

APPENDIX 7 Examples of appeal responses

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Appendix 7

Example 1

State Pension Credit - amount of income taken into account when SPC awarded

Section 1

Personal details: Mr Terrence Stone
1 Quarry Avenue
Leeds
LS1 4HR

National insurance number: ZZ000001A

Benefit: State pension credit

Date of outcome decision: 19 November ----

Date decision notified: 20 November ----

Date of appeal: 30 November ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [-]	[--/--/----]	[--/--/----]	Extract from PC1
Pages [-]	[--/--/----]	[--/--/----]	Record of reconsideration
Pages [-]	[--/--/----]	[--/--/----]	Form AT2A

Example 1

Section 3 *[either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]*

The decision:

You are entitled to state pension credit of £29.95 a week from 11 November ----.

Section 4

The facts of the case:

1. Mr Stone is a single man aged 60, born on 11 November ----. He applied for state pension credit from 11 November ----.
2. On 11 November ---- he was also in receipt of incapacity benefit. His entitlement was £72.15 per week. He had no other income.
3. A decision was made on 20 November ---- awarding Mr Stone a state pension credit entitlement of £29.95 per week from 11 November ----. The calculation was as follows:

The state pension credit standard minimum guarantee for a single person is £102.10 per week. Mr Stone is not entitled to any prescribed additional amounts so his appropriate minimum guarantee is £102.10. The £72.15 incapacity benefit entitlement was deducted from the £102.10 leaving a guarantee credit amount of £29.95 per week. Mr Stone was notified that he was entitled to state pension credit of £29.95 per week on 20 November ----.

4. On 30 November ---- Mr Stone appealed. His grounds for appeal are that he thought that he would be entitled to the £102.10 state pension credit amount in addition to his £72.15 incapacity benefit entitlement.
5. Mr Stone was given an explanation of the decision but was still not satisfied. The decision was looked at again and the decision maker decided that the decision could not be changed.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing.
[**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. The law states that a person is entitled to the guarantee credit element of state pension credit if their income does not exceed the appropriate amount.
Section 2 (1) The State Pension Credit Act 2002
2. Mr Stone's weekly income is calculated as £72.15 and deducted from his appropriate minimum guarantee, which is £102.10 in his case. Incapacity benefit is counted as income as it is a prescribed benefit.
Section 2 (2) The State Pension Credit Act 2002
Section 15 (1) (e) The State Pension Credit Act 2002
Regulation 15 (1) The State Pension Credit Regulations 2002
3. The difference between Mr Stone's appropriate minimum guarantee of £102.10 and his weekly income of £72.15 is the amount of guarantee credit that he is entitled to, i.e. £29.95.
Section 2 (2) (b) The State Pension Credit Act 2002
Regulation 6 (1) (b) The State Pension Regulations 2002
4. Mr Stone thinks that he should be entitled to his incapacity benefit as well as the full appropriate minimum guarantee. There is no provision in law to disregard any or the whole of incapacity benefit to do this.
5. I therefore submit that the appellant's weekly income has been correctly calculated as £72.15 in accordance with the Acts and Regulations. As a result the appellant is entitled to a guarantee credit of £29.95 from and including 11 November ----.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

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Example 2

State Pension Credit – Refusal to specify an AIP

Section 1

Personal details: Mrs Joan Wilkinson
 12 Bank Place
 Birmingham
 B16 8NU

National insurance number: ZZ123456A

Benefit: State pension credit

Date of outcome decision: 16 October ----

Date outcome decision notified: 16 October ----

Date of appeal: 26 October ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [–]			Response
Pages [–]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [–]	[--/--/----]	[--/--/----]	Extract from PC1
Pages [–]	[--/--/----]	[--/--/----]	Record of reconsideration

Example 2

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

An assessed income period cannot be set as Mrs Wilkinson's husband is under age 60.

Section 4

Facts of the case:

1. Mrs Wilkinson is aged 65 – she was born on 12 May ----. She made an application for state pension credit from 6 October ----, the date state pension credit started. Her husband, Mr Wilkinson, is 58 years old, and they applied as a pensioner couple.
2. A decision was made on 16 October ---- awarding Mr and Mrs Wilkinson a state pension credit entitlement of £xx.xx from 6 October ----. A decision was also made that they do not qualify for a five year assessed income period because Mr Wilkinson is aged under 60.
3. On 26 October ---- Mrs Wilkinson appealed against the decision not to set a five year assessed income period. The reasons for submitting her appeal are that her twin sister, who is in similar circumstances and whose husband is 68 years old, has been given a five year assessed income period. Mrs Wilkinson thinks that she should qualify for a five year assessed income period, which would mean that she would not have to provide information about her retirement provision on a regular basis.
4. Mrs Wilkinson received an explanation from the Pension Service but was still not satisfied. The decision was looked at again and the decision maker decided that the decision could not be changed.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. The Secretary of State has a duty to specify an assessed income period unless prevented from doing so by prescribed Acts and Regulations.
Sections 6 and 7 The State Pension Credit Act 2002
2. The Secretary of State is prevented from specifying an assessed income period in the case of couples where one partner is aged under 60. Mrs Wilkinson's partner, Mr Wilkinson, is aged 58 therefore an assessed income period cannot be specified.
Section 6 (1) and (2) (b) The State Pension Credit Act 2002
Regulation 10 (1) (a) The State Pension Credit Regulations 2002
3. Therefore I submit that it is correctly decided, in accordance with the Acts and Regulations, that an assessed income period cannot be set.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

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Example 3

Income Support – date of claim/evidence requirement

Section 1

Personal details: Ms Joan Smith
 1 Quarry View
 Leeds
 LS12 5YZ

National insurance number: ZZ000002C

Benefit: Income support

Date of outcome decision: 18 May ----

Date decision notified: 18 May ----

Date of appeal: 20 May ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [–]			Response
Pages [–]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [–]	[--/--/----]	[--/--/----]	Extract from form A1
Pages [–]	[--/--/----]	[--/--/----]	A164 reply
Pages [–]	[--/--/----]	[--/--/----]	Record of reconsideration
Pages [–]	[--/--/----]	[--/--/----]	Copy of form sent to claimant requesting wage slips

Example 3

Section 3 *[either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]*

The decision:

Ms Joan Smith is not entitled to income support from 6 April ---- to 19 May ----, because she does not satisfy the provisions of regulations 6 & 4(1A)(c) of the Social Security (Claims and Payments) Regulations 1987, relating to the supply of evidence.

Section 4

The facts of the case:

1. Ms Joan Smith is a 22 year old single parent with 1 dependant child at the time of her claim, who claimed income support on 25 April ---- having contacted the Social Security Office on 6 April ----. She had finished work at "Steelite" on 5 April ----. She did not supply her final 2 pay slips as requested on the A1 form.
2. Ms Smith was sent an A164 form on 28 April ---- informing her that her final 2 pay slips were required. This form stated that if the documents requested were not received by 6 May ---- she would only be paid from the date they were received.
3. On 10 May ---- a reply to the A164 was received along with Ms Smith's final 2 pay slips. The decision maker decided that the claim had not been properly completed until that date and, as this was more than 1 month later than her initial request for an income support claim form on 6 April ----, income support could only be paid from 10 May ----.
4. In her appeal Ms Smith says that the letter requesting her final 2 pay slips stated that they were required by 10 May ---- and that they were supplied by that date. However another decision maker has reconsidered the case but has been unable to change the decision in Ms Smith's favour.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. The law states that income support is paid from the date of claim.
Paragraph 6(1) to Schedule 7 of the Social Security (Claims and Payment) Regulations.
2. The law also states that the date of claim for income support is the date on which a properly completed form - i.e in accordance with the instructions on the form and including such information and evidence as the form may require - is received at an appropriate office.

Where a properly completed form is received within 1 month of the first notification of intention to make a claim - the date of claim shall be the date that notification is made.

Regulations 4(1A) and 6(1A) of the Social Security (Claims and Payments) Regulations.

3. On the front of the claim form, there is a warning in heavy black type that benefit may be lost if all the questions on the form are not answered and all the documents asked for not supplied within 1 month. On the page relating to work in the last 9 months it states that "you must send us your final 2 pay slips or a letter from your employer giving details of your final wage" and there is another warning in heavy black type that benefit may be lost if they are not supplied within 1 month of the initial date of contact.

In this case, Ms Smith requested an income support claim form on 6 April ----. The completed form was received on 25 April ----, but she did not supply her final wage slips until 10 May ----. These are required by the form sent to the claimant which requested the wage slips by 6 May ----. There are warnings in black that benefit may be lost if they are not provided. I therefore submit that Ms Smith did not supply a properly completed claim form until 10 May ---- and that this is her date of claim. Consequently income support cannot be paid prior to 10 May ----.

Access to statute and case law for appellants

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Example 4

Jobseeker's Allowance – Claimant entitled to a reduced rate of JSA(IB) because of her earnings

Section 1

Personal details: Mrs Jenny Thompson
18 London Place
Basingstoke
Hampshire
RG74 99YZ

National insurance number: ZZ000009DC

Benefit: Income-based jobseeker's allowance

Date of outcome decision: 27 May ----

Date decision notified: 27 May ----

Date of appeal: 22 June ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [–]			Response
Pages [–]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [–]	[--/--/----]	[--/--/----]	Extract from form A1
Pages [–]	[--/--/----]	[--/--/----]	A15C - request for details of part-time work

Appendix 7

Example 4

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Letter of confirmation of closure of previous claim & notification of rate of entitlement for period 16/05/05 to 21/05/05
Pages [-]	[--/--/----]	[--/--/----]	Copy of pay advice for payment received on 27/05/05
Pages [-]	[--/--/----]	[--/--/----]	Letter from customer disputing rate of entitlement
Pages [-]	[--/--/----]	[--/--/----]	Further letter from customer disputing decision
Pages [-]	[--/--/----]	[--/--/----]	Letter of notification of closure of claim from 28/05. Also confirming bank account details used & rate of entitlement for period ending 27/05/05
Pages [-]	[--/--/----]	[--/--/----]	Letter from customer requesting explanation of letter issued on 30/06/05
Pages [-]	[--/--/----]	[--/--/----]	Letter of notification of taxable benefit awarded to Jenny Thompson for period from 16/05/05 to 27/05/05 & copy of P45
Pages [-]	[--/--/----]	[--/--/----]	Letter from customer requesting explanation of taxable benefit letter
Pages [-]	[--/--/----]	[--/--/----]	Letter of explanation in response to requests from Jenny Thompson for explanation of letters issued by Jobcentre Plus on 30/06/05 & 01/07/05
Pages [-]	[--/--/----]	[--/--/----]	Letter from Jenny Thompson providing additional evidence for appeal
Pages [-]	[--/--/----]	[--/--/----]	Jenny Thompson's supporting evidence - chronology of events

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Jenny Thompson's supporting evidence - Co-operative Bank bank statements
Pages [-]	[--/--/----]	[--/--/----]	Jenny Thompson's supporting evidence - Barclays Bank bank statements
Pages [-]	[--/--/----]	[--/--/----]	Jenny Thompson's supporting evidence - letters from Basingstoke Council Housing Benefits department
Pages [-]	[--/--/----]	[--/--/----]	Jenny Thompson's supporting evidence - pay slips for periods 06/05/05 to 24/06/05
Pages [-]	[--/--/----]	[--/--/----]	Computer record- income support payment for period ended 13/04/05
Pages [-]	[--/--/----]	[--/--/----]	Computer record - linked benefit details showing first effective day (FED) of linked period
Pages [-]	[--/--/----]	[--/--/----]	Computer record - JSA payment history
Pages [-]	[--/--/----]	[--/--/----]	Computer record - JSA enquiry letters issued
Pages [-]	[--/--/----]	[--/--/----]	Computer record - notes relating to the case
Pages [-]	[--/--/----]	[--/--/----]	MF40 - memo recording small overpayment (official error)

Section 3

The decision:

Jenny Thompson is entitled to income based jobseeker's allowance totalling £80.35 for the period from 16/05/---- to 27/05/----.

I respectfully request that the following decision be substituted for the original decision:

Jenny Thompson is entitled to income-based jobseeker's allowance totalling £63.92 for the period from 16/05/---- to 27/05/----. This is because she has declared earnings that must be taken into account when calculating her entitlement.

