CAS

CENTRAL ADJUDICATION SERVICES
An independent statutory body for Social Security and Child Support Law

To:

From:

Date: 15 August 1996

Copies:

Medical conditions: deterioration in health

As I stated on the telephone this morning I have spoken to DSS HQ concerning the interpretation of the phrase "decline in health" in JSA Regulation 140(1)(h).

They want the regulation to be applied reasonably broadly so we are looking at someone's general health declining faster than that of a "normally healthy adult" rather than the specific condition declining. I am quite content, from the adjudication point of view, that this interpretation is supported by the wording of the regulation.

I hope this is helpful.

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HARDSHIP 3

6. I fully accept your point 14. but the question asks 'Will the health of the person with the medical condition get worse in the next 2 weeks if hardship payments are not made'. We agree that this is not the question for the AO, but I am concerned that claimants will take the form to mean that it is. The old Attendance Allowance form asked many questions tangential to the point at issue, but claimants felt entitled to benefit because they had answered 'Yes' to them. The result was unhappiness and appeals. I suggest it would be safer to omit the question if you feel unable to change it to :- 'Would you expect the health of the person with the medical condition to worsen more if hardship payment are not made for two weeks than would happen to a normal person? If so, what effects on their health would you expect?'

7. The form asks for the name and address of 'Doctor'. This could be the GP or a hospital doctor. It presumably excludes other health professionals, such as an osteopath or clinical psychologist who might be best placed to give information. As time is of the essence, I strongly suggest you give two spaces, one for 'your General Practitioner', and another for 'Any Hospital/Consultant/Specialist best able to tell us about the condition giving rise to hardship': this box should have a space appended for the case number. Again, to save time, I suggest you ask for telephone numbers for both as well as names and addresses.

8. Thank you for adopting the common form of consent. But, you have not adopted the last part 'I also understand that the Department may use the information which it has now, or may get in the future, to decide whether I am entitled to

- the benefit I am claiming
- any benefit I have claimed
- any other benefit I may claim in the future'

This allows fraud investigation where information for different claims is inconsistent or if fraud is found in relation to one claim and another benefit is in payment. It also allows use of information from other benefits such as IB. Could it please go in.

9. Thank you for explaining the '75%' test. I have to admit that we did not know the UK used it. Other countries do, and it is a minefield. I really cannot conceive how an AO could possibly know the going rate for jobs for the area in which he was. I would suspect that, once again, no AO would ever apply this test properly and would simply give an applicant the benefit of the doubt unless he would obviously fail. I would suggest it would be better to consider using either the test I set out in my paragraph 2, or else the DWA test. Both would be far easier to administer and would simplify the system. Would this mean changing regulations, and if so which?

10. I am sure you do not see me as a typical layman. But, I would suggest 140 (g) means 'suffer from a medical condition which affects your ability to move around, or to use your limbs, or to see, hear, touch, smell or taste, so as to limit or restrict what you can do'. This omits the reference to 'ordinary activities' which I think could be misconstrued as Commissioners have for DLA!

11. My attempt to re draft 40071 et seq follows :-

Questions for the AO to decide

40071 If an application for hardship payments is made on account of a person having a medical condition the AO has to decide

- if the person with the condition is not the claimant, whether that person is a part of the claimants family and so properly to be considered as relevant to the claimant being in hardship — implicit in the inclusion of the term partner
- whether the medical condition claimed is actually present, and if so whether it is likely to last for at least 26 weeks — or has lasted for 26 weeks - covered
- whether that condition is producing the physical restrictions or limitations claimed — covered
- if the person with the condition is not the claimant, are they incapable of work — if the claim is incapable — no dsa!
- 2. whether either the claimant or partner are entitled to IS — covered
- 3 whether the claimant satisfies the conditions of entitlement to IS — covered
- whether the person with the condition would suffer hardship if JSA were withdrawn — not the test — if dsa is not paid — dsa might not be in payment
- whether the health of the affected person would decline more than a healthy normal adult if they lost benefit for two weeks.
  — not the test.

