

SUPERSESSION IN TRANSITIONAL IB CASES

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INTRODUCTION

- 1 This Memo gives guidance on the ground for supersession to be used in cases where
 1. an award of Invalidity Benefit (IVB) is treated as a transitional award of long-term IB¹ **and**
 2. the person is subsequently found not to be incapable of work following the PCA².

The guidance is issued following a recent Commissioner's decision, [a copy of which is attached to this Memo](#)³.

1 SS (IB) (Transitional) Regs, reg 17(1); 2 SS (IW)(Gen) Regs, reg 24; 3 CSIB/695/04

BACKGROUND

- 2 The claimant was awarded IVB by a decision of an adjudication officer ("AO") dated 11.10.93. She scored more than 15 points on several applications of the PCA since 1995, so that a transitional award of long-term IB continued. On a further application of the PCA, the DM determined that she scored less than 15 points, and superseded the AO's decision so as to disallow IB from 11.1.04, the date of the decision. The ground for supersession was that medical evidence following an examination by an approved doctor had been received¹.

1 SS CS (D&A) Regs, reg 6(2)(g)

3 On appeal, the tribunal followed a Commissioner's decision¹ and overturned the DMs decision to restore the award of IB. The Secretary of State appealed to the Commissioner on the grounds that the earlier Commissioner's decision was erroneous in law. The Commissioner agreed with the earlier Commissioner, and held that the ground for supersession used was not available in transitional IB cases. This was because

1. the decision to be superseded was that of the AO awarding IVB
2. IVB is not an incapacity benefit because when it was originally awarded an incapacity determination was not a condition of entitlement²
3. the IVB decision could not be superseded so as to award IB following the incapacity determinations made before 11.1.04 as the outcome was not changed (the claimant still remained entitled to transitional IB)³.

1 CSIB/501/03; 2 SS CS (D&A) reg 7A(1); 3 R(DLA) 1/03

4 However, the Commissioner also held that it was possible to supersede the AO's decision on the grounds that there had been a relevant change in circumstances¹. This was the change in legislation which replaced IVB with IB. Where the DM determines that the claimant is not incapable, the IVB award can no longer be treated as a transitional award of long-term IB. The change in legislation which repealed the provisions relating to IVB then applies, so that the award cannot continue, and the decision can be superseded. The effective date is the date of the incapacity determination, as this is the date when the change of legislation becomes relevant². In practice the result of the supersession is the same as for the ground originally used by the DM. The tribunal had erred in law by failing to consider whether the supersession decision could be corrected³.

1 SS CS (D&A) Regs, reg 6(2)(a); 2 reg 7(2)(c)(iii); 3 R(IB) 2/04

ACTION TO TAKE

5 DMs making decisions should ensure that, where a transitional award of long-term IB is terminated following application of the PCA, the decision awarding IVB is superseded on the grounds that there has been a relevant change of circumstances since the decision was made, namely that the change in legislation repealing IVB. It is important to ensure that the correct ground for supersession is used when recording the decision.

- 6 Where a decision using another ground for supersession is the subject of an appeal to a tribunal, the submission writer should invite the tribunal to correct the supersession decision in accordance with the Commissioner's decision.

ANNOTATIONS

Please annotate the number of this Memo (Memo DMG Vol 1 07/05) against the following DMG paragraphs

04430 heading

CONTACTS

If you have any queries about this memo, please write to ACI Division, Room GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in DMG Letter 05/04.

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