Example 4

Section 4

The facts of the case:

1. On 16/05/---- Jenny Thompson contacted the local Jobcentre Plus outlet in order to claim both contributions-based and income-based jobseeker's allowance. She completed the rapid reclaim form JSA4 (RR) as required because she had previously claimed the same benefit from 14/04/---- until 24/04/----. That earlier award had ended because Mrs Thompson had failed to sign on her next due fortnightly interview date (12/05/----). Before that earlier claim Mrs Thompson had claimed incapacity benefit and income support from 06/03/1999 to 13/04/----.
2. Jenny Thompson stated in the claim form JSA 4(RR), completed and submitted by her on 24/05/----, that she was currently undertaking part time employment with XYZ Catering as a catering assistant, working on average 1 day a week. (Page(s) [-])
3. It was determined that the tax years ending 5th April ---- and 5th April ---- should be used in assessing entitlement to contribution-based jobseeker's allowance. This was based on the details of her previous claims as linking rules apply. (Page(s) [-])
4. On 27/05/---- the decision maker established that Jenny Thompson did not satisfy the contribution conditions based on the tax years ending 5th April --- - and 5th April ---- and as a result she was not entitled to contribution-based jobseeker's allowance from 16/05/----. However, as Mrs Thompson had stated in her claim form that she also wished to claim income-based jobseeker's allowance, the decision maker further determined that she would be entitled to benefit at the full standard entitlement rate of £55.65 for each week in which a) she did not work, b) she was available for work, and c) for which she attended the local Jobcentre Plus office at fortnightly intervals to provide evidence that she was still actively seeking work.
5. On 27/05/---- Jenny Thompson attended her local office as requested and informed the local office that she had worked for less than 16 hours in the period ending 20/05/---- and that she had received £21.00 She further declared that in the period ending 27/05/---- that she had worked for less than 16 hours and had earned £26.00.
6. Jenny Thompson's entitlement was then calculated as follows:

weekly rate of entitlement was determined based upon the declaration that she had received £21.00 earnings per week

i) Week ending 20/05/----

Personal Allowance £40.20

Mrs Thompson claimed for 5 days in that benefit week (16/05/---- to 20/05/----) thus

5/7 of £40.20 = £28.72 due.

ii) Week ending 27/05/----	
Personal Allowance	£56.20 Less:
Income from earnings:	£16.00
(1st £5.00 of earnings is disregarded for benefit calculation purposes)	
Total:	£40.20.

7. On 27/05/---- a benefit cheque for the sum of **£68.92** (£28.72 + £40.20) was issued to Jenny Thompson.
 8. On 31/05/---- Jenny Thompson prepared a letter, that she states she posted to the local office on 01/06/----, to dispute the decision that her weekly entitlement was to be paid at the weekly rate of £40.20. She asked for an explanation of this decision. (Page(s) [-])
 9. Coincidentally, on the same day, 31/05/----, the decision maker revised the benefit decision and determined that the correct benefit rate for w/e 20/05/-- -- was £56.20, not £40.20 as previously calculated, and that 5/7 of £56.20 = £40.15. As £28.72 of this sum had already been paid to Jenny Thompson for that week (as shown above), the decision maker determined that she was owed a further £11.43 and this was paid to her on 31/05/---- by bank credit transfer. (Page(s) [-])
- (**Note:** This payment did not take into account any income from earnings for that period.)
10. On 06/06/---- Jenny Thompson reported non-receipt of the £11.43 payment. She noted that the payment notification issued to her, indicated that the payment had been sent to an incorrect bank account, Mrs Thompson offered her correct bank account details again in this letter and asked that a replacement payment was issued to her. She also informed the local office that she had not worked since 19/05/----, as she had declared when she attended the local office on 27/05/----, and she enclosed the payslip she had received later on in the day (27/05/----) for that work. She also again queried the rate of entitlement that had been notified to her in letters sent by the Department to Mrs Thompson on 31/05/----. (Page(s) [-]).
 11. It is noted that the claim records show that the bank account details were corrected and that a replacement for the £11.43 payment was sent to Jenny Thompson on 30/06/----. (Page(s) [-])
 12. As a result of receiving the wage slip and Jenny Thompson's query concerning the rate of entitlement, the benefit decision was looked at again on 17/06/---- and was changed, but not favourably. Jenny Thompson had provided payslips with her letter that showed that her entitlement for the period from 16/05/---- to 27/05/---- should have been calculated as follows:

Example 4

iii) Week ending 20/05/----

Personal Allowance	£56.20	Less:
Income from earnings:	£16.00	

(1st £5.00 of earnings is disregarded for benefit calculation purposes)

Total: £40.20

Mrs Thompson claimed for 5 days in that benefit week (16/05/---- to 20/05/----) thus:

5/7 of £40.20 = £28.72 due.

iv) Week ending 27/05/----

Personal Allowance	£56.20	Less:
Income from earnings:	£21.00	

(1st £5.00 of earnings is disregarded for benefit calculation purposes)

Total due to Mrs Thompson £35.20.

Total due for period 16/05/---- to 27/05/---- is **£28.72 + 35.20 = £63.92**. In consequence, an overpayment of jobseeker's allowance totalling £5.00 was identified but as this had been caused by an official error, Mrs Thompson was not required to repay the overpaid amount. (Page(s) [-])

13. On 22/06/---- Jenny Thompson appealed against this decision. She gave her reasons for appealing as " Please look at all your paperwork sent to me from the beginning of April ----... Income of £21 earned in one week only, cannot pay my rent of £78.01 plus council tax... The Government states that for income-based jobseeker's allowance that rent will be paid. Therefore why is mine not? Plus my Jobseeker's is £56.20 not £40. So why have you said I'm entitled to a lower rate of Jobseeker's Allowance".
14. On 30/06/----, the local office sent a letter to Jenny Thompson to inform her that her jobseeker's allowance award had come to an end after 27/05/---- because she had not attended to sign her declaration after 27/5/----. (Page(s) [-])
15. On 26/07/---- the decision maker sent a letter to explain how the income tax years are used to establish entitlement to the contributions based element of Jenny Thompson's claims (she had subsequently claimed benefit again from 21/07/----) and also to give an explanation as to how payment of Mrs Thompson's income based benefit for May ---- had been calculated. This letter had been sent in response to two further requests for explanation from Mrs Thompson, both of these having been received in the local office on 19/07/----. (Page(s) [-])
16. On 09/08/---- Jenny Thompson sent in a further letter concerning her appeal providing details of her income and of her bank statements from April ---- to support her appeal. (Page(s) [-])

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations:

Applicable amount

1. A person is entitled to income-based jobseeker's allowance if he has no income or his income does not exceed the applicable amount.
Section 3(1)(a) of the Jobseeker's Act 1995

Jenny Thompson is a single person aged not less than 25. In the case of an income-based jobseeker's allowance the applicable amount shall be -

- a) if a claimant has no income, the applicable amount;
- b) if a claimant has an income, the amount by which the applicable amount exceeds his income.

Therefore for any week in which Mrs Thompson does not work she is entitled to a personal allowance of £56.20 a week.

Section 4(3) of the Jobseeker's Act 1995; Regulation 83 of, and paragraph 1(1)(e) of Schedule 1 to, the Jobseeker's Allowance Regulations 1996

Income

2. Earnings derived from employment shall be taken into account from the first day of the benefit week in which they are paid, or the first succeeding benefit week in which it is practicable to take them into account, over a period equal to the length of the period for which they are due to be paid.

Where a payment is treated as paid before the first benefit week and a part is to be taken into account for some days only in that week ("the relevant days"), the amount to be taken into account for the relevant days shall be calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven. It is the net earnings after tax, which is taken into account.

Example 4

The weekly disregard for a single person is £5.00.

Regulations 94, 96, 97 (1)(a) &(4)(b), 98 & 99 and Schedule 6 of the Jobseeker's Allowance Regulations 1996.

3. In accordance with the above regulations, net weekly earnings of £21.00 were paid to Jenny Thompson on 20/05/----. A £5.00 disregard has been applied. Therefore the income to be taken into account from 16/05/---- to 20/05/---- is £16.00.
4. In accordance with the above regulations, net weekly earnings of £26.00 were paid to Jenny Thompson on 27/05/----. A £5.00 disregard has been applied. Therefore the income to be taken into account from 21/05/---- to 27/05/---- is £21.00.
5. I therefore submit that Jenny Thompson is entitled to income-based jobseeker's allowance at the weekly rate of £40.20 (£56.20 - £16.00) from 14/05/---- to 20/05/----. As Mrs Thompson claimed from 16/05/---- and the first period claimed for was for 5 days (16/05/---- to 20/05/----) 5/7ths of £40.20 is due, resulting in an entitlement of £28.70 for that period.
6. I further submit that Jenny Thompson is entitled to income-based jobseeker's allowance at the weekly rate of £35.20 from 21/05/---- to 27/05/----. The total amount to which Mrs Thompson is entitled for the period 16/05/---- to 27/05/---- is £28.70 + £35.20 = £63.92.

Other Matters

7. It is noted that the actual amount paid to Jenny Thompson for the period 16/05/---- to 27/05/---- was £85.35 (£68.92 issued on 27/05/---- + £11.43 issued on 30/06/----). Because the overpayment was made as a result of official error, and because the overpayment is £16.43, within de minimus limits, it has been accepted by the decision maker that Mrs Thompson is not required to repay that sum.
8. In her appeal Jenny Thompson also states that she wishes her claim to be revised from April ----. When Mrs Thompson made her claim, she asked for her claim to be backdated for the period from 25/04/---- to 15/05/----. That request was refused by a decision maker on 27/05/----, and is the subject of a separate appeal to be submitted to the Tribunal.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/>

Example 5

Jobseeker's Allowance – Claimant does not meet the prescribed conditions for a backdated payment

Section 1

Personal details:	Mrs June Delamere 1 Quarry Drive Birmingham B16 8SS
National insurance number:	ZZ000003D
Benefit	Jobseeker's allowance
Date of outcome decision:	9 June ----
Date decision notified:	9 June ----
Date of appeal:	7 July ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [–]			Response
Pages [–]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [–]	[--/--/----]	[--/--/----]	Form JSA5
Pages [–]	[--/--/----]	[--/--/----]	Record of reconsideration
Pages [–]	[--/--/----]	[--/--/----]	Notice of redundancy

Example 5

Section 3 *[either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]*

The decision:

Mrs June Delamere is not entitled to jobseeker's allowance from 18 April ---- to 16 May ---- as she does not meet the prescribed conditions for a backdated payment.

Section 4

The facts of the case:

1. June Delamere is a 31 year old, who claimed jobseekers allowance by completing form JSA 1 on 22 May ----, having enquired about making a claim for jobseeker's allowance on 17 May ----.

Her employment with M G Rover Group had ended on 17 April ----.

2. June Delamere also completed form JSA5 requesting that her claim be backdated from 18 April ---- to 16 May ---- and giving details why her claim was delayed. She stated at page 5 of the JSA 5 that she had not claimed earlier as Price Waterhouse Administrators informed her that during her 8 week statutory notice period that any jobseeker's allowance that she claimed would be deducted from her notice pay. June Delamere also stated that she was actively seeking work during this period and that she did not realise that delaying the claim would impact upon her national insurance situation. She gave details at page 4 of the efforts she had made to find employment during the period in question.
3. The decision maker decided that June Delamere was not entitled to backdated payments for the period 18 April ---- to 16 May ---- as she did not meet the prescribed conditions for not claiming timeously. The period 17 May ---- to 19 May ---- represents "waiting days."
4. In her letter of appeal June Delamere states that she had not claimed earlier as she was not aware of the implications in delaying claiming benefit. Mrs Delamere had an appointment to claim jobseeker's allowance on 27 April --- - but did not attend due to another appointment with a recruitment agency. She booked a further appointment for 4 May ---- but was not able to attend as she contracted tonsillitis. The reason for her appeal is that her mortgage insurance company will only accept the date that she registers at the Jobcentre as the date that she became unemployed.
5. June Delamere's appeal was received on 7 July ----. Another decision maker has looked at the case again but was unable to change the decision in June Delamere's favour.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. The law says that a claim for income support or jobseeker's allowance shall be made in writing on a form approved by the Secretary of State for the purpose of the benefit for which the claim is made.
Regulation 4 (1A), (1B), 1(C), (7A) and (9) of the Social Security (Claims and Payments) Regulations.
2. The law also states that the date of claim for jobseekers allowance shall be the later of the following dates:
 - (i) the first day from which the claimant wishes to claim**or**
 - (ii) the date of the first notification of the intention to claim provided the claimant subsequently attends the arranged appointment at the Jobcentre and hands in a completed form.

If he fails to keep the arranged appointment the date of claim is the date he attends the Jobcentre and hands in a completed claim form.

Regulation 6 (4A), (4AA) and (4AB) and Schedule 4 of the Claims and Payments Regulations

3. The law provides that a claim can be backdated to the first day from which a claimant wishes to claim provided certain conditions as detailed in regulation 19(4) and (7) of the Social Security (Claims and Payments) Regulations are satisfied.

Note: Regulation 19 of the Social Security (Claims and Payments) Regulations is attached at Appendix 1.

4. The claimant's request that her claim be backdated to 18 April ---- was submitted for the consideration of the decision maker. The decision maker considered the claimant's reasons for not having claimed earlier, but decided that, as none of the conditions prescribed in paragraph 5 of regulation 19 applied, backdating could not be allowed. June Delamere's employment with M G Rover Group ended on 17 April ----. She contacted the Jobcentre and arranged a new claim appointment for 27 April ----. Mrs Delamere was unable

Example 5

to attend this appointment as she also had an appointment with a recruitment agency. Mrs Delamere made a new appointment with the Jobcentre for 4 May ----. She was unable to keep this appointment due to illness. Mrs Delamere contacted the Jobcentre on 17 May ---- and completed a JSA1 to claim Jobseekers Allowance on 22 May ----. She completed a JSA5 to request that the time limit for claiming be extended to 18 April ---- stating that Price Waterhouse Administrators informed her that during her 8 week statutory notice period that if she claimed jobseeker's allowance this would be deducted from her notice pay. She states that she was actively seeking work during this period and did not realise the impact of delaying her claim.

