

## ESA: CHEWING OR SWALLOWING FOOD OR DRINK

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### INTRODUCTION

- 1 This memo advises DMs of an update to the WCA Handbook. The update clarifies the guidance for HCPs on the interpretation of the LCWRA descriptor about chewing or swallowing food or drink<sup>1</sup>.

*1 ESA Regs 13, reg 16(1)(g) & Sch 3, Activity 16; UC Regs, reg 40(1)(a) & Sch 8, Activity 16*

- 2 The update is issued in the light of a recent UT decision<sup>1</sup>, and can be found in the Appendix to this memo.

*1 WC v SSWP (ESA) [2015] UKUT 304 (AAC)*

### THE UT DECISION

- 3 The only issue before the FtT and, on appeal, the UT, was whether the claimant had LCWRA because he had difficulties swallowing food other than soup and pot noodles due to a reflux problem. The FtT dismissed the appeal, finding that he was able to swallow drink.
- 4 The UT held that the descriptor had to be interpreted as if it read: cannot either chew and swallow food, or swallow drink. A person who was unable to swallow food, but could swallow drink, would be able to satisfy the descriptor and be found to have LCWRA, as would a person who could swallow drink but not food, or could chew but not swallow food. On the facts of the case, the claimant was able to chew and swallow drink and soft food. Although the FtT had applied the wrong test, the error was not material to the outcome and the appeal was dismissed.

## **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: March 2016**

## **APPENDIX**

See below for content to Appendix

## Update to Standard – 05/2016

**Subject:** The Support Group/LCWRA Descriptors- Activity 16

**Effective from:** 18<sup>th</sup> March 2016

**Audience:** All HCPs

**Guides affected:** The WCA Revised Handbook - (MEDESAAR2011/12HB~001)  
The ESA Filework Guidelines (MED-ESAFWG~001)

**This Update will be incorporated into the next version of the Standards on review of the procedures.**

This Update to Standard provides some clarification on the interpretation of the wording for the Support Group/LCWRA descriptor for Activity 16.

**For clarification this descriptor applies when the claimant:**

Is unable to eat but could drink **OR** Is unable to drink but could eat

**OR** Is unable to eat and is unable to drink

	<b>Activity</b>	<b>Support Group/LCWRA</b>
<b>16</b>	<b>Chewing or swallowing food or drink</b>	(a) Cannot chew or swallow food or drink;  (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;  (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence  (d) Owing to a severe disorder of mood or behaviour, fails to-  (i) Chew or swallow food or drink; or  (ii) Chew or swallow food or drink without regular prompting given by someone else in the claimant's presence