

Salaried Judge of the First-tier Tribunal (Social Entitlement Chamber) (2009)

Qualifying Test

Advance Information

The date for the qualifying test is the 21 April 2009. The qualifying test will be the sole method of shortlisting applicants for selection days for this exercise. Shortlisting is a competitive process, so the test is designed to be challenging. Preparation is strongly advised and there will be time pressure. It will be sat under exam conditions in two venues in London and if sufficient applicants request this, one venue in Edinburgh. Applicants are asked to indicate their preference for location in the application form. Letters with information on how to book a test session will be sent in early April. When booking, applicants will be invited to express a preference for which session in the day to sit the test, however, we cannot guarantee to meet all preferences.

The test has been devised by Tribunal Judges and is designed to test the following qualities and abilities:

Intellectual Capacity

- Ability quickly to absorb and analyse information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

Efficiency

- Ability to work at speed and under pressure
- Ability to organise time effectively and produce clear reasoned judgements expeditiously

The test will consist of two parts and will last no more than 90 minutes, including reading time. The first part will test applicants' understanding and application of the law. The second will test their understanding and application of the Tribunal Rules and case management procedure.

Applicants will be required to complete the written paper either using paper and writing materials or a laptop computer that can be provided. You are asked to indicate your preference in the application form.

Preparation

Applicants must be conversant with:

- a) Sections 71-76 Social Security Contributions and Benefits Act 1992 (as amended). Contained in Social Security Legislation Volume 1 (2008/09) (Sweet and Maxwell).
- b) The Social Security (Disability Living Allowance) Regulations 1991 (as amended). Contained in Social Security Legislation Volume 1 as above.
- c) The Tribunal Procedure (First-tier Tribunal)(Social Entitlement Chamber) Rules 2008. [<http://www.appeals-service.gov.uk/>]
[n.b. Rule 4 has not been implemented in this jurisdiction].

Clean copies of the Tribunal Rules, this legislation and regulations will be available for applicants to use on the day. You will not be permitted to bring any texts into the test.

Some applicants for these appointments may not have a background in Social Security law. The questions have therefore been designed to enable applicants to show their general legal and procedural skills, although it will be by reference to this particular jurisdiction. It is, however, recommended that applicants research the areas of law covered by the jurisdiction.

In all cases, candidates will find it helpful to know something of the way in which Social Security and Child Support tribunals work. Visit: <http://www.appeals-service.gov.uk/> to find out more.

More information about Disability Living Allowance may be viewed or downloaded from:

http://www.direct.gov.uk/en/DisabledPeople/FinancialSupport/DG_10011731

More general information about Social Security benefits is available on the Department of Work & Pensions (DWP) website:

<http://www.dwp.gov.uk/lifeevent/benefits/>

A detailed commentary on the law may be found in Social Security Legislation 2008-9 (Sweet & Maxwell) Volumes I-IV.

Sample questions

Included here are two sample questions devised by the test developers. This material is provided by way of an illustrative example of the structure, format and complexity of the test only, it is not indicative of the content or preparation requirements.

Part 1

A general Social Security technical problem:

If this was set as a test question, applicants would be required to be conversant with:

Regulations 6(16) – (18), and 19(4) and (5) Social Security (Claims and Payments) Regulations 1987 (as amended).

Hetti is in receipt of Incapacity Benefit at the long-term rate of £83.50 per week. She is aged 48 and lives alone. She is also receiving the higher rate mobility component of Disability Living Allowance (DLA) and the lowest rate of the care component based on the 'cooking test' [section 72(1)(a)(ii) Social Security Contributions and Benefits Act 1992]. The award is from 1 January 2006 to 31 December 2009 and was made on 1 February 2006.

On 1 July 2008 she had an interview with the local Citizens Advice Bureau (CAB) following which she applied to supersede the decision to award her DLA on the basis that her circumstances had changed and she had greater care needs. She suffers from asthma and arthritis. She said her care needs had increased on 1 June 2007 when she fell and broke her arm.

The CAB helped her complete her application to supersede the award of DLA. The application was received by Department of Work and Pensions (DWP) on 4 July

2008. After some delay, on 31 January 2009, the DWP made a decision to supersede the award. Hetti became entitled to the middle rate of the care component for day-time attention from 4 July 2008 until 31 December 2009. Hetti then applied for income support and this was awarded from the date of her application, 10 February 2009. When she received this decision Hetti applied for the award of Income Support to be back-dated to 1 June 2007.

This was refused and Hetti appealed.

The submission from the DWP relied on Regulations 6 (16) – (18) and 19(4) and (5) of the Social Security (Claims and Payments) Regulations 1987.

For the purposes of Schedule 4 to the Regulations the specified time for claiming Income Support is “the first day of the period in respect of which the claim is made”.

The CAB has confirmed that it helped with the request to supersede the award of DLA and the CAB was surprised that it took so long for the request to be dealt with. They also confirm that Hetti had applied for Income Support in the early part of 2006 but her Incapacity benefit had then exceeded the amount of Income Support to which she would have been entitled.

Hetti has written in her appeal to complain that she was never told by the CAB that there would be any problem in back-dating the award of Income Support when she asked for help to increase her DLA award. She also complains that the increase of DLA should be back-dated to 1 June 2007. The case has been listed as a paper appeal in relation only to the Income Support decision.

The appeal decision relates to the period from 1 June 1 2007 to 9 February 2009.

- 1. Why has the award of the middle rate care component of DLA meant that Hetti is now entitled to Income Support?**
- 2. Why has the DWP chosen to supersede the award of DLA from 4 July 2008 and not from 1 June 2007?**
- 3. Explain the relevance of Regulation 6(16)-(18) to this appeal. What is meant by the terms “relevant benefit” and “qualifying benefit” in the context of Hetti’s case.**
- 4. The DWP has reached the conclusion that Regulation 6 (16) – (18) does not apply. Please give your reasons for agreeing or disagreeing with this conclusion.**
- 5. On the available evidence consider the application of Regulations 19(4) and (5) to the appeal. Explain which parts of this regulation you consider to be relevant to this appeal.**
- 6. What is your decision?**
- 7. How would you deal with Hetti’s complaint that the award of middle rate DLA should start from 1 June 2007?**
- 8. Give reasons for your decision with appropriate findings of fact.**

Part 2

A file problem

If this was set as a test question, applicants would be required to be conversant with:

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

The appellant, John, is barely literate. His representative is his neighbour who is also barely literate. You have reached that conclusion from their handwriting, spelling, and punctuation. The issue in the appeal was the recovery or not of a large overpayment of a means tested benefit which came to light after the generalised matching service identified a previously unknown account in the appellant's name.

An enquiry form was returned which asked for an oral hearing. The form was signed by the representative. After its return only the neighbour/representative was informed of the hearing.

The appeal was listed for oral hearing but there was no attendance by the appellant or by his representative. The tribunal adjourned for the appellant to be contacted in view of size of overpayment. When there was no response a new tribunal dismissed his appeal.

Yesterday, six months after the hearing, it transpired that the appellant had moved. He called the office to say that he has just received details of the hearing. He wants to attend and to get details of the payments. He says the money represents the winnings of himself and others from visits they make to race meetings around the country, most of the money being owed to the others who he will have to seek out. He states that he would like to find a new representative as he feels he is too inarticulate to attend on his own. He won't give any commitment as to how long it will take to sort out all of these items, saying that it was never his fault in the first place.

Referring fully to the relevant Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008:

With reasons, identify all the options and the relevant rules and in each instance list the case management action required to progress the file