Regulation 19(5)(b) of the Claims and Payments Regulations 1987 states that the time limit for claiming can be extended if the claimant was ill, except in the case of a claim for jobseeker's allowance. I therefore submit that regulation 19(5)(b) does not apply in this case. The remainder of the sub-paragraphs (5) and (7) detail specific circumstances where the time limit for claiming can be extended. This is an exhaustive list. I submit that the circumstances described by Mrs Delamere do not comply with any of those described in these sub-paragraphs (see Appendix 1) and ignorance of the law does not constitute a valid reason for extending the time limit for claiming.

I therefore submit that the date of Mrs Delamere's claim is 17 May ---- and that no benefit can be awarded prior to that date.

Access to statute and case law for appellants

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APPENDIX 1

Regulation 19 provides, as far as it is relevant

- (1) Subject to the following provisions of this regulation the prescribed time for claiming any benefit specified in column (1) of Schedule 4 shall be the appropriate time specified opposite that benefit in column (2) of that Schedule.
- (2) ...;
- (3) ...;
- (4) Subject to paragraph (8) {treatment of refugees}, in the case of ...jobseeker's allowance ... **where the claim is not made within the time specified for that benefit in Schedule 4**, the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of three months, to the date on which the claim is made, where -
 - (a) any of the circumstances specified in paragraph (5) applies or has applied to the claimant; **and**
 - (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.
- (5) The circumstances referred to in paragraph (4) are -
 - (a) the claimant has difficulty communicating because -
 - (i) he has learning, language or literacy difficulties; **or**
 - (ii) he is deaf or blind,and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
 - (b) except in the case for jobseeker's allowance, the claimant was ill or disabled, and it was not reasonably practicable for him to obtain assistance from another person to make his claim;
 - (c) the claimant was caring for a person who is ill or disabled and it was not reasonably practicable for him to obtain assistance from another person to make his claim;
 - (d) the claimant was given information by an officer of the Department of Social Security or of the Department for Education and employment which led the claimant to believe that a claim for benefit would not succeed;
 - (e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed;

Example 5

- (f) the claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
 - (g) the claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to obtain assistance from another person to make his claim; or
 - (h) the claimant was prevented by adverse weather conditions from attending the appropriate office.
- (6) In the case of a claim for jobseeker's allowance, where the claim is not made within the time specified for that benefit in Schedule 4, The prescribed time for claiming the benefit shall be extended, subject to a maximum of one month, to the date on which the claim is made, where
- (a) any one or more of the circumstances specified in paragraph (7) applies or has applied to the claimant; and
 - (b) as a result of that circumstance or those circumstances the claimant could not have reasonably been expected to make the claim earlier,
- (7) The circumstances referred to in paragraph (6) are -
- (a) the appropriate office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
 - (b) the claimant was unable to attend the appropriate office due to difficulties with his normal mode of transport and there was no reasonable alternative available;
 - (c) there were adverse postal conditions;
 - (d) the claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the
 - a. date that his entitlement expired;
 - (e) in the case of a claim for family credit...;
 - (f) the claimant had ceased to be a member of a married or unmarried couple within the period of one month before the claim was made; or
 - (g) during the period of one month before the claim was made a close relative of the claimant had died....

Example 6

Income support – Award of Child Tax Credits – Overpayment of income support is recoverable from the claimant

Section 1

Personal details:	Mr Martin Hopton 7A Ballinson Walk Burton-on-Trent DE49 8XY
National insurance number:	ZZ100000C
Benefit:	Income support
Date of outcome decision:	26 January ----
Date decision notified:	26 January ----
Date of appeal:	31 January ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [-]	[--/--/----]	[--/--/----]	A1 claim form (Part)
Pages [-]			Copy of CTC award
Pages [-]			A2 claim (Part)
Pages [-]	[--/--/----]		Decision
Pages [-]		[--/--/----]	Reconsideration request

Example 6

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

Mr Hopton is entitled to a reduced award of income support for the period shown on the attached schedule.

Of £1630.83 already paid to Mr Hopton as income support from 4 April ---- to 31 July ---- (both dates included), £513.42 is to be offset against the arrears of income support now due from 4 April ---- to 31 July ---- (both dates included).

As a result, an overpayment of income support has been made from 4 April ---- to 31 July ---- (both dates included) amounting to £1117.41 as shown on the attached schedule.

On 6 April ----, or as soon as possible afterwards, Mr Hopton failed to disclose the material fact that he was in receipt of child tax credit.

As a consequence, income support amounting to £1117.41 from 4 April ---- to 31 July ---- (both dates included), as detailed on the attached schedule, was paid which would not have been paid but for the failure to disclose.

Accordingly, that amount is recoverable from Mr Hopton.

SCHEDULE:

Period		Benefit		Weekly Amounts			Total
From	To	Weeks	Days	Paid	Payable	Overpaid	
04/04/--	10/04/--	1	0	£92.48	£26.75	£65.73	£65.73
11/04/--	24/07/--	15	0	£96.80	£31.07	£65.73	£985.95
25/07/--	31/07/--	1	0	£86.35	£20.62	£65.73	£65.73
Gross Overpayment							£1117.41

(Note: alternatively the schedule can be included as a document in the bundle, in which case note here that the overpayment schedule is at page [-].)

Section 4

The facts of the case:

1. Mr Hopton claimed income support from 06/03/---- on the grounds that he was incapable of work. He claimed an increase of income support for his partner, Christine Beal and 3 children (pages [-]).
2. On 22/08/---- a scan revealed that Mr Hopton had been awarded child tax credits from 06/04/---- @ £3436 per annum (£9.39 per day). The claim had been made on 06/01/---- and actually paid on 07/08/----. Mr Hopton's income support was adjusted to take account of the child tax credits with effect from 01/08/---- (pages [-]).
3. Mr Hopton separated from his partner on 06/03/---- and moved in with his wife Shirley Hopton. He completed a claim form on 18/03/---- for his wife and 2 children (pages [-]).
4. Income support ceased on 15/04/---- because Mr Hopton had returned to work.
5. The case was referred to a decision maker who on 02/11/---- decided that income support amounting to £1117.41 for the period from 04/04/---- to 31/07/---- would not have been paid but for Mr Hopton's failure to disclose the material fact that he was in receipt of child tax credit. (Page(s) [-])
6. Mr Hopton requested reconsideration on 06/12/----. He stated that he felt that Christine Beal was liable for some of the debt, if not all, as she was living with him at the time of the overpayment, had dealt with all the financial matters and all benefits were paid into her bank account. He stated that the department should have known he was receiving child tax credit as he had claimed for children on his income support claim form. (Page(s) [-])
7. On 26/01/---- a decision maker looked at the case again and changed the reason for recovery of the overpayment, but decided that the overpayment was still recoverable from Mr Hopton.
8. It is against this decision that Mr Hopton now appeals. (Page(s) [-])

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

Example 6

I submit that it would be appropriate for the case to be disposed of without a hearing [note: include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. The law says that :

"(1) Where

- (a) a payment by way of prescribed income is made after the date which is the prescribed date in relation to the payment, and
- (b) it is determined that an amount which has been paid by way of income support would not have been paid if the payment had been made on the prescribed date,

the Secretary of State shall be entitled to recover that amount from the person to whom it was paid".

Section 74(1) of the Social Security Administration Act 1992

2. The law also says that the prescribed income and prescribed date for the purposes of Section 74(1) are defined in regulation 7 of the POR Regulations as:

"7-(1) For the purposes of section 74(1) of the Act (recovery of amount of benefit awarded because prescribed income not paid on prescribed date), a person's prescribed income is income required to be taken into account in accordance with Part V of the Income Support Regulations.

(2) The prescribed date in relation to any payment of income prescribed by paragraph (1) is:

- (a) where it is made in respect of a specific day or period, that day or the first day of the period
- (b) where it is not so made, the day or the first day of the period to which it is fairly attributable".

3. The decision maker determined that -

- i. child tax credit is a prescribed income under regulation 7(1) of the POR Regulations.
- ii. the arrears of child tax credit were paid after the prescribed date as defined in the regulation 7(2) of the POR Regulations; the prescribed dates being 04/04/---- to 31/07/----.
- iii. the amount the Secretary of State is entitled to recover from the claimant is £1117.41.
- iv. the amount in iii. above is the sum that has been paid by way of income support which would not have been paid if the prescribed income had been made on the date at ii. above".

4. In his appeal Mr Hopton states that the overpayment is an administrative error and that a portion of the debt should be allocated to Christine. However, I submit that there is no evidence of any administrative error and since prescribed income is defined in regulation 7 of the POR Regulations, the Secretary of State is entitled to recover the amount overpaid. Further, there is no provision to allow recovery from the “other member” of a married or unmarried couple. Thus, the Secretary of State is entitled to recover the overpayment from Mr. Hopton as income support was payable to him.

Access to statute and case law for appellants

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Example 7

Income-based jobseeker's allowance – Capital in excess of the limit – Overpayment of income-based jobseeker's allowance is recoverable from the claimant

Section 1

Personal details: Miss Carol Kinder
48 Foxhall Rise
Coventry
CV94 1QU

National insurance number: ZZ100001C

Benefit: Income-based jobseeker's allowance

Date of outcome decision: 04/10/----

Date decision notified: 12/11/----

Date of appeal: 17/11/----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	Letter of appeal
Pages [-]			Original award decision
Pages [-]			Supersession decision
Pages [-]	[--/--/----]		Original disallowance decision
Pages [-]	[--/--/----]	[--/--/----]	Overpayment decision

Example 7

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Extract of JSA1 claim form
Pages [-]	[--/--/----]	[--/--/----]	Claimant's statement
Pages [-]	[--/--/----]	[--/--/----]	Sister's bank statement
Pages [-]	[--/--/----]	[--/--/----]	Sainsbury's bank statement
Pages [-]	[--/--/----]	[--/--/----]	Nationwide pass-book
Pages [-]	[--/--/----]		Record of reconsideration
Pages [-]			Schedule 8 – JSA Regs 1996

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

I have revised the decision dated 22/09/---- awarding income-based jobseeker's allowance from and including 31/08/----. This is because Miss Carol Kinder has capital in excess of the limit of £16,000.

As a result of this decision, an overpayment of income-based jobseeker's allowance has been made from 31/08/---- to 10/11/---- (both dates included) amounting to £562.12, as shown on the schedule.

On 28/08/----, on form JSA1, Miss Carol Kinder misrepresented the material fact that she had capital in excess of the capital limit of £16,000.

As a consequence, income-based jobseeker's allowance amounting to £562.12 from 31/08/---- to 10/11/---- (both dates included), as detailed on the schedule, was paid which would not have been paid but for the misrepresentation.

Accordingly, that amount is recoverable from Miss Carol Kinder.

SCHEDULE:

Period		Benefit		Weekly Amounts			
From	To	Weeks	Days	Paid	Payable	Overpaid	Total
31/08/----	01/09/----	0	2	£54.65	£00.00	£54.65	£15.62
02/09/----	10/11/----	10	0	£54.65	£00.00	£54.65	£546.50
Gross Overpayment							£562.12

(Note:

a) alternatively the schedule can be included as a document in the bundle, in which case note here that the overpayment schedule is at page [-];

b) *when calculating the amount of the **recoverable** overpayment in “Capital” cases the DM should always consider whether the “diminishing capital rule should be applied.)*

Section 4

The facts of the case:

1. Miss Kinder is a 29 year old single woman living with her parents. She ceased an NVQ course in March ----. On 02/09/---- she claimed income-based jobseeker’s allowance from 28/08/---- by completing form JSA1. She stated on the claim she hadn’t worked in the 12 months before the claim and was supported by her parents. Income-based jobseeker’s allowance was awarded from and including 31/08/---- by a decision dated 22/09/---- (page(s) --).
2. As a result of a computer scan of building society and bank accounts it came to light that Miss Kinder had a building society account and a bank account which together exceeded £16,000. Neither of these accounts had been declared on the JSA1 claim form that Miss Kinder had completed (page(s) [-]).

At the date of the claim – 31/08/---- – she had £10,143 in a Nationwide Building Society account and £6352 in a Sainsbury’s bank account (page(s) [-]).

3. She was interviewed and gave a statement saying that she did not regard the £10,143 in the Nationwide Building Society account as being available to her as her parents had deposited the money in her name, for her use, when she marries.

The Sainsbury’s bank account containing £6352 as at 31/08/---- was built up over some years by payments made by Miss Kinder’s sister. The money was intended for her to use during her student years as and when she needed it. In practice her mother held the pass book for her and updated it from time to time.

The facts were put to a decision maker who decided that Miss Kinder was not entitled to income-based jobseeker’s allowance because her capital exceeded £16,000. An overpayment of benefit occurred amounting to £562.12 which the decision maker required to be repaid by Miss Kinder.

