Correct date for non-dependant deductions to start in HB when ESA assessment-phase finishes.

The Local authority had incorrectly applied back-dated non-dependent deductions to this client’s Housing Benefit.

The client had two non-dependants who were under 25 and who were claiming ESA at the assessment rate.  Both non-dependents were on the ESA assessment rate for a long period – well in excess of the 13 week “assessment period”.

They were eventually assessed and moved onto the ESA main-phase – the client then became liable for two non-dependent deductions. The client reported the change of circumstances to the LA.

The Local Authority  decided that the client was liable for the non-dependant deductions from the end of the 13 week “assessment” period.   This was significantly earlier than the actual date that each non-dependant was transferred to the “main-phase” of ESA and created a substantial HB overpayment.   This appeared unjust to the client as he could not have reported any change of circumstances at the 13 week stage as his non-dependents were still in fact being paid the assessment rate of ESA and he could not have known. He appealed against the decision to recover the overpayment of around £950.

A Mandatory Reconsideration was submitted to the Local Council in which the decision was not changed so the next stage was to appeal that decision

In the appeal the representative successfully argued that the regulations state  that if the non-dependant transfers to main phase within the “assessment period” 13 week period then the non-dependant deduction should start at week 14  and if the transfer happens after the “assessment period” then it should only apply from the housing benefit week immediately following the decision (reg. 79 Housing Benefit Regulations 2006, further explained and applied in guidance circular HB/CTB A18/2008 circular in which Paragraph 22- 23 give examples).

The Local Authority changed its decision and accepted the appeal argument.

This successful decision offset the overpayment fully & a HB credit was also paid into the rent account

We have also helped our client successfully claim PIP of which the Daily living component has been awarded. Due to this no non dependant charge is applied to HB claim

Win…..Win for my client 

Rachel Ealey – WR Specialist -   Cobalt Welfare Benefits team.