

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

The Adelphi, 1 - 11 John Adam Street, London WC2N 6HT

HB/CTB A16/2008

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	Changes to the backdating rules for Housing Benefit and Council Tax Benefit claims

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *Chapter A2 paragraphs P2.493, examples 1 and 2, P2.494, P2.495 and example 3, P2.497 and W2.524.*

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at www.dwp.gov.uk/hbctb
- have any queries about the
 - **technical content of this circular**, contact Richard Grennan
Tel: 020 7962 8528
Email: HB-CTB.claimsandpayments@dwp.gsi.gov.uk
 - **distribution of this circular**, contact Corporate Document Services Ltd Orderline
Email: orderline@cds.co.uk

Crown Copyright 2008

Recipients may freely reproduce this circular.

Contents

para

Changes to the backdating rules for Housing Benefit and Council Tax Benefit claims

Introduction	1
Initial proposals	4
Working age men 60 - 64.....	6
Good cause	9
Review of guidance	12
Backdating or reviewing?.....	21

Changes to the backdating rules for Housing benefit and Council Tax Benefit claims

Introduction

- 1 This circular provides information about **The Social Security (Miscellaneous Amendments) (No.4) Regulations 2008** ([SI 2008/2424](#)). These regulations
 - include amendments to the prescribed time for claiming Housing Benefit/Council Tax Benefit (HB/CTB) for a person who has attained the qualifying age for State Pension Credit, and
 - amend the maximum period a claim for HB/CTB can be backdated for a customer of working age
- 2 The new arrangements
 - reduce the time for claiming HB/CTB for Pension Credit age customers from 12 months to **three** months, and
 - reduce the maximum period for which HB/CTB claims may be backdated for working age customers from 52 weeks to **six** months
- 3 These arrangements, subject to the usual parliamentary processes, are planned to come into force from **6 October 2008**. A copy can be downloaded from DWP's own website (<http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/>) or the website of the Office of Public Information (<http://www.opsi.gov.uk/stat.htm>).

Initial proposals

- 4 The Government's initial proposal was to reduce the maximum backdating period for HB/CTB for working age customers from 52 weeks to three months, in line with the revised time for claiming Pension Credit and HB/CTB for people who have attained the qualifying age for State Pension Credit.
- 5 However, after consideration of a report on these proposals by the Social Security Advisory Committee, the Government has decided to introduce the change to the **working age** backdating rules incrementally. Accordingly, the backdating timescales will initially reduce to six months from October, with the aim of reducing to three months in the future at a date yet to be fixed. The arrangements will be reviewed towards the end of next year.

Working age men aged 60 - 64

- 6 Men aged 60 - 64 are working age customers, but are also entitled to claim Pension Credit. The following rules will apply to this group:

- 7 If the customer, or partner, is in receipt of Income Support (IS) or income-based Jobseeker's Allowance (JSA(IB)), the six month time limit for backdating HB/CTB applies and the customer will need to show good cause for not claiming before.
- 8 If the customer is claiming Pension Credit (and no partner is in receipt of IS or JSA(IB)), the three month limit for making a claim for HB/CTB applies, ie effectively a three month limit on backdating applies.

Good cause

- 9 The good cause provisions have not changed and working age customers will still need to demonstrate good cause throughout the period for which they are requesting backdating. HB/CTB may be backdated if the customer requests benefit for a past period and can show that they had continuous good cause for not making a claim earlier. The new arrangements mean that HB/CTB cannot be backdated for more than six months if the customer makes their backdating request on or after 6 October 2008 (even if this is a belated request linked to a current claim for HB/CTB which was made before that date).

Example

A customer makes a claim for HB on 4 August 2008.

Subsequent to the award decision, on 8 October 2008 the customer submits a request for their claim to be backdated for 12 months prior to the claim date of 4 August 2008.

As the regulations changed on 6 October 2008, the new rules apply.

The maximum period for which backdating may be considered is six months. So, counting back six months from the date of application (8 October 2008), backdating can only be considered from 9 April 2008.

