

GAINING AN ADVANTAGE FROM A FURTHER APPEAL

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INTRODUCTION

- 1 This Bulletin expands the guidance in CAP Bulletin 02/07 about when a claimant gains an advantage from making or continuing an appeal in IS cases. This follows recent queries after the Bulletin was published.

REDUCED RATE IS

- 2 DMs and appeals officers should note that IS cannot continue in payment where the claimant
 1. makes an appeal against a decision disallowing IB or credits unless it follows application of the own occupation test or the PCA **or**
 2. is entitled to IS as a carer pending determination of a claim for AA or DLA, and the claim for AA or DLA is disallowed.

Example 1

The claimant is entitled to IS and credits because he is incapable of work. The IB DM terminates the award of credits because the claimant was treated as capable of work after he failed without good cause to return a questionnaire. The IS DM terminates the award of IS. Although the claimant appeals against the IB DM's decision, he is not entitled to reduced rate IS. His entitlement to IS can only continue if he satisfies another condition of entitlement. Alternatively, he could claim JSA.

Example 2

The claimant is in receipt of IS because he is caring on a full-time basis for his brother, who has claimed DLA. The claim for DLA is disallowed, and the brother appeals against the decision. The claimant's entitlement to IS can only continue if he satisfies another condition of entitlement. Alternatively, he could claim JSA.

Judicial review

- 3 The guidance about continuing an appeal does not apply where the appellant challenges a decision outside the SS appeal system. This is most likely to happen when
 1. a claimant's appeal to a tribunal is dismissed **and**
 2. an application for leave to appeal is refused by the district chairman and the Commissioner **and**
 3. the claimant applies for Judicial Review of the Commissioner's refusal to grant leave.

- 4 Where the claimant was entitled to reduced rate IS because an appeal against the decision about the PCA was ongoing, that entitlement ends when the Commissioner gives a ruling refusing the application for leave. The claimant's entitlement to IS can only continue if they satisfy another condition of entitlement. Alternatively, they could claim JSA.

ANNOTATIONS

Please annotate the number of this bulletin (CAP 03/07) against the following:

CAP Bulletin 02/07, CAP 8000 heading

CONTACTS

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