

Benefits: Disputes and Appeals

Information Guide 17: For Residents and Advisers

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www.wolverhampton.gov.uk

1. Introduction

Decisions involving benefits like Universal Credit, Income Support, Jobseeker's Allowance, Employment and Support Allowance, Pension Credit, Disability Living Allowance, Personal Independence Payment, Attendance Allowance and Carer's Allowance can normally be altered by way of:

- **SUPERSESSION**
- **MANDATORY RECONSIDERATION**
- **APPEAL**

The Department for Work and Pensions (DWP) will often refer to a 'supersession' as a 'reconsideration' for ease of language. Another word for 'mandatory reconsideration' is 'revision'. Before being able to 'appeal' against a decision there must be a 'mandatory reconsideration' of that decision.

2. Supersession

A supersession is what a person should ask for if their circumstances have changed resulting in a need for them to get a greater amount of benefit or less benefit.

Example: Salima is getting Attendance Allowance at the lower rate. Her care needs have increased entitling her to the higher rate of Attendance Allowance. Salima will need to ask for a 'supersession' if she is to get her Attendance Allowance award revised to correctly reflect her current level of care needs.

There is no time limit for requesting a supersession. However, a supersession will normally only take effect from the date it is requested. If, however, a person is slow to report a change of circumstance which would result in them getting more benefit than the DWP can go back 12 months and pay arrears from this date providing there is a good reason for the person's failure to report the change sooner. If a person was slow in reporting a change of circumstance which would result in them getting less benefit (not more benefit) then the DWP would not carry out a supersession. They would instead undertake a revision which would enable them to seek to recover any overpaid benefit effective from the date the change took place.

A supersession can be requested in writing or over the phone. If a person is not happy with the outcome of a supersession, then they may challenge the decision by way of a 'mandatory reconsideration' (revision) and after this an 'appeal'.

3. Mandatory Reconsideration

A 'mandatory reconsideration' (sometimes also known as a 'revision') is what a person would ask for if they wanted to ask the DWP to look at a benefit decision again because they think it is wrong and they wish to dispute it/challenge it. The normal time limit for requesting a 'mandatory reconsideration' is one month (see Time Limit below) from the date of the decision letter/decision notice.

The one month time limit can be extended by 14 days if a person asks for a written explanation (which was not already included in the decision letter or given at a later date) of the decision which they are seeking to dispute/challenge. If the DWP do not respond to this request within 1 month then the person will be given a further 14 days from the date the written explanation is provided. The time limit for asking for a 'mandatory reconsideration' can be further extended by 12 months if a person was late in making the request and they have a 'good reason' (some 'special circumstance') for the delay. In demonstrating 'good reason' a person must explain why it was not practical for them to have asked for the 'mandatory reconsideration' sooner. Also, the longer the delay the 'the more compelling' should be the good reason. Up until recently if the DWP did not think that there had been sufficient 'good reason' then no appeal could be made against the original decision. This is because the DWP will have refused to carry out a 'mandatory reconsideration' and the rules said that you cannot appeal unless there has been a 'mandatory reconsideration'. However, in a recent test case [known as (*R(CJ) and SG v SSWP (ESA)*)] the Upper Tribunal held that this practice was wrong because it effectively meant that the DWP became the gatekeepers to appeal. The Upper Tribunal ruled that if a person's 'mandatory reconsideration' was late and the DWP refused to conduct a 'mandatory reconsideration' because it considered that the person did not have a 'good reason' then the person still had a right to appeal. Do seek further advice and information as necessary.

A 'mandatory reconsideration' will normally take effect from the date of the claim/decision in dispute with arrears of any unpaid benefit being payable from this date.

A 'mandatory reconsideration' can be requested in writing or over the phone. If a person is not happy with the outcome of a mandatory reconsideration, then they may challenge the decision by way of 'appeal'.

Example One: Sandra's claim for Personal Independence Payment has been refused by the DWP. Sandra thinks the decision is wrong. Sandra thinks that due to the difficulties she has with her personal care and mobility she should qualify. Sandra can ask for a 'mandatory reconsideration. This will result in the DWP looking at the original decision again taking into account both the information that was originally available and any new information which has since been submitted.

Example Two: Habib claimed Income-related ESA. The DWP held that he had 'limited capability for work' but not 'limited capability for work-related activity'. This meant that he would be put into the 'work-related activity group' (not the 'support group') and so would be subjected to 'work-focused interviews' and 'work-related activity'. Habib thinks this decision is wrong. He thinks that given his poor health he should have been placed into the 'support group'. Habib can ask for a 'mandatory reconsideration' of the decision made by the DWP on this matter. This will result in the DWP looking at the original decision again taking into account both the information that was originally available and any new information which has since been submitted.

