance (see case 14.1).

Direction 32(4) requires the RO to take account of any relevant changes in the ADM's guidance. However, this does not specify which guidance to apply in a particular application. Often there will be only one ADM's guidance in force during a BL application. Clearly this will be the guidance used to decide the amount to award. However, in some cases, a change of ADM guidance takes place during the application. This change must be taken into account, but it is then within the decision-maker's discretion to decide whether to use the original or new ADM guidance when determining that BL application.

In Mr L's application the RO took account of the budget position and the change in ADM guidance. He correctly used his discretion to use the guidance that would result in the higher BL award for Mr L. 

Direction 3 -**In an emergency - Serious damage or serious risk****Application Details**

Ms H applied on 4 September 2000 for a crisis loan (CL) for various household items. She was aged 54 and in receipt of Incapacity Benefit. She was on medication for heart and chest problems, had recently undergone one small operation and was awaiting a further one. She was having suicidal thoughts. Ms H had been homeless since having her own home repossessed when she was made bankrupt. She had been staying at various relatives' homes. By the date of her CL application she was temporarily staying with her sister. They were sharing a bedroom. Her brother-in-law had only recently died, so her sister was trying to come to terms with the bereavement. Ms H had been allocated her own unfurnished tenancy but had little in the way of furniture and equipment to move in. She did however have a cooker, bed and bedding bought with money left by her brother-in-law.

The Benefits Agency's Decision

The Reviewing Officer (RO) concluded that Direction 3 was not met, so a CL could not be awarded for any of the items requested. He concluded that Ms H could either remain living with her sister or move to her daughter's home. Help was not needed to meet expenses in an emergency.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) was not satisfied the RO's decision had been reached correctly. He found that adequate consideration had not been given to the fact that Ms H had health problems, was sharing a bedroom with her recently bereaved sister and was reported as having had suicidal thoughts.

The SFI decided that, due to the above factors, there was a foreseeable risk to Ms H's mental and physical health. This would significantly deteriorate if she were unable to move and create a more settled way of life for herself in her own home. She would be unable to do so without help by way of a CL. She therefore needed help to meet expenses in an emergency. She had been able to obtain a cooker, bed and bedding from money left to her by her late brother-in-law. However, the SFI concluded that, to prevent serious risk to her health, she also needed a washing machine, carpet for the living room and bedroom and pots and pans. The only means of her meeting these needs would be a CL.

Comment


Direction 3 allows for a CL to be awarded to assist an applicant to meet expenses in an emergency, or as the consequence of a disaster, provided the provision of such assistance is the only means by which serious damage or serious risk to the health or safety of the applicant, or to a member of his family, may be prevented.

The issue under consideration in this case was whether Ms H's situation meant she needed help to meet expenses in an emergency, and then whether the refusal of an award for any of the items being requested would present serious damage or serious threat to her health or safety.

There is no definition of "in an emergency" in the law or directions. The IRS working definition of "emergency" is:

An unforeseen circumstance or pressing need either of which requires immediate remedy or action.

If it is considered the customer's current need for the items is pressing, and that they need to be provided immediately, then a payment will generally satisfy this part of Direction 3(1)(a) – that is, it will assist the applicant to meet expenses in an emergency.

With regard to other means available to meet the need, the burden of proof is on the decision-maker (in this case the RO) to show that these, in fact, exist. As such, the conclusion must be supported by clear evidence as to what the other means are. It was not shown that Ms H could remain at her sister's home, and given the evidence that they were sharing the bedroom, this was unlikely. There was no evidence that Ms H could move in with her daughter. Having accepted she needed to move into her new home as soon as possible, it was appropriate to conclude that once in there, given her heart and chest problems, she would need to be able to eat meals, keep warm and laundry washing, to prevent serious risk to her health. The award for a washing machine, carpets and pots and pans would ensure this was the case. 

Direction 3 -**In an emergency - Serious damage or serious risk****Application Details**

Miss D applied for a crisis loan (CL) on 30 August 2000 for a bed, bedding, clothing and shoes.

