

Social security test: October 2010

Mr John Deed, aged 52, made a claim for incapacity benefit on 01 June 2008. He has arthritis in his lower spine, knees, wrists and fingers.

He was awarded benefit with effect from 01 June 2008 on this basis. The decision to award benefit, made on 07 July 2008, was made in accordance with section 8 of the Social Security Act 1998.

In January 2010, Mr Deed was subject to the personal capability assessment for the first time. He completed and returned a self assessment questionnaire (an IB50 form) which had been sent to him by the Department for Work and Pensions (DWP). On the form he explained that: he cannot walk for more than 200 yards without the onset of severe discomfort; he cannot walk up or down a flight of 12 stairs without holding on and taking a rest; he cannot stand for more than 30 minutes before needing to sit down; he cannot pick up a coin which is 2.5 cm or less in diameter with either hand.

On 02 February 2010 he attended the Wembley assessment centre for a medical examination, as requested in a letter dated 28 January 2010, in respect of his incapacity benefit award.

On 25 February 2010 Mr Deed received a decision notice, dated 23 February 2010, telling him that the decision to award him incapacity benefit was being superseded and that he no longer qualified for benefit from the date of the letter because he had failed the Personal Capability Assessment (PCA). They said that Dr Moggs, who examined him on 02 February, has assessed him as scoring "0" in the PCA.

He appealed against this decision by letter. His letter was received by the DWP on 25 March 2010. He was then told that his appeal would not be allowed because it was submitted after the time limit had expired.

Mr Deed is bewildered by what has happened to him. He says his arthritis is as bad as it ever was, and he cannot understand why the DWP are allowed to stop his payments if he is still ill. He also says that he understood he had a month to appeal from the date he received the letter.

Please answer the following questions, giving reasons for doing so, and by making reference to the attached statutory provisions.

Assume that all the statutory provisions cited are in force at all relevant times. The numbering is as it appears in the legislation and there are no typing or similar errors. This is what the statute looks like: do your best with it. Square brackets [] indicate that the section has been amended: this is not important for the purposes of this test.

Attached: Sections 10 and 12 of the Social Security Act 1998; Regulations 8, 25, 26 and Schedule 1 of the Social Security (Incapacity for Work) (General)

Regulations 1995; Regulations 6, 31 and 32 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

1. The DWP say they have superseded Mr Deed's claim. In the circumstances as described, which statutory powers to supercede do you think the DWP could argue apply? Discuss the two most likely to apply.

2. How many points would he score on the basis of his own assessment?

3. Is his appeal late?

4. If it is late, what would Mr Deed have to argue in order to persuade a tribunal that his appeal should be allowed to proceed?