

the Digest of Decisions

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Independent Review Service
for the Social Fund

Welcome to the 37th edition of the Digest of Decisions

This digest covers:

- Capital resources
- Exclusions
- Direction 7
- Budgeting Loans

In this edition we have tried to cover issues about which we receive a lot of queries. As usual, we hope you find this helpful. All feedback on the content of the Digest is welcome.

You can write with feedback to the usual IRS address or e-mail us at [**kjm@irs-review.org.uk**](mailto:kjm@irs-review.org.uk)

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Case 37.1

Capital Resources -

Resources not immediately accessible by the applicant

Application Details

Mrs D applied for a community care grant on 27 June 2006 for a bed (£150), bedding (£80), cooker (£200), pans/cutlery and crockery (£100), a washing machine (£200), seating (£350), vacuum cleaner (£60), table and chairs (£100), carpets (£500) and curtains (£240). She was in receipt of Income Support and Disability Living Allowance.

Mrs D was 57 years old. She had health problems including high blood pressure, heart problems, diabetes and incontinence. She had lived at her current home since May 2006. This had dirty lino on the floors. Her cooker had broken down beyond repair, her bed, bedding and seating she described as old, tatty and smelly. She had bought her pans, crockery and cutlery from charity shops and wanted new ones.

In the papers was a computer print out from her Income Support records indicating she had capital of £7,000.

The Decision Maker decided that Mrs D was not in a grant situation. Mrs D asked for a review saying her living conditions were poor and this was affecting her health. She was having problems sleeping and could no longer use her bed.

The Reviewing Officer's Decision

The Reviewing Officer (RO) interviewed Mrs D by phone and found out that she needed help every day from a neighbour with household tasks such as cleaning and shopping and may need to have a by pass operation for her heart trouble. The RO asked her about the capital. Mrs D did not think it was right this money should be taken account of because it was money in a property. She did not have access to it to buy things now. This was a property she had bought many years ago with her ex-husband when she was working and it is being used by her ex-husband's mother. She received no money from the rent as she did not contribute to the maintenance or repair costs. She told the officer she had problems with incontinence daily and needed help from her neighbour to get things washed and dried. However, she could manage this if she had a machine of her own. Her neighbour was providing some meals but could not do this every day. She had to be careful what she ate and not all the food her neighbour cooked was suitable for her.

The RO decided that Direction 4(a)(ii) was met and that Mrs D's need for a bed (£99.99), bedding (£40), cooker (£200), cooking utensils (£40), some seating (£200), living room carpet (£120), a washing machine (£200) and curtains for the living room and bedroom (£40) were all urgent and important in helping her to stay in her home. The total award would amount to £939.99. However because the payment would be less than her available capital of £6,500, Mrs D could not be paid a grant award.

Mrs D requested a review saying she was really struggling to manage and could not afford to buy the items herself.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) agreed with the RO's decision to refuse a grant. He agreed that Mrs D was at risk of entering care and that a grant would help her to remain in the community rather than enter care. He also agreed with the items that had been identified as being of high priority and with the amounts awarded to meet these needs. However, because the total award was less than the available capital resources no award could be paid. Mrs D had capital of £7,000 and because of this she could not be paid a grant award.

However the SFI decided that the RO's decision was not reached correctly because he should have gone on to consider Mrs D for a crisis loan. In view of her health problems, the SFI decided that Mrs D's health was at serious risk without a cooker and bed. Although she had capital in a property, this was not available to her, so a crisis loan was the only means of preventing that risk. He paid a crisis loan for a cooker and a bed. The SFI decided there was no serious risk to Mrs D's health or safety without the other items.

Comment

Direction 27 provides that for applicants aged under 60, their total capital resources above £500 should be offset against any community care grant award. Total capital resources are calculated in accordance with Chapter VI of Part V of, and Schedule 10 to, the Income Support (General) Regulations 1987; Chapter VI of Part VIII of, and Schedule 8 to, the Jobseekers Allowance Regulations 1996; and Part III and Schedule V to the State Pension Credit Regulations 2002. Total capital resources include real estate, and as Mrs D did not live in the property which she co-owned, her interest in the property could not be disregarded.

The calculation of capital resources for benefit purposes is decided by an appropriate decision maker. In Mrs D's case, the appropriate decision maker had calculated her total capital resources for the purposes of her claim to Income Support. He had found that, at the time of his decision, she had equity in a property to the value of £7,000. This became relevant when deciding the amount of award on her application for a community care grant. The value of real estate fluctuates but as the excess amount was significantly above the value of the grant award, it was unnecessary for the Social Fund decision makers or the Inspector to seek a re-evaluation of Mrs D's interest in the property. Once the £500 allowance was deducted there was around £6,500 to be taken into account. This meant that the potential grant award of £993 could not be paid. The fact that Mrs D did not actually have access to these funds at the time of the claim did not affect the requirement to take account of them for the purposes of a grant.

In contrast, crisis loans may be paid where capital is inaccessible, provided that all the qualifying conditions for such a payment are met. Crisis loans can be paid where expenses are needed in an emergency or as a consequence of a disaster and the loan is the only way of preventing serious damage or a serious risk to health or safety.

Case 37.2

Capital Resources -
Money earmarked for other expenses

Application Details

Miss R applied for a community care grant on 12 October 2006 for help with a cooker (£300), 2 single beds (£300), towels (£20), bedding (£150), carpets (£800), seating (£500), kitchen items (£100.00), a fridge freezer (£300) and a washing machine (£250).

Miss R was living with her family and had behavioural problems including autism as well as epilepsy. She needed a lot of care from her parents and they also had other children to care for of school age. Miss R had the chance to move into supported accommodation with care provided by Social Services. This would include night care and supervision which was why she wanted two beds so a carer could stay overnight with her.

Miss R had savings of £3,000 as well as shares worth £150.

The Decision Maker decided that Miss R met Directions 4(a)(ii) and (iii). She was vulnerable to care, and she and her family were facing exceptional pressures. He decided that her need for a cooker (£200), kitchen items (£50), a fridge (£100), 2 beds (£200), a settee (£150) and a washing machine (£179) were all urgent and important in helping her to stay in her home and easing exceptional pressures on her and family. The total award would amount to £879. However because of the savings Miss R had in excess of £500, a payment could not be made.

Miss R asked for a review because the money she had was for her future expenses and should not be looked at now. She desperately needed to move as this would help everyone.

The Reviewing Officer's Decision

The Reviewing Officer (RO) arranged a telephone interview and spoke to Miss R's mum on her behalf. She explained that her daughter needed to move out to help the family cope better and to give her the proper care she needed. Because of her epilepsy she could be incontinent about twice a week when she had fits and although she had some bedding she could take with her, it was not enough. The new property had tiled floors that were cold and she could not take any towels with her as the family needed these. Miss R's mum said that she wanted her daughter to be able to stay with them at the weekends or maybe a night in the week as well whilst she got used to being in her own home. This was why not all her bedding could go with her. She confirmed that Miss R had savings in a building society instant access account and shares of her own but said these were for her future needs because of her health and should not be used now. The officer asked what these savings were to be used for and was told that there was no specific item or expense at the moment but that they were for an emergency or a bill if necessary. Both she and her husband were getting older and they wanted her to have some financial independence so she would be able to cope without them. Miss R had saved this money up over a period of time.

The RO agreed that Miss R met Directions 4(a)(ii) and (iii) and with the items that would be paid but for the savings. He also decided that some bedding and towels as well were urgently needed. Because of her health problems and the risk of falls due to epilepsy he decided that a payment for carpet for the living area and bedroom as the main areas was equally compelling. The extra award would amount to £295, giving an overall total of £1,174. However this was still less than the excess capital and a grant could not be paid.

Miss R asked for an Inspector's review because she did not think it was right her money and shares had to be used as she was ill and Social Services were involved with her care.

The Social Fund Inspector's Decision

The Social Fund Inspector decided the RO's decision was reached correctly. It was clear that Miss R was in a grant situation and had an urgent need for some of the items she wanted. But a payment from the fund could not be made because of the rules about capital.

Comment

Total capital resources also include savings and investments such as shares and in Miss R's case, any amount she had over £500 had to be offset against any potential grant award. The amount she could have as a grant was lower than the excess capital she had. Whilst there were good reasons why she did not want to spend this money at this time, this could not change the outcome of her case.

Case 37.3

Capital Resources - Notional capital

Application Details

Mr B applied for help with a community care grant (CCG) on 23 January 2007 for a cooker (£200), washing machine (£250), and sofa (£300).

He was getting Income Support including a Disability Premium. He lived with his partner and one child aged 9. He had rheumatism of the spine, diabetes and depression. He needed help with getting dressed and in and out of the bath. Mr B and his family had recently moved into a part furnished address after leaving the house they owned. The new address had carpets and curtains provided. In assessing Mr B's claim for Income Support, the Benefits Decision Maker had decided he had notional capital of £10,500.

The Decision Maker (DM) decided that the family were under exceptional pressures and that a cooker and seating would be high priority. But as Mr B had excess notional capital of £10,000, no grant could be awarded.

Mr B asked for a review because he stated he did not have any money and his family really needed the items.

The Reviewing Officer's Decision

During the telephone interview the Reviewing Officer (RO) asked for more details about what had happened to the capital. Mr B said he moved home about 5 months ago and had used money from the sale to pay for the removal costs, other debts and a holiday for the family as they had not been away for 8 years. The family had to move home as they could not afford to repair the home and it was too expensive to run. The officer asked how much the removals were and for the exact details of the debts and how much these were. Mr B said he didn't know how much the debts were but that he did not have this money any more. He said the removals cost £1,500 and the holiday £1,000. He said the family needed a cooker as theirs did not fully work, that they had no seating and washing by hand was difficult and took ages. The RO advised Mr B that in assessing his benefit claim, the Income Support Decision Maker had decided that he should have capital resources of £10,500 available to him. This was because of the way in which he had disposed of the money from the sale of his house. Unfortunately this meant that Mr B could not have a grant. Mr B became angry and ended the call.

The RO agreed with the DM that Direction 4(a)(iii) was met and found that all the needs had high priority. He refused an award due to Mr B's excess notional capital.

Mr B asked for a review saying he did not have any of the money any more and had spent it on debts. He provided a bank statement from the previous month showing that he had £142.63 in his current account.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) sent a statement to Mr B, outlining the important issues in his case and asking for more information about his need for the items and the debts he said he had repaid following the sale of his house. Mr B did not respond to the statement or a reminder letter. The Inspector found that the RO's decision was reached correctly and confirmed it.

Comment

For the purposes of Direction 27, notional capital is treated as “total capital resources”. In Mr B’s case, there was no dispute that he no longer had the money from the proceeds of the sale of his house. However, in assessing his claim to Income Support, the Benefits Decision Maker had decided Mr B had deprived himself of the capital so he could receive Income Support for the family, and so he should be treated as having £10,500. The RO and the SFI decided that Mr B could be awarded a grant of £750, but given the extent of the notional capital applied to his Income Support claim, no grant could be paid.

For more information on this topic and the difference in how notional capital is dealt with for grants and crisis loans, see the related article “Ask the Inspector”.

Case 37.4

Exclusions -

Distinctive school uniform and the inquisitorial role

Application Details

Mrs J applied for a crisis loan (CL) on 17 September 2006 for a bed, bedding, school uniform and shoes.

She lived with her daughter aged 4 who was starting school where a uniform was worn. Her daughter did not have this and she had been told she could not go to school without it. Mrs J wanted a new bed and bedding for her daughter as her bedroom was affected by damp badly. The bed and bedding had mould and damp spores on it.

Mrs J had a social fund debt of £200 repayable over 28 weeks.

The Decision Maker (DM) decided that a crisis loan payment for a new bed and bedding could be made for her daughter for £144.99. He excluded the request for school uniform under Direction 23(1)(a)(iii).

Mrs J asked for a review of the decision saying she needed the school uniform including sports things for her daughter.

The Reviewing Officer's Decision

During the telephone review interview, Mrs J told the Reviewing Officer (RO) that her daughter was missing school and that she also wanted a sports kit because the school held football and trampolining classes. The landlord was doing repairs to the property to deal with the damp.

The RO decided that the school uniform and sports items were excluded from a payment and agreed with the decision to pay a CL for a bed and bedding.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided the RO's decision was not reached correctly. He was not satisfied that the RO had used his inquisitorial role properly in looking at the request for school uniform. He had failed to ask questions about the uniform and which parts of this, if any, were "distinctive" in nature.

In his statement of issues, the Inspector asked questions about the school uniform and whether the sports clothes would be used outside school. In her reply, Mrs J said she wanted 2 school polo shirts with badges on them, 2 jumpers with badges, 2 grey school skirts and 2 pairs of trousers. She wanted a warm coat for the winter and some shoes. For sports lessons, her daughter needed shorts and 2 t-shirts in the school colours of brown and yellow. Her daughter would not be wearing these outside school because she wanted them to last and not get worn out.

Mrs J explained that her daughter had gone to school at first but had then refused to go because the other children had uniform to wear. She was upset about not having the proper clothes and Mrs J was getting worried about her. The headmistress had also said it would be better if she had the proper uniform to attend school. Mrs J said her daughter had 1 pair of jeans, a skirt, a dress, 2 sweat tops and 2 T-shirts. The jeans would not do up properly and the skirt was getting too short. She had trainers and a fleece top for a coat.

The SFI decided that the sports clothing, polo shirts and jumpers were all excluded for a CL. Because the polo shirts and jumpers were distinctive due to the badges and the shorts and T-shirts were needed for sports lessons, they could not be paid. The skirts and trousers could be

considered further as these were not distinctive, as could the coat and shoes.

The SFI decided that the award made for a new bed and bedding by the DM was correct. He did not award a CL for the skirts, trousers, coat and shoes. Whilst her clothing stocks were not large, she had some clothes and outdoor wear and footwear. He acknowledged that not having a school uniform was upsetting her and causing problems for the family, this did not pose a serious risk to their health or safety.

Comment

Direction 23(1)(a)(iii) prevents the payment of a CL for distinctive school uniform or sports clothes of any description for use at school. This makes it clear that not all items of school uniform are excluded – only those items that are distinctive. The onus is on the decision maker to show that the exclusion applies. So it is important at the earliest stage of the process to establish which items of uniform are distinctive. In this case the RO had not established the nature of the items requested and so excluded items inappropriately.

Case 37.5

Exclusions: work related expenses -
Excluded items other than equipment

Application Details

Miss W applied for a community care grant on 22 November 2006 for a folding therapy couch (£350), sterilising kit (£25), white cotton uniforms (£60) and a vanity case (£25).

She was 19 and living at home with her mum. She was getting income based Jobseeker's Allowance and attending college on a beauty therapy course. She had a job lined up for 3 months as part of a placement and hoped this would lead to a permanent offer of work later on. The things she wanted were for this work.

The Decision Maker (DM) decided that he could not pay for the couch or steriliser as these were work related expenses and Direction 23(1)(a)(xi) applied. He decided that no part of Direction 4 was met for the other things.

Miss W asked for a review as she had no other way of paying for the items and everything was provided for her at college.

The Reviewing Officer's Decision

During the review interview Miss W said she had a work placement set up and had to wear a uniform of white trousers and overall to fit in with the salon. She had to provide her own treatment couch and steriliser for using equipment. Miss W said that the table, sterilising kit and uniforms would be used only at work. She intended to leave the table and sterilising kit at the salon and would need to wash her uniform each night. She wanted the vanity box to keep her own products in. Her mum was on benefit and could not help her, and the college did not give funds to help either.

The Reviewing Officer (RO) decided that the folding couch and steriliser were excluded as they were for work. He also decided that the white clothing was excluded as this was particular to the therapist job and not likely to be worn other than at work. This left the vanity box to be considered only. He agreed with the DM that Miss W did not meet Direction 4 and did not make an award.

Miss W asked for an Inspector's review. She sent in letters of support from both the salon and her college explaining she needed these things to complete the placement which was a requirement of her course, and to help her chances of getting a job.

The Social Fund Inspector's Decision

In his statement of issues, the Social Fund Inspector (SFI) asked for more information about the vanity case. In her response, Miss W said she expected to use the vanity case at home as well as work to store her cosmetics. She did not think she would need to take it to work every day.

The SFI decided the RO's decision was reached correctly. He agreed with the RO that all of the requested items were work related expenses apart from the vanity box. The items were solely connected with the employment of a therapist. The qualifying conditions for a grant for a vanity case were not satisfied as no part of Direction 4 was met and no award could be made.

Comment

Directions 29 and 23(1)(a)(xi) prevent the payment of grants and crisis loans for work related expenses. This includes clothing and equipment and therefore clearly relevant to Miss W's application. The nature of items and the likelihood of them being used other than at work is relevant for deciding if the exclusion applies. Although all of the items were needed by Miss W in the course of her work, not all of the items were intended solely for use at work. The vanity case was intended for her personal use as well as her work as the exclusion did not apply. All the other items, including the uniform were intended only for the workplace, therefore the exclusion applied.

Case 37.6

Exclusions: work related expenses -
The need for clothing and the inquisitorial role

Application Details

Mr O applied for a community care grant on 7 January 2007 for help with clothing (£400) for him and his partner. He lived with his wife and son aged 7. He stated he needed clothing as his was old and tatty and he had not replaced items for a while. His partner had arthritis and needed help at times to get in and out of the bath or a chair if it was bad. She used a stick to help her walk. Her sister lived 3 doors down and would come each day to see her and provide some help if it was needed.

The Decision Maker (DM) rang Mr O for a breakdown of the items he wanted and this included a suit (£100), smart shoes (£30), work shirts (£20) and a tie (£10), 2 pairs of jeans (£40), 2 jumpers (£50), a coat (£40), trainers (£20), t-shirts (£30) and, for his partner a coat (£40) and a jumper (£20). The DM decided that although the family were facing exceptional pressures because of the partner's health problems, the needs did not have enough priority to be paid.

Mr O asked for a review stating he had very little he could wear and no smart clothes at all. He said his partner could not go out without a coat and she felt the cold because of her health.

The Reviewing Officer's Decision

During the review interview Mr O said he only had 2 sets of clothes to wear and one of them had holes in and paint on them. His jacket had a big rip in it down the back and he was wearing old trainers that were scruffy. He wanted smart clothes to go to interviews in as he felt he was being held back in getting a job because of his clothing. His partner did not have a coat and her 2 jumpers were wearing thin through washing. She felt the cold because of her arthritis and it was more painful if she was cold. Her sister provided some help with things around the house if she was having a bad day and would call in every day to see her. His partner was also depressed and took medication for this. She had mood swings when she would be weepy and lack motivation and sometimes Mr O would take his son round to his sister-in-law's home so he would not be upset by his mum's mood. Mr O said he relied a lot on his partner's sister to help manage in the family because of Mrs O's mental and physical health problems.

The Reviewing Officer (RO) decided that the family were facing exceptional pressures because of Mrs O's health problems and the help the family had from her sister. He decided to pay a CCG of £60 for a coat and jumper of £60.00 in full for her.

Mr O asked for a review because he said he had to wait for his better clothing to get dry before he went out to appointments like interviews or the GP with his partner as he was embarrassed about the state of his other set of clothing. He said it was cold without a proper coat and things were getting him down.

The Social Fund Inspector's Decision

In the statement of issues, the Social Fund Inspector (SFI) explained that grants could not be paid for work related expenses and he needed more information about Mr O's need for clothing, in particular the request for the suit, dress shoes, work shirts and tie. He was asked if these things would just be for work or not. Mr O said he wanted these particular items for interviews. He felt he was not doing well in his job hunt because of going in tatty clothing. He explained he would wear them for interviews and then hopefully to work as he wanted an office job. In relation to the need for

other clothing, he said his partner had appointments at the GP surgery and the hospital about her health and he found it hard if he had to go in his ripped and paint stained things because he was ashamed. His son was in good health but got upset when his mum was depressed and tearful. This is when Mr O would take him round to his sister-in-law's.

The SFI found that the RO's decision was not reached correctly as he had not asked relevant questions about Mr O's need for clothing and therefore not exercised his inquisitorial role appropriately. The SFI decided that the request for a suit, work shirts, tie and dress shoes were excluded from a payment as a work related expense – direction 23 (1)(a)(xi) applied to these things. He considered that an award would ease exceptional pressures on the family and agreed with the payment already made for Mrs O's coat and jumper. Mr O's stock of clothing was very limited, but the need for these items was not quite as important as clothes for Mrs O in easing the exceptional pressures on the family, arising from her health problems. The district had paid high priority needs since the beginning of the year and by the end of February had spent 15% less than it had planned. In these circumstances, the SFI decided that Mr O's need for jeans £20, jumper £15 and a coat £40 to provide Mr O with another set of clothes to help with the laundry and a coat for warmth could be paid from the budget.

Comment

Directions 23(1)(a)(xi) and 29 exclude work related expenses. It is important not to interpret this too widely and exclude only those expenses which have the sole purpose of helping the applicant either obtain work or attend it. It is important to establish whether the applicant expect items to be used solely for work or to be worn also in other situations, for example, someone may say they want a suit for interviews but also to keep for special occasions. In such cases, it is not appropriate to exclude items as work related expenses.

In this case it became clear at the interview that the suit, work shirts, shoes and tie were intended for work related activities. The RO was on notice to ask more about this to find out whether these items were excluded. In the interests of natural justice, it was essential that the SFI told Mr O about the exclusion and why he was asking questions about the need for clothes for interviews. Following his response to the SFI's questions, it became clear that Mr O intended to wear the clothes only for interviews and at work in an office environment, as this was the type of work he was seeking. Therefore, these items were work related expenses and a grant could not be paid.

Budgeting loans are available to people who have received a relevant qualifying benefit (Income Support, income based Jobseeker's Allowance or Pension Credit) for 26 weeks and need help with expenses associated with seeking or re-entering work. Budgeting loan decisions are fact based and take into account the size of the applicant's family ie. whether he is single, has a partner and/ or has any children, and any Social Fund debt outstanding in respect of budgeting loan payments.

Case 37.7

Direction 7 -

Two applications made on the same day

Application Details

Mr J applied to the fund on Tuesday 16 January 2007 for a crisis loan (CL) for a cooker (£200), fridge (£120) and a washing machine (£300). He returned to the office later in the day and applied for a community care grant (CCG) for the same items because he did not want to have to repay a loan.

The Decision Maker (DM) decided the CL on the same day as the application. He refused a payment because on the information available, there was no serious risk to Mr J's health or safety so Direction 3 was not met.

The application for a CCG was decided on Friday 19 January 2007. The DM decided Direction 7 prevented the determination of this application because this was made within 26 weeks of a CL application for the same items.

Mr J asked for a review of the CCG decision only, saying he had a second hand cooker which had broken and his fridge was leaking. He had never had a washing machine and found it hard to afford to pay at the launderette.

The Reviewing Officer's Decision

Mr J did not attend the interview – the Reviewing Officer (RO) confirmed the DM's decision that Direction 7 prevented the determination of the CCG application.

Mr J asked for an Inspector's review of the CCG application. He said he was finding it hard to manage without a cooker and a fridge. His money was running out each week.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) found out that Mr J was living in a bedsit where the things were all second hand. He had to buy takeaway foods like chips and kebabs but he was running out of money and so went hungry for about 2 days at the end of his benefit week. He had been using the local launderette but this cost a lot and did not help him budget.

The SFI decided that Direction 7 could not apply to the case. Applications made on the same day should be treated as being simultaneous and the 26 weeks referred to in the direction did not begin until the next day. He decided that no part of Direction 4 was met for a grant but that under Direction 49 he could consider and pay a crisis loan for a cooker.

Comment

Direction 7 prevents the determination of an application made within 26 weeks of a previous application. Some applications should not be regarded as "previous applications". These include applications made on the same day.

Section 3 of the Social Fund (Applications) Regulations 1988, sets out how it should be decided at what time an application is to be treated as made. These regulations refer only to the date on which the application was received at an appropriate office. No provision is made for distinguishing between applications made earlier or later on the same day. For this reason, applications made on the same day should be treated as simultaneous. One cannot be said to be "previous" to another, so Direction 7 cannot apply. The 26 week period only begins to run from the day after the initial application was made.

Case 37.8

Direction 7 -

The importance of the date of application

Application Details

Mr S applied for a community care grant on 30 June 2006 for a bed, bedding and bedroom carpet. This application was refused by the Decision Maker (DM) because no part of Direction 4 was found to be met. This decision was made on 12 July 2006.

Mr S did not ask for a review of this application.

On 2 January 2007 Mr S applied again for a bed, bedding and bedroom carpet. The DM decided that an award could not be made because a decision was made within the previous 26 weeks of this application. Mr S asked for a review saying they were even more desperate for the items than they were last time.

The Reviewing Officer's Decision

During the review interview Mr S said his situation was still the same as before only more urgent. His bed had springs through the mattress and the base was ripped. Because his partner had trouble with incontinence it also smelled. The bedding had to be washed more frequently because of this and had worn very thin and into holes in places. The duvet was thin and not warm. He wanted bedroom carpet as they did not have one and it was cold.

His partner had Post Traumatic Stress Disorder after a bad car crash a few years ago. She walked with sticks and had some mobility problems. She had flashbacks and nightmares which led to her bedwetting. She had been told this is due to the emotional trauma and that there was nothing that could be done about this.

The Reviewing Officer (RO) agreed with the DM that because a determination was made within 26 weeks he could not look at the case again. Mr S asked for a review, saying that he really needed the money and did not understand why his needs were not considered urgent enough.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO's decision was not reached correctly. Direction 7 did not apply because the date of application of the previous application was more than 26 weeks before this application. He decided that Direction 4 a (iii) was met and paid a grant for a bed and bedding.

Comment

For Direction 7, the dates the applications were made are the relevant dates in calculating the 26 week period. In this case there were more than 26 weeks between the applications (30 June 2006 and 2 January 2007) so Direction 7 could not prevent the determination of the later application. Both the DM and the RO wrongly used the decision date on the earlier application as the starting point for the 26 week period. This was within 26 weeks which led to the error.

Case 37.9

Direction 7 -

A later application is made before an earlier one has been determined

Application Details

Mr H applied for a community care grant (CCG) for a fridge (£100) on Tuesday 9 January 2007. This was application number 1.

By Friday 12 January 2007 he had not heard anything so he made another CCG application for a fridge. This was application number 2.

On Monday 15 January 2007 the DM made a decision on application number 1. He decided he could not pay a grant because Direction 4 was not met.

On Tuesday 16 January 2007 the DM made a decision on application number 2 and decided that he could not make a payment because Direction 7 applied because it was made within 26 weeks of application number 1 and there were no changes in circumstances.

Mr H asked for a review of application number 2 on 1 February 2007, saying he really needed a fridge to keep things fresh.

The Reviewing Officer's Decision

During the review interview, the Reviewing Officer (RO) asked Mr H if there had been any relevant changes in his situation – Mr H said there had not. He said he had diabetes controlled by insulin which he needed to keep in a fridge. He had been using a neighbour's fridge to store it in since his fridge broke down but this neighbour was due to move out and he did not know what he would do then. He also had Hepatitis C and needed to eat proper meals to help keep well. Without a fridge it had been harder to manage to buy fresh things to eat and his diet was more limited.

The RO decided that Direction 7 prevented him determining the application because it was made within 26 weeks of the earlier application. He could see Mr H's circumstances were difficult but there had been no changes since the earlier application. He decided he could not consider the case any further.

Mr H asked for an Inspector's review, saying his friend had now moved out and he had nowhere for his insulin to go. He had put it in a plastic bag in a sink of cold water. He had to keep changing the water to try and keep it cold. He felt very stressed about having to do this and about managing his health overall without a fridge. This and his diet meant he had less energy and he was worried he would be ill.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO's decision was not reached correctly because Direction 7 could not apply to the application made on 12 January 2007. When this application number 2 was made, a decision had not yet been made on application 1. The rules about repeat applications did not apply. The SFI asked for more details about Mr H's health issues. He found out that Mr H's diabetes was not well controlled and he had been admitted to hospital three times in the last year. The SFI decided that Direction 4(a)(ii) was met and paid a grant for a fridge.

Comment

Direction 7 says that “a decision maker shall not determine an application... made within 26 weeks of a previous application... for which a payment has already been awarded or refused...”. This means that where the current application was made before an initial decision had been made on the previous application, all the tests of Direction 7 are not met. This applies even if, by the time the decision maker receives the case, a decision has been made on the previous application. This was scenario in Mr H’s case. Because a decision had not been made on application number 1 before he made application number 2, Direction 7 could not apply to application 2 at any point during the review process.

Case 37.10

Direction 7 -

Previous application papers unavailable

Application Details

Mr D applied to the fund for a community care grant (CCG) on 22 February 2007 for a bed (£150) and bedding (£50). Mr D said he had problems with incontinence and this had soiled his bedding. He needed a new bed.

The Decision Maker (DM) stated that an award could not be made because Direction 7 applied. Mr D had applied for these things on 18 September 2006 and been paid for them at that time.

Mr D asked for a review saying he wanted a new mattress and his bedding got affected by his soiling it.

The Reviewing Officer (RO) arranged a telephone interview but was unable to contact Mr D at the appointed time or on two subsequent attempts. The RO confirmed the DM's decision on the basis of the evidence before him. He decided that there had been no relevant change in Mr D's circumstances since last time and no award could be made.

Mr D requested a review saying he really needed bedding because he only had one set and was not given enough money last time.

The Inspector's Decision

The RO sent the papers from the application made in February but did not send the case papers from the application made in September to the IRS. The Social Fund Inspector (SFI) requested those papers but did not receive them before he was due to make his decision. The SFI decided that the RO's decision was not reached correctly as the evidence did not show that Direction 7 should be applied.

Mr D told the SFI that he had stained the mattress because his rubber sheet moved about on the bed. He had 2 sets of sheets but only one cover set to use. He wanted some more of these. He lived with his parents and washed his covers each day and used the dryer to get them dried. The SFI decided that Mr D did not meet any part of Direction 4 so could not be paid a grant.

Post Decision

The RO complained to the IRS Customer Service Team about the SFI's decision. In particular he was unhappy about the decision to find an error in his decision. He sent the papers from Mr D's previous application with his letter, explaining that there had been a delay sending them because he had been waiting for them from Jobcentre Plus' remote storage facility. The SFI on the Customer Service Team decided that the first SFI had dealt with the issues appropriately. He was right to find an error in the RO's decision and although the papers had now been provided, there were no grounds for re-opening the case.

Comment

Direction 7 is a procedural bar to allowing the proper determination of an application. It should only be used in cases where all the relevant case papers are available to enable the decision maker to make an informed decision on whether the items are the "same" on both applications and then whether there has been a relevant change in circumstances. Where Direction 7 is an issue in the case, the relevant papers should be sent to the IRS with the current application. Without them, the SFI will not apply Direction 7 and will determine an application in full. It will not be appropriate for the decision to be re-opened later.

Case 37.11

Budgeting Loans -

The lack of an interview and the exercise of discretion

Application Details

Mr S was single and receiving Income Support (IS), including a Disability Premium. He applied for a budgeting loan (BL) on 7 December 2006 for £1,500 for clothing and home improvements. He had no social fund debt and had been on IS for more than 26 weeks.

The Decision Maker (DM) made his decision on 7 December and offered Mr S a BL of £300 based on the Area Decision Maker's (ADM) guidance on the maximum amount for single people.

Mr S asked for a review because he was not paid enough to get what he wanted.

The Reviewing Officer's Decision

The Reviewing Officer (RO) did not offer Mr S a review interview and confirmed the decision. He made his decision on 22 December and confirmed the DM's decision to award £300.

Mr S wanted a review because he believed he was entitled to a maximum payment of £1,500.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) decided that the RO's decision was not reached correctly because he did not offer Mr S a review interview and did not exercise his discretion in relation to the maximum amount of BL available to Mr S. The area budget for the end of November 2006 showed an under spend against planned spend of 8%. This had not been taken into account by the RO in reaching his decision.

The SFI made his decision on 9 January 2007. At the end of December, the budget was still 8% under spent against the planned spend. The SFI acknowledged that the ADM's suggested maximum amount for a single person was £300 but that it was appropriate to exercise discretion in view of the budget position. The Inspector increased the amount by 8% representing the amount of the under spend and awarded a higher budgeting loan of £324.

The SFI also explained that the most anyone could owe to the Social Fund was £1,500 including both BLs and crisis loans. However, this did not mean that everyone who made an application could have loans up to that amount.

Comment

Direction 33 which sets out the requirements on ROs to offer review interviews does not differentiate between BLs and other types of payment. As long as the applicant is eligible for a BL under Direction 8, then he should be given the opportunity of taking part, at the very least, in a telephone interview.

In accordance with Direction 41, the ADM is required to issue guidance on the maximum amount available to BL applicants, based on the figure advised by the Secretary of State. As this is guidance, it is not binding on decision makers. Direction 53 makes it clear that it is for the decision maker, whether the DM, RO or SFI, to decide the maximum amount available to a BL applicant, taking into account the budget and the ADM's guidance.

The BL scheme has its legislative base in a discretionary framework. Direction 3 to Inspectors requires the SFI to consider if the DM has exercised his discretion in relation to deciding the applicant's maximum amount. In Mr S's case the under spend in the loans budget provided scope to increase the maximum amount available to him. However, the RO had not considered this when making his decision.

Case 37.12

Budgeting Loans - and the inquisitorial role

Application Details

Mr H applied for a £200 budgeting loan (BL) for furniture and household items. He applied on 25 February 2007 and had been getting income based Jobseekers Allowance (JSA(IB)) since 22 January 2007. Before this he had been in prison. On his application form he indicated that he had been on benefits since April 2006.

The Decision Maker (DM) decided the case on 3 March 2007. He decided that Mr H was not eligible for an award because he had not been on JSA for 26 weeks as required by Direction 8.

Mr H asked for a review again stating he had been on benefits since April last year.

The Reviewing Officer's Decision

The Reviewing Officer (RO) did not arrange a review interview with Mr H as he was not eligible for a BL and confirmed the DM's decision. He noted in his decision that he had checked the system and this showed no payments of benefit before 22 January 2007.

Mr H asked for a review, saying he had been getting benefit since last April until he went to prison in December.

The Social Fund Inspector's Decision

The Social Fund Inspector (SFI) explained in his statement of issues to Mr H that any breaks in his claim to benefit up to 28 days did not effect whether or not he could be paid a BL. He asked Mr H when he had gone into prison. He also phoned his Jobcentre Plus office to find out when his previous claim to benefit had ended. He was told that Mr H had been in receipt of Income Support from 5 April 2006 until 28 December 2006. Mr H had moved around quite a lot and his benefit payments were being made clerically.

In response to the SFI's statement, Mr H said he went into prison on 28 December 2006.

The SFI decided that the RO's decision was not reached correctly because the RO had failed to use his inquisitorial role to establish Mr H's benefit details. The SFI decided that Mr H was eligible for a BL and could be considered for an award. The Area Decision Maker's (ADM) guidance on the maximum amount for single people was £300. Mr H did not have any outstanding BLs and the budget was spending its money as planned. The SFI decided that £300 was the right maximum amount in Mr H's case, and as he only wanted £200, he could have that amount.

Comment

Direction 8 requires that people are in receipt of either JSA(IB), Income Support or Pension Credit for 26 weeks before they can be paid a BL. However it also allows for breaks in claim of up to 28 days before eligibility is affected.

In cases where the eligibility requirements of Direction 8 are not satisfied, the RO is not duty bound to offer a review interview under Direction 33. However, this does not absolve him of responsibility for making relevant enquiries, and therefore properly exercising the inquisitorial role. Although information about the previous claim to benefit was unavailable on the computer system, Mr H had given clear and consistent evidence that he had received benefit during 2006. In these circumstances, the RO should have made further enquiries about this, both to establish the type of benefit Mr H had received and the extent of the break in his claim. Had he done so, he would have found that Mr H was eligible for a BL.

In accordance with Direction 53(2), the amount of award in BL cases is the lesser of the maximum amount minus the applicant's and, where appropriate his partner's, existing BL debt or the amount requested.