4. In her letter of appeal Miss Kinder states that she doesn't agree with decision as she didn't accept the money was hers. Following the disallowance decision she states she returned the money to her parents and sister (page(s) [-]).

Another decision maker has looked at the case again but was unable to change the decision in Miss Kinder’s favour. (page(s) [-]).

Example 7

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

The jobseeker's allowance entitlement decision

1. The law says that no person shall be entitled to an income-based jobseeker's allowance related benefit if his capital or a prescribed part of it exceeds the prescribed amount of £16,000.

Section 13(1) of the Jobseekers Act 1995

Regulation 107 (a) of the Jobseekers Allowance Regulations 1996

2. Regulation 108(1) provides as far as it is relevant that the capital of a claimant to be taken into account shall, subject to paragraph (2), be the whole of his capital calculated in accordance with this Part and any income treated as capital.

Regulation 108(2) provides that there shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 8 (page(s) [-]).

3. Previous Commissioner's decisions have ruled that the mere fact that a bank or building society account is in the claimant's name alone, does not mean that it belongs to the claimant. It is "beneficial ownership" which matters. The claimant may hold the asset under a trust, which means that he or she cannot simply treat that asset as his, but must treat it as if it belonged to the beneficiary or beneficiaries under the trust. It is they who are "beneficially entitled". The most common circumstances in which this occurs is during the division of former matrimonial assets.

In this case all of the money was under Miss Kinder's control and no other party was involved. The "wedding money" was not repayable to her parents and was not, at the date of the claim, needed to be used for the purpose it was gifted to her. In decision R(IS) 5/99 The Court of Appeal held that - money that the claimant was under "a certain and immediate liability" to repay did not amount to income. The same principal applies to capital. The money paid by her sister was a straightforward gift, which she chose not to use - or had forgotten about.

4. I submit that the questions for determination by the tribunal are as follows:

(1) What capital does the claimant possess?

The claimant has total savings of over £16,000 in the Nationwide Building Society and Sainsbury's bank. There is no indication she has any other capital.

(2) Is there any provision in Schedule 8 to disregard any part of this capital?

A copy of Schedule 8 is attached to this response. I submit that there is no provision to disregard any part of the capital.

The total value of the claimant's capital is therefore £16,495 I would submit that the money she held should all be taken into account as it was all hers, and there was no immediate or imminent requirement on her to have to use that money to enable it to be treated as held in trust.

As this exceeds the prescribed level of £16,000 applicable in this case, the claimant is not entitled to income based jobseekers allowance in accordance with Section 13(1) of the Act.

5. If the Tribunal decides that the claimant's capital is less than the prescribed level appropriate findings of fact should be made.

The overpayment decision

1. The law states that where any person, either fraudulently or otherwise, misrepresents, or fails to disclose, any material facts which results in an overpayment of benefit - the Secretary of State is entitled to recover the amount of the overpayment, providing the benefit award has been revised or superseded.
Section 71(1) and (5A) of the Social Security Administration Act 1992.
2. In the present case I submit that a supersession of the original award of income-based jobseeker's allowance has taken place and that evidence of this is shown at page(s) --. (**NB.** If this evidence is in the form of a computer printout, this should be accompanied by an explanation of its contents).
3. The law also states that the amount of the overpayment and period over which it occurred is also to be determined by the Secretary of State.
Section 71(2) of the Social Security Administration Act 1992.
4. In the present case, the amount and period of the overpayment is detailed in the Schedule in Section 3 above.
5. The law goes on to say that the amount determined to be recoverable by the Secretary of State can in all cases be recovered from the person who misrepresented the material fact or failed to disclose it.
Section 71(3) of the Social Security Act 1992.

Example 7

6. Claim form JSA1 contains a section which requires the claimant to supply details of any money held in building society or bank accounts, savings and property. In the present case the evidence is that when completing form JSA1, Miss Kinder misrepresented the material fact that she held money to the value of £10,143 in a Nationwide Building Society account and £6352 in a Sainsbury's bank account. I therefore submit that the overpayment of income-based jobseeker's allowance amounting to £562.12 is recoverable from Miss Kinder.
7. Miss Kinder has said that she doesn't accept the money as hers. However, in R(SB) 2/92 the Commissioner rejected the argument that Section 53(1) of the Social Security Act 1986 (now section 71 of the Administration Act) does not catch innocent misrepresentation. The Court of Appeal dismissed an appeal from this decision (**Page and Davis v Chief Adjudication Officer** - see appendix to R(SB) 2/92) They held that the wording of Section 53(1) was unambiguous and covers innocent as well as fraudulent misrepresentation.
8. I submit that the questions for determination by the tribunal are as follows:
- (1) Did Miss Kinder misrepresent the material fact that she has capital of over £16000?**
- I submit it is not in dispute that she did. The relevant box on the JSA 1 claim form dated 28/08/---- was completed to show an account that was £831 overdrawn (page [-]) - there no reference to the other two accounts holding £16,495.
- (2) Has income-based jobseekers allowance been paid that would not have been paid but for the misrepresentation?**
- I submit that no income-based jobseeker's allowance would have been paid if the misrepresentation had not occurred. The level of her savings was such that no applicable amount was payable for her.
- (3) Does the absence of any intent to mislead on Miss Kinder part have any bearing?**
- I submit not, although it is accepted that she did not intend to mislead, the wording of section 71(1) of the Administration Act is plain and unambiguous and covers innocent as well as fraudulent misrepresentation.
9. I therefore submit that the overpayment of income based jobseeker's allowance from 31/8/---- to 10/11/---- (both dates included) amounting to £562.12, as detailed in the attached schedule (page [-]), is recoverable from Miss Kinder.

Access to statute and case law for appellants

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May 2011 - Amendment 11

Example 8

Income support – Claimant’s income exceeds the applicable amount

Section 1

Personal details: Mr John Deed
 19 Denby Street
 Wolverhampton
 WV22 19QX

National insurance number: ZZ100001D

Benefit: Income support

Date of outcome decision: 15 February ----

Date decision notified: 15 February ----

Date of appeal: 24 February ----

Decision maker’s name and address:

Name and address of the decision maker’s representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [–]			Response
Pages [–]	[--/--/----]	[--/--/----]	Letter of appeal
Pages [–]	[--/--/----]	[--/--/----]	Form MI 12
Pages [–]	[--/--/----]		Form A6
Pages [–]	[--/--/----]	[--/--/----]	Disablement details
Pages [-]		[--/--/----]	Record of reconsideration

Example 8

Section 3 *[either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]*

The decision:

Mr John Deed is not entitled to income support from 7 June ---- because his income exceeds his applicable amount.

Section 4

The facts of the case:

1. Mr Deed claimed income support on 7 June ----. He is aged 55 and divorced.
2. Mr Deed claimed income support on 7 June ----, he is unable to work due to sickness. He receives incapacity benefit of £66.15 from 19 September ----, industrial injuries benefit of £24.02 and an occupational pension from Rolls Royce of £36.97, all weekly figures.

His home was remortgaged with Halifax PLC on 10 September 2003, he borrowed £40,000; £30,000 was to buy the dwelling occupied as the home, the balance was spent as follows:

£3,200 for a central heating system, he replaced old electric storage heaters with gas central heating;

£2,000 for a kitchen and bathroom upgrade, he confirmed by phone that the existing bath was cracked and the toilet leaked, the cost of the bathroom including plumbing and installation was £1,000, the kitchen was upgraded;

£1,000 on wood flooring, the existing carpets were worn and were replaced with wooden flooring;

£1,400 to relocate his daughter and grand-daughter.

3. The decision maker decided that interest was to be allowed on the £30,000 to buy the dwelling occupied as the home and £1,000 for the bathroom work. There was no entitlement to income support as his income exceeded the applicable amount.
4. In letter of appeal the Mr Deed states that the re-mortgage was for improvements that were greatly needed, the bath and heating system needed replacing due to his disability and health. The clerical records show that Mr Deed has been assessed for disablement benefit purposes as being 14% disabled due to impaired function of both knees and impaired mood.
5. A decision maker has reconsidered the decision but was unable to change it in Mr Deed's favour.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations

1. Section 124 (4) (b) of the Contributions and Benefits Act provides that if a person is entitled to income support if he has income the amount shall be the difference between his income and the applicable amount.
2. Regulation 17 (1) of the Income Support (General) Regulations provides that, subject to regulations 18 to 22A and 70 (applicable amounts in other cases and reductions in applicable amounts and urgent cases) a claimant's weekly applicable amount shall be the aggregate of such of the following amounts as may apply in this case:
 - (e) any amounts determined in accordance with Schedule 3 (housing costs) which may be applicable to him in respect of mortgage payments or such other housing costs as are prescribed in that Schedule.
3. Paragraph 16 of Schedule 3 to the Income Support (General) Regulations 1987 provides the circumstances in which help can be given for "loans for repairs and improvements to the dwelling occupied as the home".

In this paragraph "repairs and improvements" means major repairs necessary to maintain the fabric of the dwelling occupied as the home and any of the following measures undertaken with a view to improving its fitness for occupation -

- (a) provision of a fixed bath, shower, wash basin, sink or lavatory, and necessary associated plumbing, including the provision of hot water not connected to a central heating system;
- (b) repairs to existing heating systems
- (c) damp proofing measures;
- (d) provision of ventilation and natural lighting;
- (e) provision or improvement of drainage facilities;
- (f) provision of facilities for storing, preparing and cooking food;
- (g) provision of insulation of the dwelling occupied as the home;

Example 8

- (h) provision of electric lighting and sockets;
 - (i) provision of storage facilities for fuel and refuse;
 - (j) repairs of unsafe structural defects;
 - (k) adapting a dwelling for the special needs of a disabled person; or
 - (l) provision of separate sleeping accommodation for children of different sexes aged 10 or over who are part of the same family as the claimant, but under age 20.
4. The costs of the bathroom are allowable, the condition of the existing facilities was such that provision of new facilities was necessary to maintain the property's fitness for human habitation. The upgrade of the kitchen would appear to be purely cosmetic.
5. The central heating system has not been allowed as the regulation specifies repairs to an existing system, not as in this case the provision of a new system.
6. There is no provision at all to allow the money given to his daughter nor the replacement of carpets with wooden flooring.

The total allowable is therefore the original £30,000 to purchase the property and £1,000 for the bathroom.

7. In his appeal Mr Deed says that other items should be allowed because of his health and disability. There is no evidence that his level of disability, classed as 14 per cent for disablement benefit purposes, means that the dwelling was adapted for the special needs of a disabled person.
8. It is further submitted that even if all the loan was allowed there would still be no entitlement to income support.

Mr Deed's applicable amount from 6 September ----, when housing costs would have become payable, is £93.39 (comprising the personal allowance of £55.65 and housing costs of £37.74). His total income is £127.14. Allowing the balance of the loan less the money for the daughter would add approximately £6.00 to the applicable amount. This is still insufficient to make income support payable.

9. I therefore finally submit that Mr Deed is not entitled to income support, either from the date of claim, 7 June ---- or from 6 September ---- when housing costs would have become payable.

Access to statute and case law for appellants

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Example 9

Incapacity credits – Disallowance of national insurance credits because claimant failed (subsequent) personal capability assessment

Section 1

Personal details: Mr Joseph Sinclair
117 Poole Crescent
Dorchester
DT3 9ZY

National insurance number: ZZ000004A

Advantage: National insurance credits

Date of outcome decision: 21/01/----

Date decision notified: 24/01/----

Date of appeal: 28/01/----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Name and address of claimant's representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	21514 decision
Pages [-]	[--/--/----]	[--/--/----]	Appeal letter
Pages [-]	[--/--/----]	[--/--/----]	Med 3
Pages [-]	[--/--/----]		IB 50
Pages [-]	[--/--/----]	[--/--/----]	IB 85
Pages [-]	[--/--/----]		Reconsideration
Pages [-]	[--/--/----]		Score sheet

Appendix 7

Example 9

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]		Record of previous appeal hearing with scores
Pages [-]			IB 85
Pages [-]	[--/--/----]	[--/--/----]	Score sheet prior to previous appeal
Pages [-]	[--/--/----]		Request for rework of IB 85
Pages [-]	[--/--/----]		Reply to request for rework of IB 85
Pages [-]	[--/--/----]	[--/--/----]	Reconsideration
Pages [-]			Full list of descriptors
Appendix 1			

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

I have superseded the decision of the decision maker dated 19/01/---- awarding national insurance credits from and including 19/01/---- this is because there has been a relevant change of circumstances. A report has been received from an approved health care professional following an examination on 17/01/---- and I have determined that the claimant no longer satisfies the personal capability assessment and can no longer be treated as incapable of work.

To satisfy the personal capability assessment you need to reach 15 points from physical descriptors, 10 points from mental health descriptors or 15 points using a combination of physical and mental health descriptors.

The points were as follows:

physical health descriptors: 6

mental health descriptors: 0

total score: 6.

Therefore Mr Sinclair is found to be capable of work and no longer entitled to national insurance credits from and including 21/01/----.