Miss D was aged 27, single and in receipt of Incapacity Benefit. She had lived at her parents' home since being involved in a car crash in March 2000. Miss D had suffered whiplash injuries in the crash, which affected her back and hips and left her with limited mobility. At the time of her CL application she also had a dislocated knee. Miss D had been evicted from her former tenancy and the council had thrown all her furniture away. She had only a limited stock of clothing, as all her other items had been removed by the council. She was sleeping in her parents' living room on a settee, with a quilt and quilt cover. When she moved to her parents' address, there was no room in the living room for a bed. Space had since been created in that room for a bed, with the construction of a utility room into which the settee was to be moved.

The Benefits Agency's Decision

The Reviewing Officer (RO) decided that none of the tests of Direction 3 were met for a CL to be awarded. He concluded that if Miss D had felt there to be serious risk to her health she would have applied for her own bed sooner, making room in the living area for a bed at that time.

The Social Fund Inspector's Decision


The Social Fund Inspector (SFI) concluded that the RO had not demonstrated that he had given appropriate consideration to Miss D's evidence regarding her present circumstances and needs. The SFI found that, given Miss D's health problems and the fact that she had now been evicted and had lost many of her possessions, she needed help to meet expenses in an emergency. The SFI went on to find that the provision of a bed was the only means of preventing serious risk to Miss D's health. Although Miss D has been sleeping on the settee for some time, these arrangements were unsatisfactory given her back problems. The SFI awarded a CL for a bed.

Miss D did have some bedding, clothing and shoes. For this reason, the SFI considered that an award for those items was not needed to prevent serious damage or serious risk to health or safety.

Comment

In this case the RO's decision incorrectly concentrated on the arrangements which should ideally have taken place some time ago, rather than Miss D's present circumstances. How an emergency has arisen is not a relevant issue when deciding whether a person qualifies for a CL under Direction 3(1)(a). The wording of the direction concentrates on the present situation and needs. Case 14.3 shows the IRS working definition of "in an emergency". The central issue is whether an emergency or consequence of a disaster in fact exists.

The SFI's decision was based on the present facts. Miss D was sleeping on a settee and urgently needed a bed, particularly in view of her health problems. The foreseeable impact of leaving her without such an item was serious. Although Miss D did have somewhere to sleep now, given the extent of her back and hip problems and her restricted mobility, sleeping on a settee was unsuitable for her. There was a foreseeable risk to her health if this situation were to continue.

In comparison, because Miss D did have some clothes and bedding, this did not present a situation where serious damage or serious risk to health or safety was foreseeable. 

Direction 3 -**Serious damage or serious risk****Application Details**

Mr A applied on 18 August 2000 for a crisis loan (CL) to buy a cooker, bed, bedding and various other household items to furnish his new home. The Reviewing Officer (RO) decided no award should be made.

Mr A was aged 40 and lived alone for most of the week. He had his daughter aged 12 to stay at weekends. Mr A received Incapacity Benefit due to being long-term sick. He had arthritis in his arms, shoulders and knees and suffered from depression and anxiety. He had recently acquired his own unfurnished tenancy, after having lived for several years in furnished accommodation, and then with friends. He had to leave his last home as this became overcrowded. Mr A only had an airbed and sleeping bag in his new home. He had no cooking facilities.

The Benefits Agency's Decision

The RO decided that Direction 3 was not met for a CL as Mr A did not need assistance to prevent serious damage or serious risk to health or safety. He had adequate sleeping equipment and would be able to obtain nutritious meals from takeaways, cafes, sandwiches etc.

The Social Fund Inspector's Decision


The Social Fund Inspector (SFI) decided the earlier decision was not sustainable on the evidence. He concluded that Direction 3 was met in respect of a cooker, saucepans, cutlery, crockery, a bed and bedding. Given the nature of Mr A's on-going health problems, using an airbed was an inadequate arrangement and likely to lead to serious damage to his health. In the same way, the SFI explained that Mr A's lack of cooking facilities at his home was inadequate, given his health problems. As such an award for a cooker, bed, bedding, cutlery, crockery and saucepans was needed in an emergency, as the only means of preventing serious risk to Mr A's health.

