

Voluntary Deprivation of Resources

THE GENERAL POSITION

The general rule is that:

“A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to benefit or increasing the amount of that benefit.”

For disabled facilities grant purposes, the rule is, similarly, that:

“A relevant person shall be treated as possessing capital of which he has deprived himself for the purpose of increasing the amount of grant.”

For the rule to be applied, it is therefore necessary for the person making a decision on the issue to be sure both that there has actually been a deprivation of capital – that the money has been disposed of – and also that the intention of the claimant or grant applicant was to put themselves on a better footing in relation to means-testing.

Putting oneself at an advantage in relation to means-testing must be one of the significant reasons, but not necessarily the only one, for disposing of the capital.

Proving that disposal was for the purpose of increasing entitlement can be difficult, because it is reasonable for a person to use capital in everyday life.

However a sudden sharp reduction in the amount of capital available may indicate a deliberate deprivation intended to increase entitlement.

If the person making the decision is satisfied after investigation that deprivation has occurred for the purpose of increasing entitlement then the original amount should be treated as available capital and entitlement reduced.

There is provision for any such “notional capital” to be regarded as diminishing over time, at a low rate similar to the reduction it is causing in entitlement.

PEOPLE OVER THE QUALIFYING AGE FOR STATE PENSION CREDIT

The rules are more liberal for those over the qualifying age for state pension credit. These apply not only to Pension Credit itself, but also to Housing Benefit and Council Tax Reduction (CTR) payable to those over the qualifying age for state pension credit.*(See Endnotes)

For these benefits it is explicitly stated that spending money to pay off debts, or spending money “reasonably”, should not be treated as a voluntary deprivation of resources.

“Reasonableness” is notoriously subjective and the regulations do not give a list of items that are “reasonable“. However, it is likely that modest expenditure on repairs and improvements (even if not “essential“), or on a holiday would be regarded as acceptable. An example given in the DWP guide to Pension Credit is that a decision maker might consider replacing a car to be reasonable but not if the car that was bought was a Rolls Royce!

SOME EQUITY RELEASE CONSIDERATIONS

A key issue for those giving advice on the relationship between equity release and benefit entitlement is timing. If the client is in receipt of Pension Credit and is in an Assessed Income Period (AIP) then the only situation where the receipt of capital is reportable is if they receive Savings Pension Credit only and are in receipt of CTR. In that case, they are required to report to the local authority, for CTR purposes, when their capital reaches £16,000.

In any other AIP situation it is perfectly acceptable to receive, and then spend, capital during the AIP. There is no policy intention to ask, on the renewal of the AIP, “what capital have you had and what have you done with it? “. Instead, on renewal, it is the claimant’s capital circumstances at that point which are at issue.

Some clients undertake equity release specifically to pay off their debts. This will explicitly be acceptable where they are over the qualifying age for state pension credit. It may well, in practice, be acceptable to those making a decision on their benefit claims if they are under that age.

SOME DISABLED FACILITIES GRANT CONSIDERATIONS

There can sometimes be concern that the voluntary deprivation rule should be applied in disabled facilities grant (DFG) cases because capital has clearly been reduced between any preliminary test of resources and the final, formal, application.

However, it is not enough simply to note a difference between the two figures and decide to treat the earlier one as the capital. It is quite hard, in practice, to show that a client had deliberately got rid off capital to increase their entitlement to a DFG, as it is likely to be the case that even those who have an understanding of how means-testing works generally are unaware of the relatively unknown means-testing structure in relation to DFG.

There are, as yet, no specific and more liberal rules in relation to those over the qualifying age for state pension credit as there are set out in relation to Pension Credit, etc., above. In practice, those deciding on such DFG cases do seem to operate a “reasonableness“ rule and would probably accept that capital spent paying off debts should not be treated as being notionally available.

ENDNOTES

* “Notional capital

21. (1) A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to state pension credit or increasing the amount of that benefit except to the extent that the capital which he is treated as possessing is reduced in accordance with regulation 22 (diminishing notional capital rule).

(2) A person who disposes of a capital resource for the purpose of—

(a) reducing or paying a debt owed by the claimant; or

(b) purchasing goods or services if the expenditure was reasonable in the circumstances of the claimant’s case, shall be regarded as not depriving himself of it.”

Reg 21 The State Pension Credit Regulations 2002 (SI 2002 No. 1792)

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