Time Limit: Note that in some situations it is possible to ask for a 'mandatory reconsideration' at any time. For example, in cases involving a sanction decision or a case involving an 'official error' i.e. one where the DWP have clearly applied the law wrongly or ignored specific evidence. Further, the DWP may decide to carry out a 'mandatory reconsideration' after an appeal has been lodged if it is considered that the decision was after all flawed. Do seek further information and advice as necessary.

4. Appeal

If a person is not happy with a decision they can appeal to an independent First-tier Tribunal. However, before going to appeal the person must normally have already asked for a 'mandatory reconsideration' (revision) of the decision. The idea of this is that it gives the DWP another chance to correct any defect at this point, dispensing with the need to go to appeal.

The time limit for requesting an 'appeal' is one month from the date the decision following the making of the 'mandatory reconsideration' was issued - the date on the decision letter/notice. This time limit may be extended by 14 days where a person has requested (within one month of the date of the decision letter/notice) a written explanation of the decision.

The overall time limit for appeal can be extended by 12 months (so the overall time limit becomes 13 months from the date of the decision plus 14 days where written reasons for the decision have been requested) by a First-Tier Tribunal Judge providing the DWP do not object. Should the DWP object then a First-Tier Tribunal Judge can still allow the late appeal providing it would be 'fair and just' to do so.

Normally an appeal would be heard by a Judge (a qualified lawyer) sitting alone. However, if the appeal is connected to whether the person should be treated as though they have 'limited capability for work' and/or 'limited capability for work-related activity' for Employment and Support Allowance (or Universal Credit) then the appeal would be heard by a tribunal of two - a Judge and a doctor. If the appeal is connected to Personal Independence Payment, Disability Living Allowance or Attendance Allowance then it would be heard by a tribunal of three - a Judge, a doctor and a disabled member. The disabled member would be someone who is disabled or someone who has experience of working with people with disabilities.

5. Direct Lodgment

Under 'direct lodgment' all DWP appeals should be made in writing preferably using **SSCS1 Form** (or **SSCS5 Form** in the case of Child Tax Credit and/or Working Tax Credit) and sent direct to:

SSCS1 Appeals Centre
PO Box 1203
Bradford
BD1 9WP

Her Majesty's Courts and Tribunal Service (HMCTS) provide an **SSCS1 Form** (or **SSCS5 Form**) on which appeals can be made. The appeal application should normally contain a copy of the 'Mandatory Reconsideration Notice' which is sent by the DWP following a 'mandatory reconsideration' request. This confirms that a 'mandatory reconsideration' has been carried out on the decision under appeal. If the appeal request does not contain the 'Mandatory Reconsideration Notice' or at least proof that the DWP have actually undertaken a 'mandatory reconsideration' on the decision under appeal, then the Appeals Centre will look to establish whether one has been carried out by contacting the DWP or claimant. If there is no evidence that a 'mandatory reconsideration' has been undertaken, then the appeal paperwork will be returned to the appellant and the appeal will in effect be struck out. Any 'appeal' should contain the reasons why the appeal is being made and should be signed by the appellant (or their appointee, if they have one). Further, if the person has a representative who is helping them with the appeal then that person's/ organisation's details should be included on the **SSCS1** appeal form.

Providing 'reasons for appeal' (sometimes referred to as 'grounds for appeal') amounts to simply explaining why it is felt that the decision is wrong. For example, it may be that in the case of Employment and Support Allowance or Personal Independence Payment the person simply does not think that the DWP have applied the law correctly in their case and/or fully taken into account the nature of their condition and how it impacts on their functional ability.

Similar grounds may exist in relation to an appeal concerning Disability Living Allowance, Personal Independence Payment, Attendance Allowance. In the case of an overpayment of benefit it may simply be that the person does not think that they were overpaid or that the overpayment has been calculated incorrectly. It might be that the appellant accepts that they were overpaid but believe that the overpayment should not be recovered from them because it arose due to no fault on their part.

Whilst an appeal can be made against most types of decisions made by the DWP there are some decisions against which an appeal may not be made. In these cases, a person may still ask for a 'mandatory reconsideration' (i.e. ask for the DWP to look at the decision again). Do seek further information and advice where necessary.

