

APPEALS

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HB (Decisions and Appeals) Regs 2001**Who can appeal against an overpayment decision?**

- 6.00 A person from whom the overpayment is recoverable has a right of appeal against the HB overpayment decision.
- 6.01 You must issue an overpayment decision notice to all parties who the overpayment is legally recoverable from (even if you have decided to recover from someone else). This could be
- the claimant
 - in the case of a person who is unable, for the time being, to act
 - a Court Appointed Deputy, these are appointed by the Court of Protection with power to claim, or as the case may be, receive benefit on their behalf, or
 - in Scotland, a tutor, curator or other guardian acting or appointed in terms of law administering that person's estate, or
 - an attorney with a general power, or power to receive benefit appointed by the person liable to make those payments under the Powers of Attorney Act 1971 or Enduring Powers of Attorney Act 1985 or Mental Capacity Act 2005
 - a person appointed by the authority to act for the claimant
 - a person from whom the authority determines that an overpayment is recoverable
 - the landlord or agent, when a decision has been made by the LA under regulation 95 or 96 [(SPC) 76 or 77] of the Housing Benefit Regulations

6.02-6.09

What overpayment decisions can be appealed against?

- 6.10 A person who has received an overpayment decision notice has a right of appeal to a First Tier Tribunal (FtT) against some relevant decisions (whether as originally made or as revised or superseded) that the LA makes on a claim, or on an award of HB.
- 6.11 Examples of overpayment decisions that have a right of appeal are
- whether the overpayment is in fact a recoverable overpayment, e.g. if an LA has decided that an official error overpayment is recoverable because the claimant, a person acting on his behalf or any other person to whom the payment is made, contributed to the mistake, act or omission
 - the decision to recover an overpayment caused by a misrepresentation or failure to disclose information, if the person chosen to repay the overpayment does not feel they have misrepresented or failed to disclose information
 - the decision to recover an official error overpayment, if the person chosen to repay the overpayment does not feel they could reasonably have been expected to realise they were being overpaid
 - the calculation of the overpayment

- the period of the overpayment
- the calculation of diminution of capital
- the calculation of underlying entitlement

6.12 Examples of overpayment decisions that do not have a right of appeal are

- who the LA have decided to recover the overpayment from, if it is legally recoverable from more than one person
- whether the overpayment should be recovered
- the recovery rate (although a 'person affected' may ask you to look at this due to hardship)
- the method of recovery

6.13-6.19

The Dispute Process

Note: For the remainder of this section 'person affected' refers to anyone who could appeal the overpayment decision.

- 6.20 If a 'person affected' disagrees with a decision they may query it or ask for a written statement of reasons. Before offering an explanation or issuing a written statement of reasons, it is good practice for the LA to check that the decision is correct. If the 'person affected' still does not accept the decision, they have one calendar month in which to dispute it. The dispute period starts on the day following the date of notification. This period can be extended in specified circumstances, including when a written statement of reasons has been requested. During this time the 'person affected' may ask for the decision to be reconsidered or appeal against it immediately.
- 6.21 The process of looking again at a decision is known as 'reconsideration'. To make sure that the decision is correct the LA should look again at the evidence, including any evidence that may be offered by the 'person affected' at the explanation stage, and also the facts and law. It is considered good practice, when practicable, for a different officer to carry out the reconsideration. If, following reconsideration, the original decision is not revised, and the 'person affected' does not appeal the original decision, the LA should notify them of the decision not to revise. They then have a further month in which to appeal. If they have already appealed, the LA should tell them that the decision has been reconsidered, but not revised and that the appeal will proceed.
- 6.22 If the decision is revised to the claimant's advantage or disadvantage, notify the 'person affected' of the revised decision. Everyone who the overpayment is legally recoverable from should also receive a revised decision. The new decision carries fresh appeal rights and the 'person affected' has a further month to appeal.
- 6.23 If a 'person affected' appeals on receipt of a decision it is good practice to carry out a reconsideration. However, some decisions, mainly administrative ones, do not carry a right of appeal, such as the ones listed earlier in this section. The legal right of the 'person affected' to appeal to an independent and impartial tribunal is one of the fundamental elements of the DMA process. It is for this reason that if the 'person affected' appeals immediately on receipt of a decision, and the LA is unable to revise the decision

to their advantage, the appeal together with a submission from the LA setting out the facts of the case and the reasons for their decision, should be sent to the FtT. A copy must also be sent to the 'person affected' and their representative, if applicable.

- 6.24 The FtT must hold a hearing, which means an oral hearing, before making a decision on the appeal unless each party to the appeal has consented to or not objected to the matter being decided without a hearing and the FtT considers it can decide the appeal without a hearing. If there is an oral hearing, then the LA may decide to send a Presenting Officer to represent the LA. Following the hearing, the tribunal's decision is notified to the 'person affected' and the LA. If the LA or the 'person affected' feels that the decision of the FtT is erroneous in law, then there is the option to seek leave to appeal to the Upper Tribunal. It is important to note that FtT/ Upper Tribunal rules are statutory and have the same statutory Regulations. They are not guidance.
- 6.25 For further information, see HB Guidance Manual, Chapter C6 – Reconsidering, revising and superseding decisions.
- 6.26-6.29

Appeals and recovery

- 6.30 There is no legislative requirement to halt overpayment recovery if an appeal is lodged, but it is considered good practice to do so. As it is recommended that recovery action should not commence until appeal rights have expired, this scenario should not happen very often (possibly only in the case of late appeals). See *Recovery of overpayments, When should recovery commence?* earlier in this guide.
- 6.31 For further information, see HB Guidance Manual, Chapter C7 – Appeals.
- 6.32-6.999