Evidence that the AO should consider

40072 The AO must consider all available evidence when deciding if a claimant or partner has a chronic medical condition. If it does not allow a decision to be made, the AO will need to consider whether any medical interpretation of the evidence might clarify it so as to allow a decision; if so, BAMS should be asked to provide one. If not, further evidence might help and the AO must consider who could provide it. If the claimant cannot reasonably be asked to do so, BAMS should be asked to frame suitable questions for the GP or other health professional involved; this is expanded below. In general, the AO should expect to have to consider

- the JSA claim form
- the application form for hardship payments
- any letters or written statements from the person whose condition gives rise to the claim
- any records of interviews with the claimant and/or the person whose condition gives rise to the claim
- any records held by the S of S about relevant Incapacity Test results, or claims for DLA/AA, IIDB or SDA
- if the person with the condition is the applicant, their statement about their health to the Employment Service when they first registered

- any medical certificates or statements from any of the doctors treating the person with the condition
- any medical reports from those treating conditions, together with any interpretation of them from BAMS
- any relevant information about the effects of the condition claimed in the 'Disability Handbook'
- any reports from a BAMS doctor supplementing information about the condition and its likely effects.

12. I do not understand your para 17. I thought the disability premium is paid to those on specified passporting benefits (such as DLA), some groups such as the registered blind, and to those who have been off sick for a year and have passed the Incapacity Test, so the criteria are not those of hardship.

13. I understand your para 23 but :-
   - I would expect problems if the claimant is to be asked to get specific information - do we give him a list of questions framed by BAMS?
   - I would expect vigorous comeback if GPs charge applicants for the information - after all they are supposedly only being supported by JSA/IS.

If you want to run with the policy so be it, but there are difficulties.

14. Apologies, I got the wrong reference in my para 30. I was concerned about the certificate of pregnancy mentioned in AOG 40330. You have effectively covered my concern in your point 6 on the QA3.

15. I note your suggestion to John Pereira (para 13) that BAMS advice should normally be obtained by telephone. This could lead to problems with Tribunals: we would certainly not want them to debate what the BAMS doctor actually said. For DLA, we hold that a BAMS doctor may only give verbal advice which is not part of the evidence used for adjudication and so which might need to go to a DAT; other advice must be written. I think the same should apply to JSA until or unless SOL and ITS are happy to change. This need not affect timing, since BAMS should be able to advise by fax within a day. But we may need to explore this further and my operational colleagues will need the earliest possible warning of what is to be expected of them, as will the Partnering Project which is dealing with contractorisation.

16. Apologies for length, but I have got everything into four pages instead of five. I hope you feel there are some useful points within them.

Backup DOC 35|20

BA Medical Services
Restricted - Policy & Management
Support for Jobseeker's Allowance

To:

From: BA Medical Services

Date: 4 November 1996

Copies: BAMS
Medical Policy Group
BAMS

Issue: JSA: AOG Appendix medical hardship: comments on DNs and DQs as requested

Timing: for your deadline of 6/11/96

1 Thank you for you minute of 18/10/96 asking for comments and responses to various DNs and DQs relating to the JSA AOG Appendix on medical hardship. I am responding on behalf of Peter Doughty, having sought comments from operational and Medical Policy colleagues.

2 Regarding your first DQ (your Para 3): BAMS sought advice from Medical Policy Group on the issue of mental conditions (including alcohol and substance abuse) when we first started to draft the guidance for AOs. The steer from Policy was that only physical conditions were covered, and mental conditions were specifically excluded. Thus although mental conditions can lead to physical impairment, this physical impairment is not invariably present - hence the advice given. It is possible for someone to have a problem with excessive alcohol consumption, and the associated social and psychological problems, without demonstrating physical impairment as defined.

3 It is also true that severe mental problems of the type you describe would tend to render the person concerned unfit for work.

4 Your second DQ (your Paras 4 & 5): HIV infection is mentioned in the section on "Infections". It is certainly an area where sensitivity is required, and an awareness of issues of confidentiality, but as all medical information should be treated as confidential, it is a moot point whether HIV status should be treated differently.

5 People infected with the HIV virus (HIV positive) may be apparently normal. They are not likely to be a danger to others, except in a few situations (such as doctors and dentists). People who have progressed to active AIDS are likely to be under medical supervision, on active treatment, and possibly unfit for work. People with active AIDS should be considered as vulnerable.