

CARERS' ALLOWANCE (CA) – MEANING OF 'TEMPORARY INTERRUPTION' TO FULL-TIME EDUCATION

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INTRODUCTION

- 1 This memo provides guidance in CA on the meaning of "temporary interruption" to full-time education (FTE) following the decision in *SM v SSWP [2016] UKUT 0406 (AAC)*.¹

¹ [SM v SSWP \[2016\] UKUT 0406 \(AAC\)](#)

BACKGROUND

- 2 A person cannot be entitled to CA if they are receiving FTE.¹

¹ *SSCBA 1992 s. 70(3)*

- 3 A person shall be treated as receiving FTE for any period during which they attend a course of education at a university, or other educational establishment for twenty-one hours or more a week¹ (See DMG [60072-60075](#)).

¹ *SS(ICA) Regs 1976, reg 5(1)*

- 4 In determining the duration of FTE a person who has started on a course shall be treated as attending it for the usual number of hours per week throughout any “*temporary interruption*” of their attendance until the end of the course or if earlier when that person abandons it or is dismissed from it.¹

1 SS(ICA) Regs 1976, reg 5(3)

MEANING OF ‘TEMPORARY INTERRUPTION’ FOUND IN *SM v SSWP [2016] UKUT 0406 (AAC)*

- 5 The claimant deferred her studies for a full academic year in order to look after a disabled family member. CA was disallowed and this decision was upheld by the First-tier Tribunal (FtT) on the basis that the claimant had not actually abandoned or been dismissed from her course of study – i.e. her deferral was a temporary interruption of her studies. The Upper Tribunal (UT) disagreed holding that in her case her year long deferral was more than “temporary” because she could not fairly be considered to be actively pursuing a course of FTE.
- 6 The judgment states that the legislator used the term “temporary interruption” to “*draw a distinction between cases where (a) an interruption in attendance, by its nature, means a person can no longer fairly be considered in fact to be actively pursuing a full-time course of study and (b) other interruptions the nature of which means the person can fairly be said still to pursue a full-time course of study. These other interruptions are temporary interruptions for the purposes of regulation 5.*”¹

1 SM v SSWP [2016] UKUT 0406 (AAC), paragraph 34

CONSEQUENCES OF THE DECISION

- 7 When considering a claim to CA a DM must consider the question “is the person actively pursuing a full-time course of study”? A DM must have evidence of the arrangement between the claimant and the university that allows the claimant to not attend. If there is no such agreement then a DM should consider this to be a temporary matter of immediate circumstances, a temporary interruption, and CA would not be payable. Where there is an agreement a DM would then have to decide whether this agreed break was of a nature to make it sufficient to be deemed that they are no longer actively pursuing their course of study. For example, if the claimant and university had agreed a two week break it would be reasonable to say that was for such a short length of time that they were still actively pursuing their course of study and CA would not be payable. Relevant factors may include length of break, whether or not the person can still access funding for their studies, and whether the person can access learning materials. If, on balance of probabilities, they are still deemed to be

actively pursuing a course of study then the interruption is a temporary one. They are still receiving FTE and therefore not entitled to CA. If they are not actively pursuing a course of study then the interruption is not a temporary one, the claimant is not deemed to be receiving FTE, and therefore the person is entitled to CA.

Example

Irina claims CA and informs the DM that she has taken time off university in order to look after an ailing parent. No agreement about this time off has been arranged or agreed with the university. Without such an agreement the DM decides that she is still actively pursuing a course of education and disallows her claim as the DM considers that break to be a temporary matter of immediate circumstances. Five weeks later Irina makes a new claim as she has subsequently been able to agree time off with the university, and will not have to attend until the following academic year, six months later (including the three month summer break). During this period the claimant will not be attending, will not be expected to do any work at home, and will not be assessed in examinations. The DM decides it is reasonable to find that this interruption to Irina's studies was not a temporary one, and she is no longer actively pursuing her course of study, and therefore for that six month period she can receive CA, until the start of the new academic year. The effective date of claim is taken as the date of the agreement with the university as it was not until this point that she could be properly said to be no longer pursuing her course of education.

8 RELEVANT DETERMINATION

This UT judgment, handed down on 7.9.16, is a "relevant determination" as it changed a previously held interpretation of the law. Where

1. an application is made for a supersession decision relating to entitlement to CA
and
2. a decision on that application falls to be made in accordance with the relevant determination

then the effective date of that supersession will be the date of the "relevant determination" (7.9.16)¹.

1 SS CS (D&A) Regs, reg 7(6), SSA 1998 s. 27

ANNOTATIONS

The number of this Memo 2/17 should be noted against the following DMG paragraphs: 60077

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: January 2017

The content of the examples in this document (including use of imagery) is for illustrative purposes only