

13-22 Reinstatement of a qualifying benefit and revision

Contents	Paragraphs
Introduction	1
The UT decision	
Background	2-3
Reasons for decision	4-5
Application of UT decision	6-8
In time application for revision example	
Out of time application for revision	9
Appeal to a FtT	10
Supersession	11
Annotations	
Contacts	

INTRODUCTION

1. This memo gives guidance following a recent UT decision¹ about whether a FtT can take account of circumstances that relate to a past period even if the position was different at the time of the decision before it.

1 [MW v SSWP \(IS\) \[2022\] UKUT 59 \(AAC\)](#)

THE UT DECISION

Background

2. The claimant was caring for a friend of hers who was not a member of her household but who was in receipt of the care component of DLA at the qualifying rate. The claimant was in receipt of both CA and

IS. The claimant's friend's entitlement to DLA came to an end with effect from 18.7.18 after they moved to PIP. Although he was awarded the enhanced rate of the mobility component of PIP, he was not awarded the daily living component. Consequently, the claimant's entitlement to CA was terminated with effect from 23.7.18. This in turn meant that the claimant was no longer entitled to IS and on 15.8.18, by way of supersession, this terminated with effect from 20.9.18 (after the end of the eight-week run-on period).

3. On 8.7.19 a FtT awarded the claimant's friend the standard rate of the daily living component of PIP from 18.7.18. On 22.7.19, she applied for the reinstatement of her CA, which, by a decision dated 30.8.19 was awarded from 23.7.18. On 9.7.19 and 6.9.19 the claimant contacted the Department and asked for her IS award to be reinstated, but on both occasions, she was advised to claim UC. Following further contact from the claimant's representative on 4.12.19, a decision was made and notified on 21.1.20 refusing to revise the decision of 15.8.18. The claimant appealed against the decision of 15.8.18 as not revised and the FtT dismissed the appeal.

Reasons for decision

4. The UT Judge accepted that a request for MR had been made within the absolute time limit of 13 months since the decision of 15.8.18 which terminated IS from 20.9.18. The later refusal to revise notified on 21.1.20 therefore gave rise to a right of appeal against the decision of 15.8.18. This meant that the FtT were correct to reconsider the decision which terminated IS.

5. The Judge held that

1. the making of a decision that a claimant is entitled to a benefit over a specific period of time is not itself a material change of circumstances for the purposes of section 12(8)(b)¹ and regulation 3(9)(a)² in a case like this; rather, where an award of benefit is made for a past period, the new entitlement that has been awarded is taken to have existed throughout the period it is awarded for; **and**
2. the beginning (and end, if any) of that period would have marked a material change of circumstances, but the making of the decision itself would not have been such a change; **and**
3. although the decision of 15.8.18 had appeared to be correct at the time it was made, it was later shown to be wrong by both the retrospective award of the daily living component of PIP to the claimant's friend and the retrospective award of CA to the claimant.

1 SS Act 98, s 12(8)(b); 2 SS CS (D&A) Regs, reg 3(9)(a)

APPLICATION OF THE UT DECISION

6. The UT's decision is solely about the matters a FtT can take into account on appeal. However, its finding that a retrospective award of benefit is to be taken as existing during the period it covers also has implications for when the DM can revise a decision that terminated benefit because a qualifying benefit

had ceased.

Note: The UT's decision applies to CA, ESA, JSA and SPC as well as to IS.

7. This means that the claimant can apply for revision where

7.1 the claimant's award of benefit has been terminated because a qualifying benefit has ceased; **and**

7.2 the qualifying benefit is later reinstated from when it stopped¹ **and**

7.3 an application for an "any grounds" revision is made within the relevant time limit.

1 [SS CS \(D&A\) Regs, regs 3\(1\) and 4](#)

8. If the application for revision is made

8.1 more than one month after the decision to terminate was notified **but**

8.2 within the absolute time limit of 13 months,

revision will be possible if there are grounds to extend the time for applying for an "any grounds" revision². Special circumstances that made it impracticable to apply within a month will exist as such an application can only be made once the claimant is made aware of the reinstatement. Therefore, it will be reasonable to allow the extension and revise.

1 [SS CS \(D&A\) Regs, reg 3\(1\)\(a\)](#); 2 [reg 4](#)

In time application for revision

Example

Sophia was notified on 11.2.21 that her IS award would terminate after the eight-week run on period, as the person she was caring for was no longer entitled to PIP and so Sophia's CA terminated from 25.1.21. She contacted the Department on 27.9.21 to advise that the PIP award had been restored and that she had asked for her CA to be reinstated. As Sophia had made contact within 13-months of the decision made on 11.2.21, the DM can treat that as an application for revision (MR) and revise the decision of 11.2.21 to reinstate the IS award.

Note: If a claimant has subsequently made a claim for UC, (claimed UC whilst awaiting the outcome of the MR and/or appeal or post the appeal), then arrears of IS should be paid up to and including the day before the UC claim.

Out of time application for revision

9. If an application for revision was made outside of the absolute time limit of 13- months, the DM could

only consider revision on specific grounds. As the decision on 11.2.21 was correct at the time it was made, there is no official error¹ and so no grounds to revise (or supersede). As the application was out of time the request does not constitute an application for revision. The DM should refuse to give a decision and there will be no right of appeal. Please see DMG Annex F for further guidance in respect of in time and out of time applications for revision.

1 SS CS (D&A) Regs, reg 3(5)(a)

Appeal to a FtT

10. If the claimant nevertheless appeals and the FtT waive the requirement to provide a MRN¹ the response should focus on the absence of a substantive request for an any ground revision and request that the appeal is struck out for want of jurisdiction². The appeal writer should ask the FtT to deal with the jurisdictional point as a preliminary issue³. The response should go on to say that if the FtT think otherwise then they should give a direction regarding next steps.

1 Tribunal Procedure (FtT) (SEC) Rules 2008, rule 7(2)(a); 2 rule 8(2)(a); 3 rule 5(3)(e)

Supersession

11. This decision does not change the way the general effective date rule is applied following an advantageous retrospective change of circumstances, which is reported within the relevant time limits. The supersession decision is effective from the date the change occurred¹ and not from when the retrospective change takes effect.

1 SS CS (D&A) Regs, reg 7(2)(a)

ANNOTATIONS

The number of this memo (Memo DMG 13/22) has been annotated against the following DMG paragraphs: 03004 and 03017.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo 4/19 Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds: November 2022