The lack of the other items applied for, such as curtains, a carpet and fridge would not present such a degree of risk to Mr A's health or safety now or in the foreseeable future. No CL was awarded for those items.

Comment

An important question in some CL cases is the time scale involved when considering whether there is serious damage or serious risk to health or safety. The evidence must be weighed, reaching a broad conclusion on the balance of probabilities based on whether the risk of serious consequences is foreseeable. It is suggested that the consequence does not have to be immediate. However, it is unlikely to be reasonably foreseeable if it is several years away.

The issue under consideration in Mr A's case was whether the lack of suitable items presented serious damage or serious risk to his health or safety. The RO looked only at the short-term impact of not making an award. There was no consideration of the foreseeable consequences of leaving the applicant without important items. While Mr A did have some form of sleeping facilities, given his already poor health, these would not be adequate or satisfactory. Similarly, the lack of proper cooking facilities and eating utensils was likely to impact on his health in a serious way in the foreseeable future, especially as he already had difficulties with his health. In view of the arthritis in his knees, it is likely Mr A would have some mobility problems. He also had mental health problems. It was reasonable to conclude that the lack of cooking facilities, combined with health problems, would cause Mr A extra difficulties when trying to provide himself with an adequate diet. There was a foreseeable and serious risk to his health.

No such foreseeable risk would be presented by the refusal of an award for the remaining items. Direction 3 was not therefore met for those items. 

Direction 3 -**Evidence - Other means****Application Details**

Miss M applied on 18 July 2000 for a crisis loan (CL) for various items of furniture and household equipment, including sleeping and cooking facilities. The Decision-Maker (DM) and Reviewing Officer (RO) made no award.

Miss M was single, aged 26 and received Incapacity Benefit. She was registered as unfit to seek employment because of severe asthma. Miss M had been living in her mother's home where they shared a bedroom. She had applied for a council house three years ago due to the overcrowding. When a tenancy was offered she left her mother's home. Miss M had a camp bed and a living room carpet for her new home and was returning to her mother's home, nearby, for meals. At her review interview she agreed that there was a spare bed in her mother's home that could be moved to the new address.

The Benefits Agency's Decision

The RO decided that Miss M did not qualify for a payment as a CL was not needed under Direction 3 as the only means by which serious damage or serious risk to her health or safety would be prevented.


The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided the RO's conclusion was correctly reached. She concluded that Miss M could not return to her mother's home. She needed to meet some expenses in an emergency, as her new tenancy was unfurnished. However, the SFI agreed that Direction 3 as a whole was not met. Miss M had acquired a living room carpet. She was returning to her mother's home for meals. She was using a camp bed and also had a bed that she could move to her new home. The SFI concluded that although Miss M's situation was not as she would like, the lack of the items she had applied for would not present a serious risk or serious damage to her health or safety. No award was made.

Comment

In all cases there must be evidence to support the outcome of decisions. CLs do not require a fundamentally different approach to evidence than in other types of application. The facts are established on the balance of probabilities. The question to ask is whether on the balance of probabilities the tests of the directions are met. This means whether it is more likely than not that they are met.

In this case Miss M gave reasons why she was unable to continue living in her mother's home. Although her family were providing some support, she could not return there to live. It was more likely than not that this option was not available.

However, there was other relevant information in this case that led the SFI to conclude Direction 3 was not met. Miss M had a bed available to her and was returning to her mother's home for hot meals. The meals were provided regularly and at no extra cost to her. Although she had severe asthma, she did have other means available to her. She had not done enough to satisfy the SFI that a CL was needed as the only means to prevent serious damage or serious risk to health or safety in these particular circumstances. This can be contrasted with Cases 14.4 and 14.5. 

Crisis loans for items -**Further evidence - Direction 2 to Social Fund Inspectors****Application Details**

Mr W applied on 20 September 2000 for a crisis loan (CL) for clothing. The Decision-Maker (DM) and the Reviewing Officer (RO) made no award.

