

Severe Disability Premium and Backdated Housing Benefit

From 16 January 2019, the following rules apply to people receiving a legacy working age benefit with the Severe Disability Premium (SDP):

- They may not make a claim for Universal Credit
- They may make a new claim for any other legacy benefit compatible with the one they are already getting
 - The textbook case is a person on income-related ESA with an SDP who moves to a new local authority area: s/he may now claim HB

I am aware that some people delayed claiming HB in anticipation of this rule change; I am also aware that local authorities seem to believe that HB cannot be backdated before 16 January. **But HB can be backdated up to a month.** Here's why.

The law

Article 7 of the Welfare Reform Act 2012 (Commencement No. 23 and Transitional and Transitory Provisions) Order 2015 in most cases blocks new claims for Housing Benefit, but with exceptions which now include cases where the claimant is or was recently entitled to the SDP. Article 7 goes on to say:

(8) Subject to paragraph (9)¹, for the purposes of this article—

*(a) claim for housing benefit, income support or a tax credit is made by a person on **the date on which he or she takes any action which results in a decision on a claim being required** under the relevant Regulations; and*

*(b) **it is irrelevant that** the effect of any provision of the relevant Regulations is that, for the purpose of those Regulations, **the claim is made or treated as made on a date that is earlier than the date on which that action is taken.***

(11)

(e) “the 2006 Regulations” means the Housing Benefit Regulations 2006;

(g) “the relevant Regulations” means—

(i) in the case of a claim for housing benefit, the 2006 Regulations ...;

In plain English: the HB claim can be made on or after 16 January 2019; if that claim is then backdated under normal HB rules, it doesn't matter: Article 7 is only concerned with whether the claim can be made – after that, the normal HB rules take over. As to the normal HB rules, a claim can be backdated up to a month if there was “good cause” for failing to claim sooner, and it seems to me that not being allowed to claim before 16 January is as good as good cause gets! Alternatively, a person who starts a new tenancy while on ESA(ir), JSA(ib) or Income Support has a month to claim HB and it will be backdated to the start of the tenancy.

This means HB for SDP claimants can be backdated to 16 December 2018.

¹ We needn't concern ourselves with paragraph (9), which deals with defective claims and intention to claim