6. Important

The outcome of a 'supersession', 'mandatory reconsideration' or 'appeal' is not always certain. Please be aware that in the case of Employment and Support Allowance, Disability Living Allowance, Personal Independence Payment, Attendance Allowance a person could end up getting less money than they started with. Whilst this is rare, it can happen if new information or evidence comes to light during the process that leads the DWP or First-tier Tribunal believing that the person's disability and difficulties are less than were first thought. If there is an award in payment then it is best to be sure of the grounds for the 'supersession', 'mandatory reconsideration' or 'appeal' before embarking on any action which seeks an increased award. Also, do not forget that anyone of 'working age' who requests a supersession of their Disability Living Allowance will now be assessed for Personal Independence Payment not Disability Living Allowance.

7. Housing Benefit

The provisions of 'supersession', 'mandatory reconsideration' and 'appeal' explained herein apply similarly to decisions made on Housing Benefit entitlements. One key difference is that you do not need to ask for a 'mandatory reconsideration' before making an 'appeal' application/going to appeal. Also, the appeal should not be made directly to the Appeals Centre/HMCTS. Any Housing Benefit 'appeal' should instead be sent directly to the local council - the Housing Benefit office who made the decision.

8. Council Tax Reduction

A person can ask for a 'supersession' of their award if their circumstances have changed in order to ensure that they are not being overpaid or underpaid in consequence. A person may ask for a 'mandatory reconsideration' if they want the council to look at their award again because they think there is something wrong with the way their entitlement has been calculated. A decision on Council Tax Reduction may also be challenged by way of an 'appeal' which would be decided by a 'Valuation Tribunal'. The time limit for an appeal is one month. A late appeal request may be allowed if there is good reason why it was not made in time.

9. Tax Credits

Child Tax Credit and Working Tax Credit are administered by Her Majesty's Revenue and Customs (HMRC). Since 6th April 2014, as with DWP benefits, a person must first request a 'mandatory reconsideration' of a decision which they dispute before they can appeal. A 'mandatory reconsideration' can be made in writing or requested on the telephone.

The time limit for a 'mandatory reconsideration' in the case of tax credit decisions is 30 days (not one month).

A late 'mandatory reconsideration' can be accepted if there is some good reason ('special circumstance') which meant that it was not practicable for the request to have been made in time. Any late 'mandatory reconsideration' request must be made within 13 months of the date of the decision which is the subject of dispute. As is the case with DWP decisions, there must be a 'mandatory reconsideration' before an 'appeal' can be made. The idea of insisting that a 'mandatory reconsideration' has been conducted first is that it gives the HMRC another chance to correct any defect at this point, possibly dispensing with the need to go to appeal.

If a revision does not deliver the desired outcome, then an 'appeal' may be requested. The time limit for an appeal is 30 days (not one month) but can be extended in the same way as the time limit may in the case of appeals against decisions of the DWP. See above. Any appeal must now be lodged directly with the Bradford Appeals Centre (see above for address). In relation to overpayments, whilst appeals can be made about whether or not a person has been overpaid, a person cannot appeal against the decision to recover any overpayment. Do see HMRC leaflet COP26 which deals with matters of Child Tax Credit and/or Working Tax Credit overpayments and recoverability. Some tax credit decisions can be revised even though the 13-month time limit has passed. This can be done where there has been an 'official error' providing it is done within 5 years. Do seek further advice and information as necessary.

10. Information Guides

The Welfare Rights Service produces the following Information Guides for use by local residents and advisers. The guides are designed to provide an overview of key welfare reform measures and benefit topics.

1. Personal Independence Payment
2. Personal Independence Payment - Toolkit
3. Employment and Support Allowance
4. ESA - Work Capability Assessment - Toolkit

5. Universal Credit
6. Universal Credit - Claims and Payment
7. Universal Credit - The Claimant Commitment
8. Universal Credit - Sanctions and Hardship Payments
9. The Benefit Cap
10. The Spare Room Subsidy
11. DWP Social Fund
12. Local Welfare Assistance
13. Benefits and People from Abroad
14. JSA Sanctions
15. ESA Sanctions
16. Benefits and Young People
17. Disputes and Appeals

A copy of these Information Guides may be viewed on and obtained from the City of Wolverhampton Council's website which contains information on Benefits, Universal Credit and Welfare Reform.

www.wolverhampton.gov.uk/welfarereform

Alternatively, if you ring (01902 555351) or email (A&C.WRS@wolverhampton.gov.uk) the Welfare Rights Service can send you a copy.

The information contained in this Information Guide is meant to provide insight to the supersession, mandatory reconsideration and appeals process. It should not be treated as an authoritative statement of the law. The details may be subject to change by new regulation and/or case law. Do seek further information and advice as necessary.

