

**AA, DLA (CARE), WFP & CA – EFFECT OF RECENT UT
DECISION REGARDING THE PAST PRESENCE TEST
(PPT) AND GSL**

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INTRODUCTION

- 1 The purpose of this memo is to:
 1. inform DMs about a recent decision of the UT¹ which deals with the circumstances in which a claimant is entitled to DLA (care) and AA (and, by implication, CA, WFP and PIP(daily living)) when moving from another EEA Member State (MS), and
 2. instruct DMs follow the decision.

1 [2016] UKUT 0547 (AAC)

THE UT DECISION

Background

- 2 The case involved two claimants who claimed benefit, DLA (care component) and AA, shortly after arriving in the UK. The DM in both cases disallowed benefit on the basis that they did not have a GSL and didn't satisfy the PPT.

- 3 In the DLA case, the First tier Tribunal (FtT) dismissed the appeal, deciding that neither the claimant nor his mother satisfied the GSL test and that he could not aggregate his residence in Ireland with his residence in this country in order to satisfy the PPT.
- 4 In the AA case, the FtT allowed the appeal, deciding that the claimant's residence in Germany could be aggregated with her residence in this country, with the effect that she satisfied the PPT.

What the UT decided

- 5 Both cases were appealed to the UT. The UT did not award benefit in either case and decided that:
 1. mere residence could not be aggregated for the purpose of the PPT, only residence that equates to insurance in a MS can be aggregated; and
 2. for the purpose of the GSL test, the link was with the MS not with its social security system
- 6 Both parties are appealing the decision to the Court of Appeal (CoA): the Secretary of State agrees with the first point (however, the claimants are appealing this aspect of the decision) and the Secretary of State is appealing the second point, as it disagrees that the words "social security system" should be disregarded from the GSL test.

APPLYING THE UT DECISION

- 7 Although the decision is being appealed to the CoA, the UT decision has the force of law until a CoA decision is issued, therefore DMs should decide cases on the basis that:
 1. mere residence cannot be aggregated for the purpose of the PPT, only residence that equates to insurance in a MS can be aggregated, **and**
 2. for the purpose of the GSL test, the link is with the UK not with the UK's social security system.
- 8 Case documents relating to cases where the UT decision has been applied should be exempted from the usual policy of destroying case documents 14 months after a decision has been made. A record should also be kept of any such cases, from the date of the UT decision until the CoA decision so these can be easily identified if they need to be revisited following the CoA outcome. Cases that were disallowed from the

date of the UT decision should be revisited to ensure that the UT decision has been applied correctly.

- 9 Circumstances where the claimant or judge seeks to stay the case behind the CoA case shall be considered on a case-by-case basis.

ANNOTATIONS

- 10 The number of this Memo (DMG 16/17) should be noted against the following DMG paragraphs 071786 and 077248.

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 23/16](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: August 2017

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