

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 10 Amendment 50 – June 2019

1. This letter provides details on Amendment 50; 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-10-benefits-for-incapacity-disability-maternity-and-bereavement-staff-guide>

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

3. Amendment 50 affects chapter 62. The changes:

expand guidance at 62535 and make minor and consequential amendments.
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 62

62529 – 62552 (4 pages)

Insert

Chapter 62

62529 – 62552 (4 pages)

62529 Earnings are averaged over 13 weeks in the test period. Women can choose which 13 weeks are best for them. The 13 weeks may be separate or consecutive¹. Earnings from employment and notional earnings can be used. The 13 week average will only apply if there are at least 13 weeks earnings or notional earnings in the test period.

1 SS (MA) (Earnings) Regs, reg 6(1)

62530

Rate of MA

62531 The weekly rate of MA is the lesser of the standard rate of MA or 90% of the woman's average weekly earnings¹.

Note: See DMG 62716 for guidance on the rate of MA for a participating spouse of civil partner of a S/E earner.

1 SS CB Act 92, s 35A(1); SMP (Gen) Regs, reg 6

62532 Women who qualify for MA at a lower rate than IB or ESA(Cont), and who satisfy the contributions for IB or ESA(Cont), are entitled to an IB or ESA(Cont) top-up for the full 39 weeks MAP (see DMG 62502). No separate claim form for IB or ESA(Cont) is required¹ (see DMG Chapter 02). Waiting days will apply in all cases where the woman is entitled to IB or ESA(Cont).

1 SS (C&P) Regs, Sch 1

62533 This is due to days of entitlement to MA (i.e. days within the MAP) being treated as days of IfW¹ or LCW².

1 SS CB Act 92, s 30C(2); 2 ESA Regs, reg 20(e)

Calculating earnings of employees

62534 Average weekly earnings are the average weekly amount of payments made to a woman or for her benefit when she was an employed earner¹. This includes

1. any amount retrospectively treated as earnings² (see DMG 62537)
2. payments of arrears of pay where a woman is re-instated or re-engaged because of an order under employment legislation³
3. payments made under employment legislation for the continuation of a contract of employment⁴
4. a protective award for employees made redundant or to be dismissed as redundant⁵
5. any sum payable by way of SSP (this includes payments made by HMRC rather than the employer⁶)
6. any sum payable by way of SMP (this includes payments made by HMRC rather than the employer⁷)

7. any sum payable by way of statutory paternity pay (this includes payments by HMRC rather than the employer⁸)
8. any sum payable by way of statutory adoption pay (this includes payments by HMRC rather than the employer⁹)
9. any sum payable by way of statutory shared parental pay (this includes payments by HMRC rather than the employer¹⁰).

1 SS CB Act 92, s 35A(4); SS (MA) (Earnings) Regs, reg 2(1); 2 SS CB Act 92, s 4B(2); 3 ER Act 96, s 114 & 115; 4 s 129; 5 Trade Union and Labour relations (Consolidation) Act 1992; 6 SS CB Act 92, s 151(6); 7 s 164(9)(b); 8 s 171ZD(3); 9 s 171ZM(3); 10 s 171ZX(3)

Payments to be disregarded

62535 Payments to be disregarded are those payments of earnings disregarded when calculating liability to NI contributions¹. Such payments are

1. payments in kind²
2. payments by way of assets which are not disregarded as payments in kind³
3. certain non-cash vouchers⁴
4. certain payments to directors⁵
5. certain payments in respect of employment as a mariner⁶ **and**
6. certain other payments⁷.

The DM should liaise with HMRC in cases of doubt.

1 SS (MA) (Earnings) Regs, reg 2(2); 2 SS (Conts) Regs, reg 25 & Sch 3, para 1(2); 3 reg 25 & Sch 3, para 1(3); 4 reg 25 & Sch 3, para 1(4); 5 reg 27; 6 reg 123; 7 reg 25 & Sch 3, para 1(5)

Backdated pay awards

62536 Any payment received after the end of the specified period which includes a sum in respect of any week falling within that period, should be included in the earnings calculation¹.

1 SS (MA) (Earnings) Regs, reg 6(2)

Payments to directors of limited companies

62537 A limited company of whatever size is legally distinct from its employees, officers and shareholders¹. The profits of the company do not belong to its directors. A director of a limited company may be an employee or an office holder² of the company and as such is in either case an employed earner³ for NI contributions purposes. Unless DMG 62535 4. applies, payments made by a company to a director are earnings for MA purposes⁴.

1 R(SB) 57/83; 2 McMillan v. Guest 1942, AC 561; 3 SS CB Act 92, s 2(1)(a); 4 SS (MA) (Earnings) Regs, reg 2(1)

- 62538 Where a woman director is liable to pay NI contributions on money advanced as a loan, that advance will be earnings for MA purposes¹. The DM should liaise with HMRC to confirm the NI contribution position in such cases.