Mr W was single, aged 18 and received Job Seeker's Allowance (JSA). He was hoping to join the Armed Forces. He had a limited supply of clothing and believed his appearance would jeopardise his chance of employment.

The Benefits Agency's Decision

The RO decided that Mr W did not qualify for a CL as no part of Direction 3 was met.

The Social Fund Inspector's Decision


The Social Fund Inspector (SFI) found the decision was correctly reached based on the evidence available to the RO. However, the SFI re-determined the case due to further relevant information that Mr W provided after having receiving a copy of the key papers relating to his application. Not only had he just one set of clothing, it was ill-fitting and in a very poor condition. Mr W also provided details about his various outgoings, leaving him with little money to buy further clothing.

The SFI found that Mr W had a pressing need for further clothing. He accepted that trying to manage with such a poor clothing supply could realistically result in his health being seriously affected in the foreseeable future. When making the decision the SFI also took account of the approaching colder weather and that Mr W had no other means of meeting his needs. The SFI awarded a CL for a coat and one set of clothing.

Comment

Direction 2 to SFIs, enables new information before the SFI at the time of the review, to be taken into account. Mr W's case illustrates how the provision of additional evidence can affect the outcome of a CL application for items. It was the extra detail in this case that led the SFI to a different conclusion.

Mr W did not attend his review interview and the conclusion reached by the RO was not unreasonable. However, Mr W did respond to the copy papers sent to him by the IRS. This strengthened his case. The crucial issue for the SFI concerned the effects of the lack of suitable clothing. It was felt the consequences of not making an award to someone in Mr W's circumstances were likely to be serious.

The evidence did not show a budgeting loan was available to Mr W immediately. The mere possibility of such an award is not evidence of other means (see case 11.4). 

Direction 3(2) -**Refusal of budgeting loan - Effect on crisis loan qualification****Application Details**

Mr C applied on 24 August 2000 for a crisis loan (CL) for household items and bedding. Neither the Decision-Maker (DM) nor the Reviewing Officer (RO) made an award.

Mr C was single, aged 30 and received income-based Job Seeker's Allowance. He had been living with an uncle but had to leave when his uncle gave up the tenancy. He moved in with an aunt who lived locally but was unable to stay there as her property only had one bedroom. Mr C accepted a tenancy for unfurnished accommodation. He had a borrowed bed. He also had a quilt and an old suite. He was eating take away food.

The Benefits Agency's Decision

The RO decided that Mr C did not qualify for a CL. He acknowledged that Mr C was in a difficult situation but concluded that no part of Direction 3 was met.


The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found the RO's decision was reached correctly at the time it was made. However, he decided it was no longer the right decision in all the circumstances, given new evidence. Mr C was spending a large proportion of his weekly benefit income on take away food. He had not had a home cooked meal for several weeks. He had no parents or friends who could help him. He had applied for a budgeting loan (BL) and anticipated an award. He had recently returned his bed on the strength of this, but had since been refused a BL.

The SFI took these changes of circumstances into account. He decided that Mr C needed to meet the cost of a bed, cooker and implements to prepare and consume food in an emergency. The SFI was also satisfied that a CL was the only means of preventing serious damage or a serious risk to health or safety. He went on to award a CL for a bed, cooker, pots, pans, crockery and cutlery.

Comment

This case illustrates that the refusal of a BL may have contributed to Mr C's emergency. In most CL cases the conditions contained in Secretary of State's Direction 3(1) are the essential issue. However, in some cases Direction 3(2) also has an important bearing. This directs that the decision-maker should consider whether the refusal of the application for a BL might have contributed towards the emergency or disaster. This applies regardless of the reason for BL refusal.

In this case Mr C was living in accommodation with few amenities. He had returned the bed he had been borrowing as he expected to receive a BL. When this did not materialise his living conditions deteriorated even further, contributing to the emergency. The SFI decided that Mr C had pressing needs that required immediate relief. He decided the longer this situation continued the greater was the risk of something serious happening. Direction 3 was therefore met. 

