

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 3 Amendment 59 – October 2019

PLEASE NOTE

THIS WILL BE THE LAST AMENDMENT PACKAGE PROVIDED IN THIS FORMAT. FROM 2020 A “SUMMARY OF CHANGES” DOCUMENT WILL BE PRODUCED THAT WILL COVER ALL THE CHANGES MADE IN A DMG AMENDMENT PACKAGE

1. This letter provides details on Amendment 59; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vol-3-subjects-common-to-all-benefits-staff-guide>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 59 affects chapters 9 and 15. The changes:

Chapter 9 – incorporates Memo DMG 11/16 at paragraphs 09161 and 09373.

Chapter 15 – legal reference citations added to paragraphs 15452 and 15455.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove

Chapter 9

09161 – 09166 (1 page)
09370 – 09378 (1 page)

Chapter 15

15452 – 15456 (1 page)

Insert

Chapter 9

09161 – 09166 (1 page)
09370 – 09378 (1 page)

Chapter 15

15452 – 15456 (1 page)

Recoverability - principles governing benefits

Benefits covered

09161 This guidance applies to the following benefits¹

1. benefits under the Acts²
2. CHB³
3. IS⁴
4. SF payments⁵
5. benefits under repealed Acts⁶
6. Supp B (including HB Supplement and single payments)⁷
7. JSA⁸ (but see DMG 09295 - 09300 for certain overpayments of JSA to 16/17 year olds)
8. SPC⁹
9. ESA¹⁰
10. PIP¹¹
11. health in pregnancy grant¹².
12. SP¹³

1 SS A Act 92, s 71(11); 2 SS CB Act 92, s 122; SS A Act 92, s 71(11)(a); 3 s 71(11)(f); 4 s 71(11)(b); 5 s 71(11)(e), s 71 ZA; SS CB Act 92, s 138; 6 s 186, Sch 10; 7 s 186, Sch 10; 8 s 71(11)(aa); 9 s 71(11)(ab); 10 s 71(11)(ac); 11 s 71(11)(ad); 12 s 71(11)(ea); 13 s 71(11)(za)

Benefits not covered

09162 The following payments are not recoverable

1. refunds of NHS charges for prescriptions, dentures, dental treatment, glasses, wigs and fabric supports claimed on or after 1.11.74
2. travelling expenses of patients attending hospital
3. payments for welfare foods
4. travelling expenses for prison visits etc.
5. third party deductions for housing costs, water charges, community charge arrears or fuel made in error to third party after termination of a Supp B/IS award
6. fares to a DWP office
7. Christmas bonus payments
8. HB/CTB
9. any extra-statutory payments
10. interim payments of Supp B made under provisions in being before 6.4.87

11. SSP and statutory paternity pay
12. WC (Supp) and allowances under the PB and MDB.

General principles

- 09163 Misrepresentation and failure to disclose have different meanings in law. The DM should decide at the outset, under DMG 09196 et seq and DMG 09234 et seq, which ground is appropriate bearing in mind that
1. both grounds can occur during the period of an overpayment for the same or different parts of that period
 2. the DM should identify each misrepresentation or failure to disclose
 3. the misrepresentation and failure to disclose may be wholly innocent.
- 09164 When considering the recoverability of an overpayment, the law¹ says that
1. where any person
 2. whether fraudulently or otherwise²
 3. misrepresents, **or**
 4. fails to disclose
 5. a material fact, **and**
 6. this results in an overpayment of benefit for any period
- the amount of the overpayment is recoverable from the person misrepresenting or failing to disclose that material fact.

1 SS A Act 92, s 71(1); 2 R(SB) 21/82; R(SB) 2/92 Appendix

- 09165 This guidance also applies to the recovery of JSA overpaid to 16/17 year olds in severe hardship cases where the Secretary of State certificate has been revoked¹.

1 SS A Act 92, s 71A

The material fact

- 09166 Material fact means any fact which had it been known about and properly acted upon by the DM would have prevented all or part of the overpayment in question. It is a fact which is objectively material to the decision of the Secretary of State to make an award of benefit. A fact is material where, on disclosure, it would prompt further enquiries or investigations by the DM in order to decide whether an existing entitlement continued or required some change. Whether the particular person considers it material is of no relevance¹.

1 R(IS) 7/94

Example 1

The disclosure of widowhood is not disclosure of an income from WMA.

Adjustments - abatements

Introduction

09370 SPC, IS, JSA(IB) or ESA(IR) may be recovered if it would not have been paid if another income had been paid at the correct time¹. There are three methods of recovery². These are

1. abatement of arrears of UK benefits **or**
2. receipt from arrears of EC benefits **or**
3. deductions from benefit or direct from the claimant where neither of the above applies.

1 SS A Act 92, s 74(1)(b) & (2)(b); 2 SS (POR) Regs, reg 7-11

09371

Abatements of United Kingdom benefits

09372 The amount of a prescribed payment of a UK benefit is reduced by the amount calculated as in DMG 09375¹ where

1. the prescribed payment (see DMG 09373) is not made on or before the prescribed date (see DMG 09374) for that payment **and**
2. it is decided that an amount of SPC, IS, JSA(IB) or ESA(IR) has been paid that would not have been paid if the prescribed payment had been made at the correct time.