Section 4

Facts of the case

1. Mr Sinclair became incapable of work on 19/01/---- and the cause of incapacity was certified as eye condition/low back pain. National insurance credits have been awarded on account of this incapacity from and including 19/01/----.
2. The test of incapacity for work in respect of Mr Sinclair from and including 19/01/---- is the personal capability assessment (PCA).
3. Mr Sinclair had previously been examined for the purposes of the PCA on 12/06/----. On 20/06/---- it was decided that the claimant was incapable of work as he had attained a total score of 18 points for the physical descriptors, namely, sitting, rising from sitting, bending or kneeling and carrying (Page(s) [-]).
4. On 01/12/---- Mr Sinclair completed an incapacity for work questionnaire on which he described how his condition affected his performance of certain day-to-day activities. (Page(s) [-]).
5. On 17/01/---- Mr Sinclair was examined by an approved health care professional (HCP) in respect of the PCA. The HCP confirmed the diagnosis of cataract – right eye, eye problem - left eye and back pain, stated the prescribed medication and noted any hospital treatment within the last 12 months. The HCP commented on his ability to perform the prescribed physical activities having regard to his disabilities. (Page(s) [-]).
6. The decision maker considered all the available evidence and decided that Mr Sinclair did not attain a total score of 15 points for the physical descriptors. The decision maker determined that he did not reach the threshold of incapacity under the PCA and then decided that Mr Sinclair was not entitled to national insurance credits he was no longer incapable of work. Accordingly national insurance credits were disallowed from and including 21/01/----. An explanation was given to Mr Sinclair.
7. Mr Sinclair has appealed against the decision that he is no longer entitled to national insurance credits. In his letter of appeal Mr Sinclair states that he is still incapable of work as he still has difficulties in relation to sitting, rising from sitting, bending or kneeling and carrying (Page(s) [-]). No additional medical evidence has been supplied.
8. On receipt of the appeal the decision was reconsidered by a different decision maker, but was not changed. A record of the reconsideration is at page(s) [-].
9. The issue before the Tribunal is whether Mr Sinclair is incapable of work from and including 21/01/----.

Example 9

Section 5

The decision maker's response:

1. The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

The disputed decision was made in accordance with the following Acts and Regulations.

2. The law says that a claim for, or an award of, benefit or credits is subject to the condition that the person satisfies the requirements for entitlement, and where those requirements for entitlement were in fact not, or are no longer, satisfied the award may be revised or superseded.

Section 10 Social Security Act 1998

Regulation 6 Social Security and Child Support (Decisions and Appeals) Regulations 1999

Regulation 17(4) Social Security (Claims and Payments) Regulations 1987

3. The law says that at the outset of a claim the burden of proving incapacity rests with the claimant. After an award has been made the decision maker has to show that the claimant has ceased to qualify for the benefit.

R (S) 13/52; R (S) 13/54; R (S) 3/90

4. The law states that entitlement to national insurance credits depends on incapacity for work.

Social Security Contributions and Benefits Act 1992, section 30A

5. The law says that when the own occupation test is not applicable or has ceased to apply, the test of incapacity is the PCA. The test can be treated as satisfied until it is assessed providing certain conditions are met. The PCA applies to Mr Sinclair from 19/01/---- because he had not been, or would not normally have been, engaged in an occupation (for payment or expectation of payment) for 16 hours or more a week for more than 8 weeks in the 21 weeks preceding 19/01/----.

Social Security Contributions and Benefits Act 1992, sections 171B and 171C (1) and (3)

Social Security (Incapacity for Work) (General) Regulations, regulation 28

6. The law says that where the question of whether a person is capable or incapable of work arises under the PCA, a person can be treated as incapable of work if they are in receipt of certain benefits, or have prescribed medical conditions.

These are:

- A person in receipt of the highest rate care component of disability living allowance;
- An increase of disablement pension for constant attendance which is greater than the lower rate or at the higher rate for forces;
- Constant attendance allowance or an increase of constant attendance allowance for civilians;
- A person who is 80% disabled and entitled to industrial injuries disablement benefit, war disablement pension or disablement pension under the personal injuries civilian scheme;
- A person for whom there is evidence which establishes not less than 80% disability for severe disablement allowance;
- A person who has a progressive disease whose death in consequence of that disease can reasonably be expected within six months;
- A person who is registered as blind in a register compiled by a Local Authority or, in Scotland, has been certified as blind in a register maintained by or on behalf of a regional or islands council;
- A person who has tetraplegia, persistent vegetative state, dementia, paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- A person for whom there is medical evidence of a severe learning disability;
- A severe and progressive neurological or muscle wasting disease;
- An active and progressive form of inflammatory polyarthritis;
- A progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
- Dense paralysis of the upper limb, trunk and lower limb on one side of the body;
- Multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory, and intellectual deficits;
- Manifestations of severe and progressive immune deficiency states characterized by the occurrence of severe constitutional disease, opportunistic infections or tumour formation;
- A severe mental illness involving the presence of mental disease which severely and adversely affects a person's mood or behaviour and which severely restricts their social functioning or awareness of their immediate environment.

7. Mr Sinclair does not satisfy any of the above conditions for being exempt from the PCA.

Social Security (Incapacity for Work) (General) Regulations, regulation 10

Example 9

8. The law defines the PCA as an assessment of the extent of a person's incapacity, because of some specific disease or bodily or mental disablement, to perform prescribed activities (include full list of all descriptors – pages[-]). Points are assigned to each of the descriptors in each of the prescribed activities. A total of at least 15 points for physical disability descriptors or at least 10 points from mental disability descriptors or at least 15 points for combined physical and mental disability descriptors has to be reached.

Social Security Contributions and Benefits Act 1992, section 171C(2)(a)(b)

Social Security (Incapacity for Work) (General) (Regulations), regulations 24 and 25 and Schedule

9. When deciding a person's total points the following modifications are considered:
- (a) where both physical and mental descriptors are involved:
 - (i) an aggregate score of between 6 and 9 points from the mental disability descriptors is treated as 9 points when added to the points from the physical descriptors.
 - (ii) an aggregate score of less than 6 points from the mental disability descriptors is disregarded.
 - (b) If descriptors from walking and walking up and down stairs both apply the higher descriptor only is counted.
 - (c) when calculating the points from the mental disability descriptors, the points from each descriptor are included.

Social Security (Incapacity for Work) (General) Regulations, regulation 26

10. The HCP exercises clinical judgment after considering all of the available evidence to reach his opinion as to the nature, severity and the effects that the claimant's condition has on his ability to perform the various functions of the PCA. He takes into consideration the possible variability of the claimant's condition, the claimant's ability to repeat functions with reasonable regularity and the effects of the condition over a period of time, so that his report reflects the situation on a typical day and is not merely a snapshot of the condition on the day of the examination. I submit that the functional assessment of the HCP takes into account the claimant's own evidence, obtained from the IB50 and the statement given at the time of the assessment, as to how the claimant copes with the prescribed physical activities in his day to day life, a typical day, neither good or bad, but an average day, taking into account the variability of symptoms, pain and fatigue.

11. In this case both Mr Sinclair and the HCP have assessed how his disabilities affect the way he performs day-to-day activities. There was agreement that there were no problems in the following activities:

manual dexterity; reaching; speech; remaining conscious during waking moments and continence.

The HCP did not agree with the following descriptors where Mr Sinclair indicated that he has problems and therefore fall to be considered in this appeal:

sitting; rising from sitting; bending or kneeling; standing; walking; walking up and down stairs; lifting and carrying; vision and hearing.

There were no mental health problems claimed, or found at the examination.

12. The decision maker considered Mr Sinclair's description of a typical day and the clinical findings obtained during the examination and concluded, in relation to the descriptors put in issue in the grounds of appeal, that

sitting

(full argument for the decision maker's choice for a particular descriptor is required)

rising from sitting

(full argument for the decision maker's choice for a particular descriptor is required here)

bending and kneeling

(full argument for the decision maker's choice for a particular descriptor is required here)

standing

(full argument for the decision maker's choice for a particular descriptor is required here)

walking

(full argument for the decision maker's choice for a particular descriptor is required here)

walking up and down stairs

(full argument for the decision maker's choice for a particular descriptor is required here)

lifting and carrying

(full argument for the decision maker's choice for a particular descriptor is required here)

Example 9

vision

(full argument for the decision maker's choice for a particular descriptor is required here)

hearing

(full argument for the decision maker's choice for a particular descriptor is required here)

13. The law says that a decision awarding national insurance credits, where there has been an incapacity determination (whether before or after the decision) that the claimant is incapable of work, can be superseded on a relevant change of circumstances. In this case a new determination was made, following the receipt of medical evidence from an approved HCP, that the claimant was not incapable of work as a result of the application of the PCA.

Social Security and Child Support (Decision and Appeals) Regulations, regulation 6(2)(g)

14. Case law says that uncorroborated evidence from the claimant can be accepted unless it is self contradictory or improbable. However, the presence or absence of any supporting medical evidence may be relevant when considering the credibility of the claimant's evidence. The decision maker has to consider all the evidence and is not bound to follow a particular doctor's opinion on the descriptors. Medical opinions on incapacity are not conclusive and can be rebutted by contrary, direct or other circumstantial evidence. When there is conflicting evidence the decision maker has to decide on a balance of probabilities which opinion is correct.
R(I) 2/51; R (SB) 33/85; R(S) 1/53; R(S) 4/60; R(S) 4/56; CIB/5794/97
[note: a copy of any quoted unreported decisions should be included in the papers]

15. In the present case, Mr Sinclair has not provided any further supporting medical evidence.

16. The law says that a person who is not incapable of work in accordance with the PCA shall be treated as incapable of work if:

- (a) he is suffering from a previously undiagnosed potentially life-threatening condition; or
- (b) he suffers from some specific disease or bodily or mental disablement and, because of this, there would be a substantial risk to the mental or physical health of any person if he were found to be capable of work; or
- (c) he suffers from a severe uncontrolled or uncontrollable disease; or
- (d) he will, within three months from the date on which he was examined by an approved doctor, have a major surgical operation or other major therapeutic procedure.

Social Security (Incapacity for Work) (General) Regulations 1995, regulation 27

17. I submit that the available evidence does not show that any of the exceptional circumstances apply in this case.
18. I submit that the decision maker has discharged the onus of proof in deciding that Mr Sinclair is not incapable of work and cannot be treated as incapable of work. The decision awarding national insurance credits was therefore, in my response, correctly superseded. The claimant is not entitled national insurance credits from and including 21/01/----. This is the date the decision maker decided that incapacity for work question.
19. I would finally submit that, the law states that the Tribunal can only consider the claimant's circumstances as at the date of the decision under appeal. It must not take into account anything that has happened since.
Social Security Act 1998 section 12(8)(b)

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Example 10

Disablement benefit appeal – disallowance of IIDB because an earlier assessment of disablement has not been increased

Section 1

Personal details: Mr Jeremy Butcher
15 Hazlebank Walk
Leeds
LS17 4HR

National insurance number: ZZ000001A

Benefit: Industrial injuries disablement benefit

Date of outcome decision: 9 September ----

Date decision notified: 10 September ----

Date of appeal: 16 September ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	The letter of appeal
Pages [-]	[--/--/----]	[--/--/----]	Previous disability assessments
Pages [-]	[--/--/----]	[--/--/----]	Record of reconsideration
Pages [-]	[--/--/----]	[--/--/----]	Report from doctor

Example 10

Section 3 *[either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]*

The decision:

This decision is given in respect of Jeremy Butcher's claim for industrial injuries disablement benefit.

You are not entitled to industrial injuries disablement benefit. This is because I am satisfied there has been no relevant change of circumstances since the decision of the medical appeal tribunal of 7 August 1991 which decided that the assessment of disablement was 5% for life from 11.12.90 onwards.

Section 4

Facts of the case:

1. Jeremy Butcher is a 53 year old man who was working as a fitter on 7 December 1982 when, in a pressurised room, the pressure rose quickly and damaged the hearing in his left ear.
2. On 27 October 1989 he claimed Industrial Injuries Disablement Benefit as a result of that accident.
3. The following assessments for the 1982 accident have been made in this case

Date	Assessment	From - To	Provisional/Final	AMA/MAT/MA
20.6.1990	2%	10.12.1982 - life	Final	AMA
07.8.1991	5%	11.12.1990 - life	Final	MAT

4. On 12.9.91 the Adjudication Officer decided Jeremy Butcher was not entitled to industrial injuries disablement benefit as the disablement was assessed at less than 14% and remained at 5%.
5. On 30 April ---- Jeremy Butcher applied for a supersession stating his hearing had deteriorated and the tinnitus had worsened since 1989 when he first made his claim. But he did not give a specific date from which his condition had changed. In support of his application he submitted a report from Dr Ward, a specialist in hyperbaric medicine dated 22.4.1997. [pages -].
6. Following analysis of the audiometric test carried out on 23 July ----, Jeremy Butcher was examined by a medical adviser on 23 August ---- who reported that there had been no changes in the effects of the accident since the assessment of 7 August 1991 was made. [pages -]

7. On 9 September ---- after considering all the evidence and, in particular, the audiometric test of [--/--/----] and the report of the medical adviser dated [--/-/----], the decision maker decided that the assessment of 7 August 1991 should not be superseded as there had not been a relevant change of circumstances. The assessment of disablement remains at 5% and industrial injuries disablement benefit is disallowed. [pages –]
8. Mr Butcher appealed against the decisions on 16 September ---- as he believes as he is only 53 years his hearing should not have deteriorated to such a great extent, so the deterioration must be due to the 1982 accident. He provided no further medical evidence in support of his appeal. [pages –]

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

1. The issue before the tribunal is whether or not there were grounds to supersede the decision of 7 August 1991 to give a 5% life assessment in respect of the industrial accident of 7 December 1982. And, if so, whether the extent of disablement is sufficient to award industrial injuries disablement benefit.
2. There is no evidence of any worsening of the claimant's hearing loss due to the accident. I submit, therefore, that there are no grounds for supersession and the decision of 9 September ---- not to supersede was correct. This is because the evidence considered by the decision maker from medical advisers, who are specially trained in disability assessment, supports the finding that there has been no worsening of the condition.
3. The evidence provided by Mr Butcher in support of his application for a worsening in his condition is a report from his specialist written in 1997. Having considered all the available evidence, I submit that the most up to date evidence available to the decision maker was that provided by Medical Services on 23 August ----, and therefore it was reasonable for the decision maker to prefer that evidence.

