

## LATE APPLICATION FOR A MANDATORY RECONSIDERATION – EFFECT OF A RECENT THREE JUDGE PANEL

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### INTRODUCTION

- 1 This memo provides guidance to DMs following a recent three Judge panel<sup>1</sup>. The Judges considered whether claimants who submit a late application for mandatory reconsideration (MR) and who are not granted an extension of time have a right of appeal to the FtT.

*1 R(CJ) and SG v SSWP (ESA) [2017] UKUT 0324 (AAC)*

### BACKGROUND TO MANDATORY RECONSIDERATION

- 2 Decisions notified on or after 28.10.13 can only<sup>1</sup> be appealed if the claimant has applied for a revision and the notice of the decision includes a statement to that effect. This is called “mandatory reconsideration” (MR). The time limit for requesting an MR is 1 month from the date of notification of the original decision<sup>2</sup>. The 1 month time limit for applying can be extended in certain circumstances up to a maximum of 13 months<sup>3</sup>. Where the application is made late and the DM does not accept the reasons for lateness then the current guidance ([DMG 03013](#)) is to the effect that claimants have no right of appeal to the FtT and the claimant can only challenge the decision by means of Judicial Review.

*1 SS (D&A) Regs, reg 3ZA(2); reg 3(1)(b); 3 reg 4*

## **THE UT DECISION**

- 3 The cases before the UT were claims to ESA which had been disallowed. In both cases the claimants had requested MR outside the 1 month time limit but within 13 months. The DM refused to accept that the claimant's circumstances justified extending the time limit and therefore refused to extend time for applying for MR. Both claimants sought to appeal to the FtT who declined to accept their appeals but the matter was referred to the UT to make a decision as to the proper application of the law.
- 4 The UT decided that a claimant who makes a request for MR after a month but within 13 months and who does not meet the criteria for extending the time limit has a right of appeal to the FtT against the decision for which revision has been sought. The UT decision applies immediately.

## **APPLYING THE UT DECISION**

- 5 DMs should apply the existing guidance on whether to admit a late application for MR - see [DMG 03014](#).
- 6 If a late application is made within 13 months but cannot be admitted and the decision cannot be revised for official error, a decision refusing to revise should be given and an MR notification issued. DMs must ensure that the MR notification includes appeal rights. If the claimant appeals, the FtT will be able to consider the substance of the decision that the claimant applied to have revised and not just the question of lateness. DMs should also consider whether the application for revision can be treated as an application for supersession - see DMG 03025
- 7 If an application is made more than 13 months after notification of the original decision, DMs should consider whether the decision can be revised on the grounds of official error. If not, they should give a decision refusing to revise but this will not give a new right of appeal. DMs should consider whether the application for revision can be treated as an application for supersession.

## **ANNOTATIONS**

Please annotate the number of this memo (17/17) against DMG paragraph 03013.

## **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: Sept 2017**

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