

Annex A

Late application for a mandatory reconsideration (MR)

Appeal rights following MR

Whether there is a right of appeal against an original decision after MR depends on whether the application for MR was made under (a) one of the provisions that allow revision on any grounds or (b) one of the provisions that allow revision at any time¹.

1 PH v SSWP (DLA)[2018] UKUT 404 (AAC;[2019] AACR 14

“Any grounds” application

In “any grounds” applications for MR (for example those where the claimant’s disagreement is simply that the DM got it wrong and there should have been a higher award) the FtT will have no jurisdiction unless an application for MR was submitted within 13 months of the original decision (subject to small extensions where statements of reasons have been requested).

“Any time” application (specific grounds)

In “any time” applications for MR the claimant expressly or by implication relies on one of the provisions that allow a decision to be revised in specific circumstances (for example official error¹). There is no time limit for such applications. In these cases, a FtT may have jurisdiction to hear an appeal even if the request for MR has been made over 13 months after the original decision.

Example 1

MR requested within 13 months of notification of decision on “Any grounds”

- Decision notified on 20.3.18
- MR requested on 29.8.18
- Whether or not the DM accepts lateness, a decision should be made to revise or not revise. A mandatory reconsideration notice (MRN) must be issued. If the application discloses arguable grounds for supersession, a further decision should be made to supersede or not supersede
- There is never a right of appeal against the revision decision itself but there are appeal rights against the original decision as revised or not revised (see ADM A3075)
- The time for bringing an appeal will start when the MRN is issued.

Example 2

MR requested outside of 13 months of notification of decision on “any grounds”

- Decision notified on 21.5.18
- MR requested on 19.8.19 and so approximately 15 months after notification of the decision
- The claimant argues that they should have been entitled to a higher rate of benefit. The claimant has not argued that the decision was based on official error by an officer of the DWP. The reasons given were simply that the decision was wrong on its merits
- Therefore the substance of the request is an “any grounds” request. As the MR request was made after the absolute time limit of 13 months, the request does not constitute an application for revision
- **The DM should refuse to give a decision and there will be no right of appeal to the FtT. A MRN should not be issued** (see point 1 below)
- If the application discloses arguable grounds for supersession, a decision should be made to supersede or not supersede. A MRN must be issued (see point 2 below).

Response to the FtT

1. If the claimant appeals and the FtT waive the requirement to provide a MRN¹ the response should focus on the lateness of the application and request that the appeal is struck out for want of jurisdiction². The appeal writer should ask the FtT to deal with the jurisdictional point as a preliminary issue³. The response should go on to say that if the FtT think otherwise then they should give a direction regarding next steps.

1 Tribunal Procedure (FtT)(SEC)Rules 2008, rule 7(2)(a), 2 rule 8(2)(a), 3 rule 5(3)(e)

2. If a MRN has been issued for a supersession decision, the response should explain why no decision was issued in response to the application for revision and should focus on the decision to supersede or not supersede.

Example 3

MR requested outside of 13 months of notification of decision for official error but the substance of the request is “any grounds”

- Decision notified on 29.5.18
- MR requested on 21.7.19 and so approximately 14 months after notification of the decision
- The claimant argues that they should be entitled to a higher rate of benefit and that the decision was based on official error. However, they fail to identify any matters that might, on proper investigation, constitute an official error. They also fail to identify any other circumstances that might allow an “any time” revision. They simply argue that the decision is wrong

- Therefore the substance of the request is an “any grounds” request. As the MR request was made after the absolute time limit of 13 months, the request does not constitute an application for revision
- **The DM should refuse to give a decision and there will be no right of appeal to the FtT. A MRN should not be issued** (see point 1 below)
- If the application discloses arguable grounds for supersession, a decision should be made to supersede or not supersede. A MRN must be issued. (see point 2 below).

Response to the FtT

1. If the claimant appeals and the FtT waive the requirement to provide a MRN, the response should explain that the claimant has failed to identify official error and should then focus on the lateness of the application and request that the appeal is struck out for want of jurisdiction. The appeal writer should ask the FtT to deal with the jurisdictional point as a preliminary issue. The response should go on to say that if the FtT think otherwise then they should give a direction regarding next steps.
2. If a MRN has been issued for a supersession decision, the response should explain that the claimant has failed to identify official error and why no decision was issued in response to the application for revision. The response should focus on the decision to supersede or not supersede.

Example 4

MR requested outside of 13 months of notification of the decision for official error or another “any time” ground

- Decision notified on 14.9.18
- MR requested on 12.12.19 and so 15 months after notification of the decision
- The claimant argues that they were misadvised by an officer of the DWP meaning that an overpayment of benefit occurred
- Therefore the substance of the request is an “any time” request on the grounds of official error and so constitutes an application for revision. If the DM disagrees there was official error, **the DM should give a decision that refuses to revise**. A MRN should be issued. If the application discloses arguable grounds for supersession, a further decision should be made to supersede or not supersede.
- The time for bringing an appeal will start when the MRN is issued.

Response to the FtT

Whether or not the DM has accepted the allegation of official error, the FtT has jurisdiction and the response should effectively be a business as usual response dealing with the decision(s) under appeal.