Example 10

The disputed decision was made in accordance with the following Acts and Regulations -

4. The law says that a decision can be superseded if there is a relevant change of circumstances since the decision had effect, or not superseded if there has been no change.
Section 10 Social Security Act 1998
Regulation 6(2) Social Security and Child Support (Decisions and Appeals) Regulations 1999
Court of Appeal in Wood v Secretary of State for Work and Pensions.

5. A relevant change of circumstances is a change which happens after the original decision was made. It must be of sufficient substance and must alter the assessment of disablement even if the end result does not alter the amount of benefit payable. A change of medical opinion is not of itself a relevant change of circumstances. But further medical opinion may contain evidence of a change of circumstances.

6. Where it is accepted that there has been a change of circumstances and that the earlier decision should be superseded the effective date is dependent on the following –

If the decision is advantageous and the notification of the change was received within one month of the change, the effective date will be the date of change. The period of one month can be extended up to a maximum of thirteen months where there are special circumstances for a late notification of change. Otherwise the effective date will be the date the application was received.

Section 10(5) of the Social Security Act 1998
Regulations 7 and 8 of the Social Security and Child Support [Decisions and Appeals] Regulations 1999

7. On 30 April ---- Mr. Butcher reported a worsening of his condition. He did not indicate from which date his condition had changed.
8. If the tribunal find that there has been a relevant change of circumstances it should identify what the change is and the date it occurred and determine the date the change takes effect. If the tribunal consider that the level of disablement is 14% or more the assessment may be either provisional or final. If it decides a figure less than 14% the award will be final unless there is an existing assessment of disablement which can be added to the present one which would increase it to 14% or more.
9. There are no existing assessments, other than those referred to in paragraph 3 above, in this case.
Schedule 6 paras 6 & 7 of the Social Security Contributions and Benefits Act 1992.

10. If the tribunal assess disablement at different percentages for different parts of the period the provisions of paragraph 6 and 7 of Schedule 6 can only apply to the latest part of the assessment if it is less than 14%.
Schedule 6 para 6[5] Social Security Contributions and Benefits Act 1992.

11. If the tribunal make a decision which attracts payment of benefit it is asked to refer the question of weekly entitlement to the SofS for determination, with the proviso that if there is any dispute the case should be returned to it for resolution.
Part V to Schedule 4 Social Security Contributions and Benefits Act 1992.

Access to statute and case law for appellants

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Example 11

Disabled living allowance – disallowance of renewal claim

Section 1

Personal details:	Mr John Simpson 100 Milngavie Drive Leeds LS99 0AA
National insurance number:	ZZ000001A
Date of birth at renewal: (Age 16)	22 July ---- <i>[note - the effective date of renewal in this case was the claimant's 16th birthday]</i>
Recipient:	Miss Doreen Astles
Benefit:	Disability living allowance
Effective date of renewal:	22 July ----
Date of outcome decision:	3 July ----
Date decision notified:	3 July ----
Date of appeal:	25 July ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Documents relating to previous award
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	Appeal letter from Miss Astles

Example 11

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Renewal claim
Pages [-]	[--/--/----]	[--/--/----]	Renewal decision
Pages [-]	[--/--/----]	[--/--/----]	Renewal claim
Pages [-]	[--/--/----]	[--/--/----]	Medical report from hospital
Pages [-]	[--/--/----]	[--/--/----]	Notification of the decision made on 03/07/----
Pages [-]	[--/--/----]	[--/--/----]	Screen prints
Pages [-]	[--/--/----]	[--/--/----]	Request for reconsideration
Pages [-]	[--/--/----]	[--/--/----]	Notification of the decision made on 01/09/----
Pages [-]	[--/--/----]	[--/--/----]	Screen prints

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

This decision is given in respect of John Simpson's renewal claim for disability living allowance.

Mr Simpson is not entitled to the mobility component of disability living allowance from and including 22/07/----, because from the information provided it has been established that Mr Simpson does not satisfy the conditions.

Mr Simpson is not entitled to the care component of disability living allowance from and including 22/07/----, because from the information provided it has been established that Mr Simpson does not satisfy the conditions.

Section 4

Facts of the case:

Previous decision-

Mr Simpson is entitled to the lower rate of the mobility component from 28/04/---- to 21/07/---- (both dates included), because he needs someone to guide or supervise him when he is walking on routes that are unfamiliar.

Mr Simpson is entitled to the middle rate of the care component from 28/04/---- to 21/07/---- (both dates included), because he needs to be constantly supervised, with or without short breaks right through the day, so that he does not cause substantial danger to himself or others.

Facts-

1. Mr Simpson has attention deficit hyperactivity disorder (ADHD).
2. A renewal claim for disability living allowance was made on 23/05/----, treated as effective from 22/07/----. (Page(s) [-])
3. A medical report dated 17/06/----, was obtained from Mr Simpson's consultant. (Page(s) [-])
4. A decision on Mr Simpson's claim was given on 03/07/----. Notification of this decision was issued on 03/07/----.
5. Screen prints from the computer system show the decision dated 03/07/----.
6. Verbal request made for the decision dated 03/07/---- to be reconsidered.
7. A letter of appeal from Miss Astles was received on 25/07/----. (Pages [-])
8. The decision was reconsidered but not revised on 01/09/----. A copy of the notification and computer record of this decision are included at page [-].

Reason for the decision-

9. From the hospital medical report dated 17/06/---- (Page(s) [-]) it has been established that Mr Simpson does not satisfy the conditions for disability living allowance. This is because medical evidence shows that there are no medical or physical problems from the history given by Mr Simpson and that he has no need for help with getting around. His ability to walk is not such that he is virtually unable to walk and he had no exacerbations of his condition in the previous 6 months, when last seen by Dr ----- on 19/06/----. Therefore, it is not considered that he needs guidance or supervision when outdoors from another person. The effect of his condition on his ability to self care is described as minimal by Dr ----- so I consider that he is able to manage his personal care, by day and night, in his own time. He is not at risk of substantial danger if left alone for short periods, so there is no need for continual supervision by day or watching over at night to avoid substantial danger. I consider that he should be able to plan and prepare a simple main meal for one in his own time. He is not entitled to any rate of benefit.

Example 11

Summary of the grounds of appeal-

10. An appeal was made. In the letter Miss Astles stated that she disagreed with the decision because John Simpson:
- A. does not agree with the decision as everything in the letter from DLA is untrue;
 - B. was told by Dr ----- that a trainee wrote to DLA and that it was a copy from another child's report. She feels this is unfair as no one should be able to write a report on someone they have not met.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

Issues raised by the appeal-

- A. Miss Astles disagrees that the medical evidence from Mr Simpson's speciality registrar is an accurate assessment of Mr Simpson's mobility and care needs.
- B. The decision maker, however, has accepted the medical report completed by Dr ----- as being an accurate assessment of Mr Simpson's mobility and care needs, and that they are suitably qualified to write a report.

The Tribunal is asked to consider and decide the following issues-

- 1. whether Mr Simpson satisfies the conditions of entitlement for an award of any rate of the mobility component of disability living allowance; and
- 2. whether Mr Simpson satisfies the conditions of entitlement for an award of any rate of the care component of disability living allowance.

The disputed decision was made in accordance with the following Acts and Regulations

Mobility Component

Higher rate conditions

To be entitled to the higher rate of the mobility component of disability living allowance a person must:

- be unable to walk or virtually unable to walk because of a physical disability.

**Social Security Contributions & Benefits Act 1992, section 73;
Social Security (Disability Living Allowance) Regulations 1991, regulation 12**

Lower rate conditions

To get lower rate of the mobility component of disability living allowance a person must be so severely disabled, physically or mentally that they need guidance or supervision from another person for most of the time when walking out of doors. Any ability a person has to walk on familiar routes without guidance or supervision is not taken into account.

A person who is able to walk is not to be taken as satisfying the condition of being so severely disabled physically or mentally, that he cannot take advantage of the faculty out of doors, without guidance or supervision from another person most of the time, if he does not take advantage of the faculty in such circumstances because of fear and anxiety.

The above paragraph shall not apply where the fear or anxiety is

- a symptom of a mental disability; and
- so severe as to prevent the person from taking advantage of the faculty in such circumstances.

**Social Security Contributions & Benefits Act 1992, section 73 (1)(d)
Social Security (Disability Living Allowance) Regulation 1991 regs 12(7) and (8)**

Unable or virtually unable to walk

People are considered to satisfy this criteria if their physical condition is such that:

- (a) they are unable to walk at all; or
- (b) their ability to walk out of doors is so limited, as regard the distance over which or the speed over which or the length of time for which or the manner in which they can make progress on foot without severe discomfort, that they are virtually unable to walk; or
- (c) the effort needed to walk would put their life at risk or be likely to lead to a serious deterioration in their health.

Example 11

Where a person lives or works, or the nature of the work they do cannot be taken into account.

Social Security (Disability Living Allowance) Regulations 1991, regulation 12

Virtually unable to walk

Virtually unable to walk means unable to walk to any appreciable extent or practically unable to walk. The base point is total inability to walk. This is extended to take in people who can technically walk but only to an insignificant extent.

Social Security Commissioner's decisions R (M) 1/78 and R (M) 1/91

Danger to life or serious deterioration in health

The exertion required to walk is the only consideration when deciding whether a person satisfies this condition.

Any serious deterioration in health is where there was a worsening of the condition from which:

- (a) they would never recover; or
- (b) they would recover after a significant period of time, for example 12 months; or
- (c) recovery could only be made after medical intervention.

Social Security Commissioner's decisions R (M) 3/78 and R (M) 1/98

Aids and appliances

People cannot normally be treated as unable or virtually unable to walk if they can use an artificial limb or aid to help them walk unless they are without both legs.

Social Security (Disability Living Allowance) Regulations 1991, regulation 12(4)

Guidance

Guidance may be physically leading or directing the person or by oral suggestion or persuasion.

Supervision

For the lower rate of the mobility component supervision can be:

- (i) when another person is monitoring the disabled person's physical or mental state for signs that some intervention may be needed to encourage the person to continue walking; or
- (ii) checking the route ahead for obstacles, dangers or places or situations which may upset the person.

Coaxing, encouraging, persuading or providing distraction by way of conversation may come within the meaning of "supervision".

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Care Component

Lowest rate conditions

To get disability living allowance for help with personal care at the lowest rate a person must be so severely disabled physically or mentally that they:

- need attention with bodily functions for a significant portion of the day; or
- if aged over 16, are unable to prepare a cooked main meal.

Social Security Contributions & Benefits Act 1992, section 72(1)(a)

Day conditions

To satisfy the day care conditions for disability living allowance for help with personal care a person must need from another person either:

- frequent attention with bodily functions throughout the day; or
- continual supervision throughout the day to avoid substantial danger to themselves or others.

Social Security Contribution & Benefits Act 1992, section 72(1)(b)

Night conditions

To satisfy the night care conditions for disability living allowance for help with personal care a person must be so severely disabled physically or mentally that they need from another person either:

- prolonged or repeated attention at night in connection with bodily functions; or
- someone to be awake during the night for a prolonged period or at frequent intervals in order to avoid substantial danger to themselves or others.

Note: there are special conditions for some people on renal dialysis.

Social Security Contributions & Benefits Act 1992, section 72(1)(c)

Significant portion

The word "significant portion" should be given its ordinary meaning of not negligible or trivial. It refers only to the length of time a person requires attention. What amounts to a "significant portion of the day" depends largely on a person's individual circumstances. An hour may be considered reasonable in many cases.

Example 11

Bodily functions include such things as:

- eating and drinking
- washing and dressing
- using the toilet

Help with bodily functions does not normally include help with domestic duties, for example, shopping, cooking, or cleaning, but it could, for example, include help with laundry where this forms part of a continuous episode of attention of a personal and intimate nature in connection with a bodily function.