Note: DMs should note that, with the exception of joint-claim cases, a deduction cannot be made in relation to the claimant who is a member of a couple when the prescribed payment arrears are paid to the other member of that couple.

1 SS A Act 92, s 74(2)

Prescribed payments

09373 A prescribed payment can be

1. any benefit under the Act¹, except a gratuity or WPT²
2. CHB (including OPB³)
3. WDP or WWP which is not a gratuity and any payment which the Secretary of State accepts as similar to such a pension⁴
4. an allowance paid under the Job Release Act⁵
5. training allowance⁶
6. Child maintenance for the initial period⁷ (see DMG 09378)
7. WPA⁸
8. receipts from EC benefits⁹

9. JSA(Cont)¹⁰
10. Financial Assistance Scheme payments¹¹
11. ESA(Cont)¹²
12. PIP¹³
13. SP¹⁴.

*1 SS CB Act 92; 2 R(SB) 28/85; 3 SS (POR) Regs, reg 8(1)(b); 4 reg 8(1)(d); 5 reg 8(1)(e); 6 reg 8(1)(f);
7 reg 7(1)(b); 8 reg 8(1)(i); 9 reg 8(1)(j); 10 reg 8(1); 11 reg 8(1)(k); 12 reg 8(1)(l); 13 reg 8(1)(aa);
14 reg 8(1)(za)*

Prescribed date

09374 The prescribed date is the date the receipt of, or entitlement to the benefit, would have to be notified to the Secretary of State in time for it to be taken into account in the SPC, IS, JSA(IB) or ESA(IR) assessment¹. This means that an amount can be recovered if the

1. prescribed payment has not been made **and**
2. Secretary of State was notified of entitlement to the payment and the SPC, IS, JSA(IB) or ESA(IR) award could not be revised or superseded.

1 SS (POR) Regs, reg 8(2); R(SB) 28/85

Calculation of amount to be recovered

09375 The amount to be recovered should be worked out (see Annex 2) by comparing the amount of

1. SPC, IS, JSA(IB) or ESA(IR) paid **and**
2. SPC, IS, JSA(IB) or ESA(IR) which would have been paid if the prescribed payment had been made at the correct time.

Note: The amount to be recovered in any week cannot be more than the amount of prescribed benefit which should have been taken into account in that week.

09376

SF payments

09377 SF payments are not part of the SPC, IS, JSA(IB) or ESA(IR) schemes and should not be taken into account for recovery.

Child maintenance

09378 Recovery of IS, JSA(IB) or ESA(IR) from arrears of child maintenance is limited to the amount paid in each week of the initial payment period¹. This is the period between the date on which liability to pay maintenance begins and the date on which regular payments of child maintenance are to start.

1 SS A Act 92, s 74(1)

Averaging of amounts

15452 The weekly amount of a person's income from earnings may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognisable cycle of work **or**
2. five weeks² **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 SS Ben (C of E) Regs, reg 8(3); 2 LB v SSWP (ESA) [2019] UKUT 153 (AAC)

15453 The averaging of the weekly amount does not change the other rules on the treatment of earnings such as the date that they are treated as paid. This means that earnings should only be averaged where the claimant is actually in receipt of a payment.

Example 1

John works two weeks on and one week off.

In the two weeks John actually works he works 12 hours a week and receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM decides that the earnings should be averaged over a period of three weeks because that is the period of the recognisable cycle of work.

The DM calculates that John's average weekly earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

This average amount is taken into account from the fourth week. For the first three weeks, the DM used the actual amounts of earnings paid to John before an average figure could be calculated.

Example 2

Maggie works at a school term-time only as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Maggie's earnings during term-time when she is actually in receipt of an income. During the school holidays Maggie receives no earnings so there is no income to take into account.

Identifying a recognisable cycle

- 15454 The DM should see whether there is a pattern, or whether a pattern emerges from the fluctuating earnings over a period of time.

Example 1

Week 1 £40

Week 2 £45

Week 3 £40

Week 4 £40

Week 5 £45

Week 6 £40

There is a regular cycle of 3 weeks (weeks 1 to 3 repeated in weeks 4 to 6). The average weekly earnings are £41.67.

Example 2

Month 1 £180

Month 2 £200

Month 3 £180

Month 4 £200

There is a regular cycle of 2 months. The average monthly earnings are £190.

No recognisable cycle

- 15455 Where there is no pattern the DM should average earnings over 5 weeks or some other period where this would prove more accurate¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC), LB v SSWP (ESA) [2019] UKUT 153 (AAC).

Example 1

Week 1 £40

Week 2 £40

Week 3 £45

Week 4 £47

Week 5 £43

There is no recognisable cycle. The average weekly earnings are £43.

- 15456 When one week contains unusually high earnings it may be inappropriate to include that week when averaging earnings¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC).