

GAINING AN ADVANTAGE FROM A FURTHER APPEAL

See CAP Bulletin 03/07

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INTRODUCTION

- 1 This Bulletin gives guidance to appeals officers on the action to take where
 1. an appellant, or ACI Leeds on form OS23, notifies that the claimant or appellant has applied for or been granted leave to appeal against an AT decision **and**
 2. the appellant gains an advantage from the application or appeal.

BACKGROUND

- 2 A claimant or other appellant can gain an advantage from continuing an appeal in the circumstances set out in paragraphs 4 - 7. "Continuing an appeal" means
 1. making an application to a LQPM or Commissioner for leave to appeal against an AT decision

2. where leave to appeal is granted by a LQPM, lodging notice of the appeal with the Commissioner's Office
 3. awaiting a rehearing where the Commissioner remits the appeal to a tribunal.
- 3 Offices should note that leave to appeal can be granted by the Commissioner even if it has been refused by the LQPM. Where a Commissioner grants leave, the application is normally treated as the appeal.

Recovery of overpayment

- 4 Where a person
1. has been granted leave to appeal against an AT decision that an overpayment is recoverable **and**
 2. where appropriate, lodged the appeal with the Commissioner's Office
- recovery action is suspended pending determination of the appeal.

Reduced rate IS

- 5 IS can continue in payment where a claimant applies for or is granted leave to appeal against an AT decision on IB or NI credits which upholds the DM's determination that they are not incapable of work following application of the PCA.
- 6 This also applies where leave is refused by the LQPM, and the claimant renews their application before the Commissioner. If leave is granted by the LQPM, the appeal must be lodged with the Commissioner's Office for reduced rate IS to continue.
- 7 The claimant is advised on OSSC1, the form used to make an application for leave to appeal, to notify their benefit office about the application if they were receiving IS and it stopped following the AT decision.

ACTION TO TAKE

Recovery of overpayment

- 8 If the notification is about being granted leave to appeal, or where appropriate lodging notice of the appeal, against a recoverable overpayment, the appeals officer **must** ensure that it is passed **immediately** to the appropriate Debt Management centre so that recovery can be suspended.

Reduced rate IS

- 9 If the notification is about an application for leave to appeal or an appeal against an incapacity decision, and the claimant wishes to continue receiving reduced rate IS, the notification **must** be passed **immediately** to the appropriate office so that payment of IS can continue. See DMG Chapter 03 for guidance on revision where IS has been terminated following the AT decision on incapacity.

Checking progress

- 10 Action to check on progress of the application or appeal is the responsibility of the office dealing with the overpayment or payment of IS as appropriate. If the application or appeal is unsuccessful, recovery action may begin again, or the IS award be terminated again, as appropriate. Delay in taking appropriate action following the outcome of the application or appeal may lead to difficulties in recovering an overpayment, or an overpayment of IS.
- 11 Where ACI Leeds has informed an office of an application or appeal to the Commissioner as in paragraph 1 1., we will also notify the outcome of that application or appeal on form OS77. The notification should be passed to the Debt Management centre or IS paying office as appropriate.
- 12 In all other cases, the office should check that the appeal is continuing by contacting the appropriate TS office or Commissioner's Office at regular intervals.

ANNOTATIONS

Please annotate the number of this bulletin (CAP 02/07) against the following:

CAP 8000 heading

CONTACTS

If you have any queries about this Bulletin, please write to ACI Division, Room GS36, Quarry House, Leeds.

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