Social Security Commissioner's decision R (A) 2/80 Appendix, Cockburn v Secretary of State for Social Security

Attention is some personal service of an active nature, which is reasonably required in connection with bodily functions and is given in the physical presence of the severely disabled person. This can include help by means of the spoken word, for example, persuading a person to do something like eating, or warning a visually impaired person of danger outdoors. Attention to enable a disabled person to take part in a reasonable level of social activity can be included.

Social Security Commissioner's decision R (A) 2/80 Appendix, Secretary of State for Social Security v Fairey

Social Security (Disability Living Allowance) Regulations 1991, regulation 10C

Unable to cook a main meal

This is a hypothetical test of whether a person has the ability to perform the various tasks necessary to make a meal, if they had the ingredients. This includes the mental ability to plan a meal. It has nothing to do with a person's actual domestic arrangements.

Social Security Commissioner's decision R (DLA) 2/95

Frequent throughout the day

Frequent means several times not once or twice. Attention must be required throughout the day. The ordinary definition of frequent is "occurring often or in close succession". Whether attention is given frequently depends on the length of time which passes between each spell of attention. A person cannot get the middle or highest rates of the care component of disability living allowance if the only help they need is with getting in and out of bed, or if they only need a little help when dressing and undressing in the morning and at night.

Social Security Commissioner's decision R (A) 2/80 Appendix

Continual means going on all the time, subject to brief interruptions only.

Supervision means staying close to people in order to be able to prevent or deal with substantial danger. It often means having to stay in the same room. Just being on hand does not count as supervision unless someone needs to be there to prevent a serious accident or other danger that is likely to happen.

People who are mentally competent should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing and so would not necessarily need continual supervision.

Social Security Commissioner's decision R (A) 1/88 Appendix and R (A) 5/90

Substantial danger

The phrase "substantial danger" should not be too narrowly construed. Substantial danger can result from a fall, exposure, neglect and in many other circumstances. The word "substantial" is left to discretion in each case.

Social Security Commissioner's decision R (A) 1/73

Watching over means that another person has to stay awake at frequent intervals or for a prolonged period during the night to be able to intervene and prevent or deal with substantial danger. It is not enough for the attendant to be asleep and ready to wake up and intervene when required.

Prolonged and repeated means that someone must need help at night for more than a few minutes, or that it is needed several times. 'Prolonged' has been interpreted as meaning 20 minutes or more; 'repeated' as twice or more.

Social Security Commissioner's decision R (A) 2/80 Appendix

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/>

Example 12

Attendance allowance – disallowance of claim

Section 1

Personal details: Mrs K Begum
 17 Horton Street
 Leeds
 LS99 0AA

National insurance number: ZZ000001A

Date of Birth: 5 August ----

Benefit: Attendance allowance

Date of claim: 17 August ----

Date decision made: 1 November ----

Date decision notified: 14 November ----

Date of appeal: 4 March ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	Appeal letter
Pages [-]	[--/--/----]	[--/--/----]	New claim for attendance allowance
Pages [-]	[--/--/----]	[--/--/----]	Secretary of State's certificate
Pages [-]	[--/--/----]	[--/--/----]	Medical report from GP

Example 12

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Advice from Medical Services
Pages [-]	[--/--/----]	[--/--/----]	Initial decision
Pages [-]	[--/--/----]	[--/--/----]	Request for decision to be reconsidered
Pages [-]	[--/--/----]	[--/--/----]	Record of reconsideration

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do **not** include the record of reconsideration here.]

The decision:

Mrs Begum is not entitled to attendance allowance from and including 17/08/----, because from the information provided it has been established that she does not satisfy the conditions of entitlement.

Section 4

Facts of the case:

1. The appellant suffers from joint pain, arthritis, shortness-of breath and chest pain.
2. On 17/08/---- a new claim for attendance allowance was made. (Page(s) [-])
3. On 2/10/---- the Secretary of State issued a certificate. (Page(s) [-])
4. On 16/10/---- a medical report was completed by the appellant's GP. (Page(s) [-])
5. On 31/10/---- advice was obtained from Medical Services. (Page(s) [-]).
6. On 1/11/---- a decision was made on the appellant's entitlement to attendance allowance. This decision was notified to the appellant on 14/11/--- Details of this decision are given at section 3 of this response. (Page(s) [-])
7. On 31/12/---- a late request was made to look at the decision again. The time for applying for revision was extended. (Page(s) [-])
8. On 26/01/---- the decision was reconsidered but not revised. This was notified to the claimant on 05/02/---- A copy of this reconsideration is attached to this response. (Page(s) [-])

9. On 4/03/---- a letter of appeal was received. (Page(s) [-])

Reason for the decision

From the GP report (page(s) [-]) dated 16/10/---- it has been established that the appellant does not satisfy the conditions for attendance allowance.

Mrs Begum has a number of medical conditions for which she is on treatment. She is on moderate medication for pain in her joints, but is not under specialist care or having physiotherapy. There is no medical evidence of incontinence or medication for, or referral to a specialist for this problem. Medical opinion is that the customer is able to self care. There is no medical evidence she is at risk of harm moving around her home and constant supervision is not required.

It is accepted that she has pain, she is fully able to self care both by day and night, slowly and with some difficulty, but using appropriate aids as necessary. She is not prone to falls or stumbles and she is aware of common dangers. She is not considered to be at serious risk of danger when left alone either day or night.

Summary of the grounds of appeal

In her letter of appeal the appellant stated that she disagreed with the decision because she:

- A. suffers from a number of medical conditions which affect her ability to self care.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

Issues raised by the appeal-

It is argued that the decision is incorrect because the appellant suffers from a number of medical conditions which affect her ability to self care.

Entitlement to attendance allowance depends upon a person's need for help with personal care.

I submit that the evidence from the GP gives an accurate picture of the appellant's needs and shows that she does not satisfy the conditions for an award to be made.

Example 12

The Tribunal is asked to consider and decide the following issue-

whether the appellant satisfies the conditions of entitlement for an award of any rate of attendance allowance.

The disputed decision was made in accordance with the following Acts and Regulations

Day conditions

To satisfy the day care conditions for attendance allowance a person must be so severely disabled physically or mentally that they need either:

- frequent attention with bodily functions throughout the day; or
- continual supervision throughout the day to avoid substantial danger to themselves or others.

Social Security Contribution & Benefits Act 1992, section 64(2)

Night conditions

To satisfy the night care conditions for attendance allowance a person must so severely disabled physically or mentally that they need either:

- prolonged or repeated attention at night in connection with bodily functions; or
- someone to be awake during the night for a prolonged period or at frequent intervals in order to avoid substantial danger to themselves or others.

Note: there are special conditions for some people on renal dialysis.

Social Security Contributions & Benefits Act 1992, section 64(3)

Bodily functions include such things as:

- eating and drinking
- washing and dressing
- using the toilet

Help with bodily functions does not normally include help with domestic duties, for example, shopping, cooking, or, cleaning, but it could, for example, include help with laundry where this forms part of a continuous episode of attention of a personal and intimate nature in connection with a bodily function.

Social Security Commissioner's decision R (A) 2/80 Appendix, Cockburn v Secretary of State for Social Security

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Attention is some personal service of an active nature, which is reasonably required in connection with bodily functions and is given in the physical presence of the severely disabled person. This can include help by means of the spoken word, for example, persuading a person to do something like eating, or warning a visually impaired person of danger outdoors. Attention to enable a disabled person to take part in a reasonable level of social activity can be included.

Social Security Commissioner's decision R (A) 2/80 Appendix, Security of State for Social Security v Fairey
Social Security (Attendance Allowance) Regulations 1991, regulation 8BA

Frequent throughout the day

Frequent means several times not once or twice. Attention must be required throughout the day. The ordinary definition of frequent is "occurring often or in close succession". Whether attention is given frequently depends on the length of time which passes between each spell of attention. A person cannot get attendance allowance if the only help they need is with getting in and out of bed, or if they only need a little help when dressing and undressing in the morning and at night.

Social Security Commissioner's decision R (A) 2/80 Appendix

Continual means going on all the time, subject to brief interruptions only.

Supervision means staying close to people in order to be able to prevent or deal with substantial danger. It often means having to stay in the same room. Just being on hand does not count as supervision unless someone needs to be there to prevent a serious accident or other danger that is likely to happen. People who are mentally competent should be expected to arrange for supervision when undertaking any potentially dangerous activity such as bathing and so would not necessarily need continual supervision.

Social Security Commissioner's decision R (A) 1/88 Appendix .and R (A) 5/90

Substantial danger

The phrase "substantial danger" should not be too narrowly construed. Substantial danger can result from a fall, exposure, neglect and in many other circumstances. The word "substantial" is left to discretion in each case.

Social Security Commissioner's decision R (A) 1/73

Watching over means that another person has to stay awake at frequent intervals or for a prolonged period during the night to be able to intervene and prevent or deal with substantial danger. It is not enough for the attendant to be asleep and ready to wake up and intervene when required.

Prolonged and repeated means that someone must need help at night for more than a few minutes, or that it is needed several times. 'Prolonged' has been interpreted as meaning 20 minutes or more; 'repeated' as twice or more.

Social Security Commissioner's decision R (A) 2/80 Appendix

Appendix 7

Example 12

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/>

Example 13

Carer's allowance – supersession following cessation of full-time education

Section 1

Personal details: Mrs Catherine Morland
55 Grafton Street
Southampton
SK99 00AA

National insurance number: ZZ000001A

Benefit: Carer's allowance

Date decision made: 25 September ----

Date decision notified: 25 September ----

Date of appeal: 17 October ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	Appeal letter
Pages [-]	[--/--/----]	[--/--/----]	Awarding decision
Pages [-]	[--/--/----]	[--/--/----]	Sample award notification
Pages [-]	[--/--/----]	[--/--/----]	Sample annual updating notification and details of changes of circumstances that have to be reported

Example 13

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Benefit review form (disclosure)
Pages [-]	[--/--/----]		Enquiry to claimant
Pages [-]	[--/--/----]	[--/--/----]	Letter from college
Pages [-]	[--/--/----]	[--/--/----]	Dis-entitlement decision
Pages [-]	[--/--/----]	[--/--/----]	Record of CA payments
Pages [-]	[--/--/----]	[--/--/----]	Commissioner's decision CSB/1010/1989
Pages [-]	[--/--/----]	[--/--/----]	Commissioner's decision CG/3308/2007
Pages [-]	[--/--/----]	[--/--/----]	Reconsideration

Section 3 [either verbatim from LT54, or a form of words which reflects decision - do not include the record of reconsideration here.]

The decision:

I have superseded the decision of the decision maker dated 05/08/----, awarding carer's allowance from 17/05/----. This is because the claimant has been in full-time education. As a result Catherine Morland is not entitled to carer's allowance for the period below:

You are not entitled from 27/08/---- to 01/06/----. This is because you were in full time education.

The law used to make this decision is explained at section 5 of this response.

Section 4

Facts of the case:

From 1st April 2003 invalid care allowance was re-named carer's allowance in accordance with The Regulatory Reform (Carer's Allowance) Order 2002,

1. Carer's allowance (CA) was awarded from and including 17/05/---- because Catherine Morland was caring for her daughter Tracey Morland, the severely disabled person (page(s) [-]).

2. CA was paid directly into Catherine Morland's nominated bank account. The notes and instructions which were sent to Catherine Morland can be found at pages [-].
3. On 23/5---- the CA Unit received a completed benefit review form from Catherine Morland who declared that she had attended a **full-time** education course from August ---- to the end of May ---- (page(s) [-]). I submit that benefit review forms are routinely issued to claimants every 2 years to check that the claimant continues to meet the entitlement criteria. It reminds claimants of notifiable changes and offers them the chance to disclose relevant information that has previously been forgotten.
4. Enquiries were made of the claimant for further details about the type of course she was studying and the amount of time that she was expected to spend on her studies. This was to find out if Catherine Morland was in full time education (pages [-]).
5. Mrs Morland said she started the course of education on 27/8/---- and that it ended on 30/5/----. She confirmed that "Officially the course was full-time 21 hours" and she said she spent a total of 20 hours a week on work that was required and included in the curriculum of the course. She also supplied a letter outlining details of the courses and placements that she attended (page(s) [-]).
6. A letter was also forwarded from ----- College confirming that the course was for "21 timetabled hours per week with an additional day's placement each week in school" (pages [-]).
7. A decision was made that Catherine Morland was not entitled to CA from 27/08/---- to 01/06/---- because she was engaged on a course of full time education (page [-]).
8. A letter of appeal was received from the claimant on 17/10/----. The points made in her appeal are that
 - when she applied for the course it was advertised as part-time but in the first week of the course the hours were increased - she "felt this would still be ok".
 - she says she had already completed some of the modules at previous night school classes
 - she "never thought this would have any effect" on carer's allowance
 - she still cared for her daughter
 - she doesn't see why she has to pay benefit back for holiday weeks when she did not attend college
9. A different decision maker has looked again at the decision and having considered all the evidence can find no reason to change it. The record of the reconsideration is attached to the submission at page [-].