Jobseekers Allowance disallowances -
Direction 17(b)

Application Details

Mr B applied for a £104 crisis loan (CL) on 4 August 2000 to meet living expenses. He was a single man aged 44 receiving Jobseekers Allowance (JSA). His benefit week commencement day was a Thursday. Mr B received a JSA payment on 21 July. He did not receive his next payment due on 4 August. On that date he applied for a CL saying that his benefit had been 'cancelled due to a sanction'.

The Benefits Agency's Decision

The Reviewing Officer (RO) looked at Mr B's application on 7 August and decided that no CL could be paid. He said that as Mr B was sanctioned from 20 July to 2 August, Direction 17 applied to prevent a payment. He said that Mr B would have no access to CLs between 3 August to 16 August.

The Social Fund Inspector's Decision

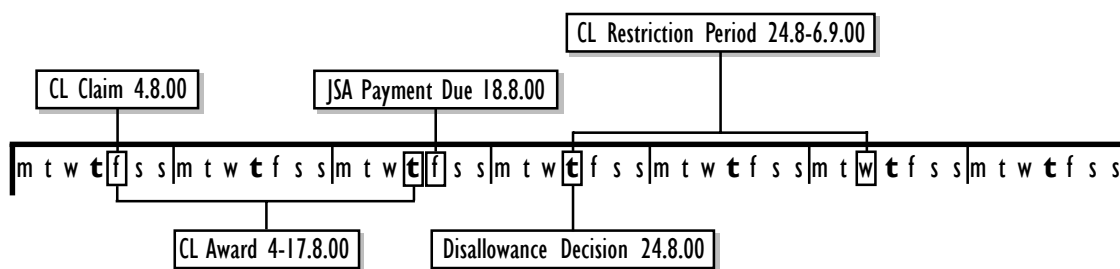
The Social Fund Inspector (SFI) reviewed Mr B's application on 25 August and found that the earlier decision had not been reached correctly. Computer printouts sent from the Benefits Agency showed that Mr B's JSA claim had been disallowed on the grounds that he was not actively seeking employment, rather than sanctioned. Also, an Adjudication Officer's decision about this was not made until 24 August. Mr B's benefit had not been paid pending that decision. As no disallowance decision had actually been made, when the RO looked at the case, the SFI pointed out that the 14 day restriction period on CLs did not apply at that time and an award should have been made. The SFI went on to award Mr B a CL in the interests of fairness.

Comment

Section 1(2)(a) - (c) of the JSA Act 1995 sets out the 'labour market' conditions that must be met for entitlement to JSA payments. These conditions require that the customer is available for employment, that they have entered into a jobseeker's agreement which remains in force, and that they are actively seeking employment. If any of these conditions are not met the customer's claim for benefit will be disallowed and no benefit paid. The key issue to establish whether a disallowance is involved, is to establish the reason why the customer's benefit is not being paid. If this is for any other reason than the three 'labour market' conditions mentioned above, Direction 17(b) does not apply.

The distinction between a disallowance and a sanction is an important one. Direction 17(b) refers to JSA disallowances and Direction 17(c) to sanctions. These contain different tests for establishing the period during which a CL can only be awarded for specified items (case 14.11 covers the types of CLs which can still be awarded). The period for the restriction of CL awards following a disallowance, relies on establishing the date on which the disallowance decision was made, and the first day of the customer's benefit week. In Mr B's case the RO had not addressed the first of these factors. As the disallowance decision was not in fact made until 24 August, the first day of Mr B's benefit week, his 14 day CL restriction period would only start from then.

Case Timeline



[Benefit week start dates in bold]

Jobseekers Allowance sanctions - Direction 17(c)

Application Details

Mr S applied on 28 August 2000 for a crisis loan (CL) for living expenses. He was 34, single and had been employed between 26 June and 10 July 2000 as a labourer working in sewers. He was unable to continue this work after discovering that he had a fear of confined spaces. Since his employment ended he had begun receiving Jobseekers Allowance (JSA).

By August 2000 an Adjudication Officer had decided that Mr S had voluntarily left his employment. The printouts provided by the Benefits Agency about Mr S' JSA claim showed a disallowance. However, Mr S said it was a sanction which was due to run from 11 August to 20 September 2000. Mr S had run out of money and had not eaten for some time. He had appealed against the sanction, but feared for his health while awaiting his first JSA hardship payment, due on 9 September 2000. He had no family living locally and the Social Services department was unable to help.

The Benefits Agency's Decision

The Reviewing Officer (RO) looked at Mr S' application on 29 August and refused a CL award under Direction 17(b), the test for JSA disallowances.


The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) reviewed Mr S' application that same day and found that the RO's decision had not been reached correctly. Having voluntarily left work Mr S was subject to a sanction, not a disallowance. The sanction tests in Direction 17(c) applied rather than those in Direction 17(b).

The SFI went on to make further enquiries with the Employment Services Jobcentre (ESJ) about Mr S' circumstances. As a result the SFI discovered that in the last couple of days, the decision that Mr S had voluntarily left employment had been overturned. He was no longer subject to a sanction, but would be unlikely to receive his backdated JSA payment until two days later. As such, as he continued to be without funds, the SFI awarded a CL for the short period until Mr S was due to receive his JSA payment.

Comment

Sections 19(5) and (6) of the JSA Act 1995 set out the circumstances in which JSA sanctions are imposed. This includes failure to comply with a jobseeker's direction, failure to take up a place on a training scheme, or voluntarily leaving employment, unless the customer has just cause for any of these situations. A sanction can last for a period of between one and 26 weeks.

As case 14.9 shows, the difference between JSA disallowances and sanctions is very important in determining which of the Direction 17 tests to apply. It is easy to misinterpret computer printouts when trying to establish whether a sanction or disallowance is involved, as in this case. All the facts need to be taken into account, in particular the reason why the payment of benefit has stopped. Mr S' case also shows that liaison between the Social Fund section dealing with a CL application and the ESJ could be useful. This can help to establish accurate and up to date facts on which to base a CL decision. 

Person in hardship -
Direction 17(f) - Specified expenses - Direction 17(g)

Application Details

On 4 September 2000 Mr Z applied for a crisis loan (CL) for living expenses. He was single and aged 28. Mr Z was under a Jobseekers Allowance (JSA) sanction until 5 December 2000. He applied for a CL after running out of money, as he had no other means of providing food or power. His entitlement to JSA hardship payments began the day after his CL application was made.

The Benefits Agency’s Decision


The Reviewing Officer (RO) accepted that the conditions of Direction 3 were met and awarded Mr Z a CL to meet his living expenses for two days (4 and 5 September). He decided that, under the rules on sanctions in Direction 17(c), Mr Z should be denied access to a CL for 14 days from 6 September, the first day of his benefit week. As Mr Z was not a ‘person in hardship’ the restrictions on CL awards must be applied.

The Social Fund Inspector’s Decision

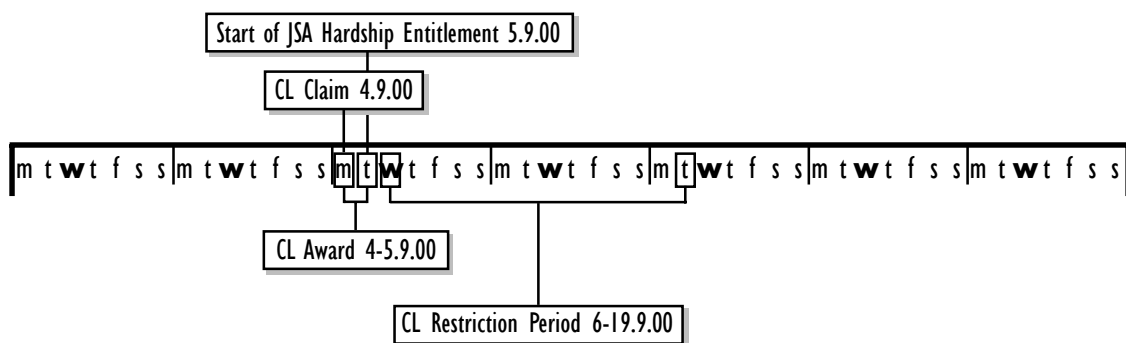
The Social Fund Inspector (SFI) confirmed that the RO’s decision had been reached correctly. Although Mr Z had run out of money, and would be getting JSA hardship, this did not mean that he was a ‘person in hardship’ as set out in Regulation 140(1) of the Jobseekers Allowance Regulations 1996. Neither was Mr Z requiring expenses as a consequence of a disaster, applying for space heating, nor cooking facilities. In Mr Z’s circumstances the 14 day CL restriction applied and no payment could be made.

Comment

Where JSA is not payable because of a sanction, as at the time of Mr Z’s application, Direction 17(c) restricts access to CLs for 14 days. This starts on the first day of the benefit week following the end of the period when JSA is not payable. During this 14 day period, according to Direction 17(g), a CL can only be paid for expenses which are a consequence of a disaster, or required for space heating or cooking. Likewise, during the CL restriction period for JSA disallowances only these limited type of CL expenses can be paid.

Direction 17(f) releases these restrictions on CL payments for customers who fall into certain vulnerable groups. Regulation 140(1) of the JSA Regulations 1996 sets out what these vulnerable groups are. For example, people with chronic medical conditions, or certain cases where pregnancy is involved. Persons in hardship under the vulnerable groups in Regulation 140(1) can receive a CL where appropriate. In contrast, people may be receiving hardship rate JSA who do not fall within these vulnerable groups. The payment of hardship rate JSA does not by itself enable the CL restrictions in Direction 17(c) and (g) to be removed, as shown in Mr Z’s case. 

Case Timeline



[Benefit week start dates in bold]

Direction 17(c) -

Restriction period for crisis loan payments - Direction 20 - Calculation of award

Application Details

Miss E applied on 21 June 2000 for a £100 crisis loan (CL) for living expenses. The Jobseekers Allowance (JSA) payment, that she believed was due on that day, had failed to arrive. She found out that she had been 'disqualified'. Miss E's sanction, for voluntarily leaving employment, was from 6 June 2000 until 1 December 2000. She had appealed against this but an appeal hearing date had not been set. Meanwhile, on 21 June Miss E had been awarded the hardship rate of income-based JSA. She was due her first payment of this on 5 July 2000. The first day of her benefit week was a Tuesday. Miss E pointed out that she had already gone without food.

The Benefits Agency's Decision

The Reviewing Officer (RO) decided that the 14 day restriction period on CLs in Direction 17(c) prevented an award being made in Miss E's circumstances.


The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) explained that Miss E's application had not been decided correctly. Applying the Direction 17(c) tests to the facts of Miss E's application, the SFI established that the CL restriction period began on 27 June, the first Tuesday after the end of her "JSA not payable" period. This was her benefit week start day. There were six 'spare' days from the date of the CL application until Miss E's restriction period began. The SFI awarded a CL for that period using Direction 20 to calculate the maximum amount to be awarded.

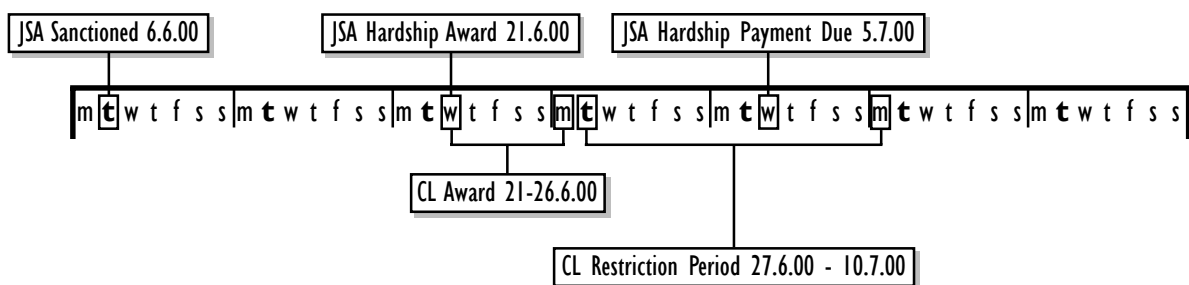
Comment

In some JSA sanction cases, the period when JSA is not payable and the length of the sanction period will be the same. However, this is not always the case. After two weeks an applicant (even one who is not in a 'vulnerable group') can become entitled to JSA hardship payments under Regulation 142 of the JSA Regulations 1996. They must apply for hardship payments to be considered for them. Hardship payments enable them to receive some income, albeit at a reduced rate, for the remainder of the sanction period.

In this case Miss E was awarded the hardship rate of JSA with effect from 21 June 2000. From that date JSA was payable again at the hardship rate, although she would not in fact receive a payment for another two weeks because JSA is paid in arrears. The payable date is important because the CL restriction period in Direction 17(c) starts on the first benefit week commencement day following the end of the non-payable period. Given that Miss E's benefit week began on a Tuesday, this means that the restriction period did not begin until 27 June 2000. This left several days during which Miss E could be paid a CL.

In income-based JSA hardship cases, special rules apply when calculating amounts to award as a CL. These are found in Direction 20, which specifies that the CL awardable for such expenses shall not be greater than the hardship rate JSA payable for that period. 

Case Timeline



[Benefit week start dates in bold]

Direction 17(c) -

Ending of sanction period - Effect on crisis loan restriction period

Application Details

On 27 July 2000 Ms G applied for a £70 crisis loan (CL) for food and other living expenses. She was registering as available for employment and claiming Jobseekers Allowance (JSA). The Employment Services Jobcentre (ESJ) informed her of vacancies on a relevant training scheme. Despite encouragement she refused to apply for a place. The ESJ decided she did not have good cause for her refusal and imposed a sanction from 12 to 25 July 2000. Due to this Ms G did not receive the JSA payment she had expected on 26 July. The following day she applied for a CL.

The Benefits Agency’s Decision

The Reviewing Officer (RO) decided that no award could be made in this application. He decided that the 14 day restriction period on CLs applied in Ms G’s circumstances following her sanction, as set out in Direction 17(c).


The Social Fund Inspector’s Decision

The Social Fund Inspector (SFI) found that the RO’s decision had not been reached correctly. By the time this application was made Ms G’s sanction had ended and JSA was payable again, although she had not yet received a payment. The SFI pointed out that for these reasons Direction 17(c) no longer applied to restrict a CL award. He went on to pay a CL for the period until Ms G was due to receive her next JSA payment.

Comment

A JSA sanction is intended as a type of penalty where benefit is not payable (although after the first two weeks of the sanction the customer may be eligible for JSA hardship payments). Sanctions run from the date they are imposed. As JSA is paid in arrears, the customer will initially still receive the arrears of benefit due. They will not feel the effect of the sanction until the date their next benefit payment would normally be due, if income is not received.

Where JSA is not payable because of a JSA sanction, Direction 17(c) restricts access to CLs for 14 days, starting on the first day of the benefit week following the end of the period when JSA was not payable. This means that the customer is unable to get a CL to compensate for having no money when they experience the effect of the sanction. However, a literal reading of the wording in Direction 17(c) is that the restriction period on CL payments only applies if a sanction is still in place when making the decision on the CL application. If the sanction period has ended before the CL decision is made, it is submitted that the Direction 17(c) restrictions on CL payments can no longer apply. It would then be a case of looking at the normal eligibility and qualification tests for a CL.

At the time Ms G applied for a CL, full JSA was payable to her as the sanction period was over. In this case the penalty will not take effect. This can be contrasted with Case 14.11 where the customer’s application was made within the sanction period so Direction 17(c) applied to limit any possible CL award. 

Case Timeline