- 10 The burden of proving good cause rests with the customer but you must examine all the relevant facts in each case.
- 11 Good cause is not defined in legislation, and the new regulations do not change the existing guidance for considering this, which is summarised below. However, the reduction in the maximum backdating period makes it all the more important that claims are made promptly, and you may want to remind customers of this and encourage them to submit claims in good time.

Review of guidance

- 12 The following is a summary of current guidance regarding the application of the good cause test.

- 13 *HB/CTB Guidance Manual, Chapter A2, Annex A* gives advice, derived from Commissioner's decisions up to April 2002, on issues relevant to consideration of good cause. These include
- awareness of **new** rules for claiming benefit
 - customer abroad or recently arrived in Great Britain
 - difficulty with language
 - postal delays
 - misleading official and unofficial information
 - advice from a doctor
 - advice from a solicitor or accountant
 - advice from an employer
 - the customer's health

This list is not exhaustive, and other factors and evidence may be relevant to the decision, depending on the circumstances of the case.

- 14 There have been a number of cases since April 2002 which should be considered, and these include the following.

Good cause and inability to speak English

- 15 Not speaking English is not in itself good cause, particularly if there is evidence of a growing community with good facilities speaking the claimant's first language. **CH.3579/2003.**

Good cause and mental incapacity

- 16 When deciding good cause, a mentally disabled person is treated as having their mental age not their chronological age. **CH/393/2003.**

Good cause in the case of a couple

- 17 When considering good cause in the case of a claimant in a couple, it is only the claimant's circumstances that are relevant and the other partner's. Specifically the other partner does not have to show good cause. **CH/3817/2004.**

Backdating if claimant does not qualify during the period

- 18 The question of backdating does not arise if the other conditions of entitlement are not satisfied in the backdated period. **CH/996/2004.**

What constitutes a request for backdating?

- 19 A request for backdating does not have to be expressed as such: it needs merely to be a claim for HB/CTB for a past period. **CH/3402/2005.**

- 20 The HB/CTB Guidance Manual makes clear that a customer cannot show good cause simply by claiming to be ignorant of a right to benefit or the time limit for claiming. The question to consider is whether the customer's ignorance or mistaken belief is reasonable. Clearly this requires closer consideration of the circumstances, and may necessitate obtaining further evidence from the customer before a decision can be made.

Backdating or reviewing?

- 21 When the Social Security Advisory Committee consulted on the proposed changes to the backdating rules, a number of organisations responded saying that the backdating rules were useful in dealing with gaps or breaks in entitlement, particularly for vulnerable people who go on and off benefit on a regular basis. The provision of a six-month backdating period should help to mitigate any adverse effects on vulnerable claimants. However, decision makers may find it helpful to remind themselves of the rules relating to revisions, suspensions and reinstatement and terminations of benefit.
- 22 If a claim has been submitted and the award subsequently terminated, then it may be possible to treat a further claim as also constituting an application for revision of the decision terminating the previous award, particularly if the customer has asked for benefit to be backdated to the day after the old award expired.
- 23 Of course, in treating the claim as an application for revision the decision maker would have to confirm there were grounds to revise the termination decision under regulation 4 of the HB/CTB D&A Regulations. And, unless the decision was wrong because of official error, if it has to be considered as a late application for revision, the decision maker must consider whether the customer satisfies the criteria set out in regulation 5.
- 24 If there are no grounds to revise or no special circumstances under regulation 5, the claim should be treated as a new claim and the normal backdating rules should be considered.
- 25 If it is clear that, despite having submitted a claim, the customer is in fact seeking a revision of the termination decision, then a refusal to revise should be notified to the customer alongside the decision on the new claim.
- 26 *Chapter C6* of the *HB/CTB Guidance Manual* explains the procedures for reconsidering, revising and superseding decisions, and *C7* contains guidance on the appeals process. These procedures have their own time limits, and the new regulations do not change these.