Example 13

10. The appeal is not made on the appropriate form, but the Secretary of State has accepted the appeal as duly made.

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

1. A decision made by a decision maker may be superseded if there has been a relevant change of circumstances since the decision had effect. When CA was awarded from 17/05/----, Catherine Morland was not receiving full time education. This has changed, and between 27/08/---- and 01/06/---- she has been undertaking a course of full-time education. This is why the decision was superseded by the decision maker on 15/09/----.

Social Security Act 1998, Section 10(1)
Social Security and Child Support (Decisions and Appeals)
Regulations 1999 Regulations 6 & 7.

2. The law says that a person will not be entitled to CA if she is receiving full time education.
3. The law says that a person who attends a course at a college (or similar place) for 21 hours or more per week is receiving full time education.
4. When counting the number of hours a person attends at college, the law says that there shall be included the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course. It will exclude any time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment.
5. The law says that, in determining the duration of a period of full-time education, a person who has started on a course of education shall be treated as attending it for the usual number of hours a week throughout any vacation or any temporary interruption of her attendance until the end of the course or such earlier date as she abandons it or is dismissed from it.
Social Security (Invalid Care Allowance) Regulations 1976 regulation 5(2) and (3).
6. When working out the number of hours spent studying the decision maker has considered Commissioner's decision CSB/1010/1989 (page(s) [-]). In paragraph 5 of this decision the Commissioner held that:

"unsupervised study must not be confused with study done in the absence of the physical presence of a supervisor. Study can perfectly well be supervised if work is set by a supervisor and is done privately by the student in his own time. Most University degree courses proceed on this basis. The 'contact hours' will be few, but the number of hours spent in private study will be considerable. However, that study, because it is done in private, does not become unsupervised."

7. The decision maker has also considered the point made in Commissioner's decision R(SB) 40/83 that "the term 'full time' referred to the course and not the student".

8. Also, in decision R(SB) 2/91, the Commissioner held that whether a claimant is a full or part time student is for determination by the decision maker after acquiring the necessary information from the college. It is immaterial what the claimant thinks about the nature of the course. He is, nevertheless, attending a course of full time education whether or not he devotes to it the number of hours considered necessary to complete the course.

9. Commissioners decision R(G)2/02 agrees with the propositions contained in decision of RI/02 of Northern Ireland, namely:

Attending a course of education at a university means engaging in the academic activities required of those who are enrolled in the course.

One component of a course of education at a university is study of subject matter of the course, which may be carried out by students at times and places of their own choosing.

Where that study is in discharge of the course, as prescribed by those who conduct it, it constitutes supervised study within the meaning of regulation 5 (of the Invalid Care Allowance Regulations). It does not have to be carried out on university premises or in the physical presence of a supervisor.

Ascertainment of the hours of attendance at a course of education is a question of fact, to be determined by the adjudication officer or tribunal. In doing so they will have regard to the university's requirements of attendance at the formal contacts specified in Regulation 5(2)(a), any estimate furnished by the university authorities of the supervised study time to complete the course, the claimant's own testimony and any other source of material evidence.

10. In para 19 of R (G)2/02 the Commissioner held "study may be supervised without the supervisor necessarily being present at the time of study. The test of what is supervised study does not depend on the period of time for which the supervisor is present. The work must be directed to the course of education and the curriculum involved. The concept requires a degree of direction by and answerability to the supervisor. The absence of any sanction for failure to do a piece of work does not take the work done outside the definition of supervised study".

Example 13

11. In para 22, the Commissioner held "some students on a course of education will spend more time studying than others do. A fact finding tribunal should however scrutinise with care evidence from a student who claims that he attends a course for significantly fewer hours than the university authorities expect of him".
12. In para 38, the Commissioner held "The tribunal should have particular regard to the amount of time which those who conduct the course expect a student to devote to contact hours and supervised study in order satisfactorily to complete the course. I recognise that the "average" student is an elusive concept, that the less able but diligent student will take longer and that the more able (or less diligent) student will take (or devote) less than the time expected. But it is plainly desirable that a person with caring responsibilities who is contemplating a course of education should know in advance whether, by attending the course, he or she will be treated as receiving full time education. A tribunal should, I think, be very slow to accept that a person expects or intends to devote or does, in fact, devote significantly less time to the course than those who have conduct of the course expect of him".
13. It is my submission, therefore, that Catherine Morland was required to attend -----College to undertake a course of full-time education. The college have clearly stated that Mrs Morland had 21 timetabled hours and she was required to spend an additional day each week on a placement. The total number of hours a week that ----- College expects Catherine Morland to devote to contact hours and supervised study is, therefore, at least 21 hours a week.
14. Therefore she is not entitled to CA from 27/08/---- to 01/06/---- because she is regarded as receiving full time education.
15. In her letter of appeal Catherine Morland states that when she applied for the course it was advertised as part-time but in the first week of the course the hours were increased - she "felt this would still be ok". I submit that Mrs Morland made assumptions and did not seek advice on the matter of whether the course would affect her benefit.
16. She says she had already completed some of the modules at previous night school classes and therefore was not required to attend for these modules. I submit that the above paragraphs show that it is the course and not the student that is relevant to the application of the law. Mrs Morland says in her letters that for these lessons where the modules had previously been completed at night school she did "guided study" therefore I submit that study was still required from her to achieve a successful completion of the course. With regard to this point the tribunal may also wish to consider CG/3308/2007 at page(s) [-].
17. Mrs Morland goes on to say she "never thought this would have any effect" on CA as she still cared for her daughter. I submit that the caring provided by Mrs Morland is not in dispute but what is at issue here is that she once again has made assumptions about how her course of education would be treated.

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/>

Reported decisions of The Upper Tribunal Office from 1991 can be accessed on-line via the DWP's website at <http://www.dwp.gov.uk/publications/specialist-guides/decisions-of-the-commissioners/>

Example 14

Employment and support allowance appeal – claimant fails work capability assessment

Section 1

Personal details: Mr Dave Edmonds
 99 Piccadilly Way
 Dudley
 DY99 10ZZ

National insurance number: ZZ000001A

Benefit: Employment and support allowance

Date of outcome decision: 24 March ----

Date decision notified: 26 March ----

Date of appeal: 26 March ----

Decision maker's name and address:

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Names and addresses of any other respondents and their representatives (if any):

Section 2

Schedule of evidence:

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]			Response
Pages [-]	[--/--/----]	[--/--/----]	ESA 50 - questionnaire
Pages [-]	[--/--/----]	[--/--/----]	ESA 85 – medical report
Pages [-]	[--/--/----]	[--/--/----]	Scoresheet
Pages [-]	[--/--/----]	[--/--/----]	Disallowance decision
Pages [-]	[--/--/----]	[--/--/----]	Letter of appeal and supporting evidence

Example 14

Page Nos.	Date of document	Date of receipt/issue	Brief description of document
Pages [-]	[--/--/----]	[--/--/----]	Reconsideration
Pages [-]	[--/--/----]	[--/--/----]	Schedule 2 - descriptors for limited capability for work
Pages [-]	[--/--/----]	[--/--/----]	Schedule 3 - descriptors for limited capability for work related activity

Section 3 *[either verbatim from LT54, or a form of words which reflects decision if it is computer generated - do **not** include the record of reconsideration here.]*

The decision:

Work capability assessment disallowance-

I have superseded the decision of the decision maker awarding employment and support allowance (Cont) from and including 07/01/----.

On 13/03/---- Mr Dave Edmonds was examined by a healthcare professional of the medical services in connection with the work capability assessment.

The decision maker has considered the healthcare professional's report and the other available evidence and has decided that he has not achieved 15 points from the appropriate descriptors.

Mr Dave Edmonds no longer meets the threshold of limited capability for work therefore limited capability for work is not accepted from and including 24/03/2---- and he is not entitled to employment and support allowance (Cont) from that date.

The law

**Welfare Reform Act 2007, sections 1, 2, Part 1 Schedule 1 (ESA C)
Social Security (Employment & Support Allowance) Regulations 2008, reg 19**

Section 4

Facts of the case:

1. Mr Edmonds was born on 11 Sep 1961. He was awarded employment and support allowance from and including 07/01/---- on the basis that he was suffering from anxiety and depression.
2. Mr Edmonds completed a questionnaire (form ESA50) on 02/02/----. This form asks the claimant to provide information about their capability to perform activities in order to assess whether they have limited capability for

work. Mr Edwards indicated that he had no physical problems but does have mental health problems in the areas of memory and concentration, going out, coping with social situations and dealing with other people. (Pages [-].)

3. On 13/03/---- Mr Edmonds attended ----- Medical Examination Centre for medical examination. In the opinion of the health care professional as set out in the report (form ESA85), Mr Edmonds had no physical problems but did have limitations for going out as he needed to be accompanied. (Pages [-].)
4. The decision maker carried out an assessment of Mr Edmonds's capability for work taking all the available evidence into account, and decided that he scored 0 points on the physical and 6 points on mental descriptors. He did not have limited capability for work, and his award of employment and support allowance was superseded and disallowed from the date of the decision, 24/03/----. (Pages [-].)
5. Mr Edmonds made an appeal on the approved form, on the grounds that he does have problems with memory and concentration, coping with change, coping with social situations, behaviour with other people and getting on with other people. He says that due to his anxiety and depression he has very low confidence and doesn't feel like meeting or talking to people. With the letter of appeal he has sent in a page from the IB65 letter identifying the areas in question. He has also sent in a medical certificate issued by his GP on 15.4.09 advising he should refrain from work for 8 weeks due to depression. (Pages [-].)
6. The decision of 24/03/---- was reconsidered on 06/05/---- but not revised. (Pages [-].)

Section 5

The decision maker's response:

The decision maker opposes [or does not oppose – as the case may be] the appellant's case [**note:** if the DM does oppose include any grounds for such opposition which are not set out in any documents which are before the Tribunal, and any further information or documents required by a practice direction or direction].

I submit that it would be appropriate for the case to be disposed of without a hearing. [**note:** include if appropriate.]

1. Entitlement to employment and support allowance depends on whether a claimant's capability for work is limited by their physical or mental condition, and if so, whether the limitation is such that it is not reasonable to require them to work.

Welfare Reform Act 2007, sections 1(3)(a) and (4)

Example 14

2. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable or not of performing certain activities due to disease or bodily or mental disablement. Points may be scored if the claimant satisfies the appropriate descriptors for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

Welfare Reform Act 2007, section 8

Employment and Support Allowance Regulations 2008, regulation 19 and Schedule 2

3. The claimant can be treated as having limited capability for work pending assessment where certain conditions are satisfied, including the condition that the claimant provides medical evidence.

Employment and Support Allowance Regulations 2008, regulation 30

4. A claimant can be treated as having limited capability for work without assessment, or after being assessed as not having limited capability for work, where certain conditions are satisfied, such as where the claimant is undergoing specified treatment, or where there is a serious risk to health if the claimant is found not to have limited capability for work. None of these conditions apply to Mr Edwards.

Employment and Support Allowance Regulations 2008, regulations 20, 25, 26 or 29

5. The decision maker decided that Mr Edmonds scored 0 points for the physical descriptors, and this is not disputed. .
6. The decision maker also decided that Mr Edmonds scored 6 points for the mental descriptors. He has disputed this as he thinks he should have scored points for several other mental health activities.
7. Although Mr Edmonds feels he should have scored more points as he has very low concentration and confidence, doesn't feel like meeting or talking to people as his behaviour causes problems with himself and others, the medical officer was of the opinion that he only had limitations for going out as he frequently needs to be accompanied to places with which he is familiar, and concluded that customer's anxiety and depression is mild. He has not seen a specialist and medication used is low strength.

In reaching this conclusion the approved disability analyst took into account the information in the ESA50 questionnaire together with details supplied by the customer at the interview. In particular he stated that he has no problems with dressing, in the bathroom, maintaining safety in the bathroom. He is usually able to make meals for himself, do housework and tidy up. He feels comfortable in his flat, prefers to watch sport, nature programmes and documentaries on the television and also reads and does crosswords. He does not experience panic attacks, has no history of disruptive behaviour and enjoys visits from his family. He does not socialise outside the home but on a good day he uses the bus to go to the town centre to shop and pay bills. Other days he has to be accompanied or get someone else to do things.

Example 14

8. I respectfully request that the tribunal confirms the decision that Mr Edmonds is not entitled to employment and support allowance from 24/03/-- -- as he does not have limited capability for work.
9. Should the tribunal decide that Mr Edmonds does have limited capability for work; I respectfully request that they decide whether or not Mr Edmonds has limited capability for work-related activity.

For example if the tribunal score the customer 15 points for the reaching test, this descriptor is identical to the description in Schedule 3 and therefore the Tribunal could recommend that the customer has limited capability for work related activity.

If they determine that there is insufficient evidence, for example where there are no direct equivalent descriptors in the limited capability for work related activity schedule and insufficient evidence in the customer's papers for a decision to be made, the tribunal is requested to refer the case to the decision maker for determination.

Employment and Support Allowance Regulations 2008, regulation 34 and Schedule 3

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