1 SS (MA) (Earnings) Regs, reg 2(1)(za); SS (Conts) Regs 01, reg 22(2)

Calculating earnings of the self-employed – EWC before 12.7.15

- 62539 For an EWC before 12.7.15, a S/E earner is treated as earning an amount
1. 90% of which equals the standard rate of MA in force at the end of the week covered by a Class 2 contribution and a small earnings exception certificate is not held for the same week¹ **or**
 2. equal to the MA threshold in force on the last day of each week covered by a small earnings exception certificate².

1 SS (MA) (Earnings) Regs, reg 3(a) (as then in force); 2 reg 3(b) (as then in force)

Example 1

A woman who has paid class 2 contributions only throughout the 13 week period earnings period will receive the standard rate of MA: she is deemed to have earnings, 90% of which equals the standard rate of MA in force in that week. From 7.4.14 the standard rate of MA is £138.18. Therefore deemed earnings are $(£138.18 \times 10 \div 9) = £153.33$. The woman would accordingly be entitled to the standard rate of MA as 90% of £153.33 is £138.18.

Example 2

A S/E woman satisfies the employment test. She has low earnings and holds a small earnings exception from the payment of NI contributions, for the specified period. She is therefore treated as having earnings equal to the MA threshold. If the MA threshold is £30 a week, she would receive MA at 90% of £30. She would receive £27 a week for up to 39 weeks.

Calculating earnings of the self-employed – EWC on or after 12.7.15

- 62540 For an EWC on or after 12.7.15¹, a S/E earner is treated as earning an amount
1. 90% of which equals the standard rate of MA in force at the end of the week covered by a Class 2 contribution² **or**
 2. equal to the MA threshold where 1. does not apply³.

1 Social Security (Maternity Allowance) (Earnings) (Amendment) Regulations 2015, reg 1(2); 2 SS (MA) (Earnings) Regs, reg 3(a); 3 reg 3(b)

- 62541 Therefore, if a S/E earner has paid¹ at least 13 Class 2 contributions in the test period, she will receive MA at the rate in DMG 62540 1.. However, if a S/E earner

could have paid but has not paid² at least 13 Class 2 contributions in the test period, she will receive MA at the rate in DMG 62540 **2.**

1 SS CB Act 92, s 35A(5)(c)(i); 2 s 35A(5)(c)(ii)

Volunteer development worker

62542 A woman who pays class 2 contributions as a volunteer development worker during her absence from GB

1. satisfies the employment condition **and**
2. is entitled to MA at the rate as in DMG 62539 **1.** or DMG 62540 **1.**

Payment of class 2 contributions after decision on claim – EWC before 12.7.15

62543 Where a claimant makes a payment of class 2 contributions after a decision has been made on her claim, the DM should check the period for which those contributions have been allocated with HMRC. If HMRC confirm that the contributions have been allocated for a period up to the date of the decision, the DM should revise that decision¹. However, if HMRC confirm that the contributions have been allocated for a period after the date of the decision the claimant would have to make a new claim for entitlement to be considered.

Note: See DMG Chapter 03 for guidance on revision.

1 SS CS (D&A) Regs, reg 3(8C)(a)(ii)

Example 1

Tanya makes a claim for MA. On 2.8.10 the DM decides that Tanya is not entitled to MA because the earnings test is not satisfied. On 23.9.10 Tanya notifies the DM that she has made a payment of class 2 contributions. HMRC confirm that the contributions were allocated for 2009/10 tax year. The DM revises the decision of 2.8.10 and awards MA.

Example 2

Jackie makes a claim for MA. On 1.4.10 the DM decides that Jackie is not entitled to MA because the earnings test is not satisfied. On 22.12.10 Jackie notifies the DM that she has made a payment of class 2 contributions. HMRC confirm that the contributions were allocated for a period from 6.4.10. The DM does not revise the decision of 1.4.10.

Payment of class 2 contributions after decision on claim – EWC on or after 12.7.15

62544 If

1. the DM makes a decision to award MA at the rate in DMG 62540 **2.** **and**

2. the claimant subsequently makes a payment so that she has paid at least 13 contributions in the test period

the DM should revise the original decision and award MA at the rate in DMG 62540 1..

Note: See DMG Chapter 03 for guidance on revision.

Employed in more than one employment or self-employment

- 62545 Earnings from more than one employment or self-employment, either in the same or different weeks in the test period, can be added together to calculate the average weekly earnings¹.

1 SS (MA) (Earnings) Regs, reg 4(1)

Example 1

A S/E woman claims MA and satisfies the employment test. Her EWC is 29.4.18. She could have paid but has not paid at least 13 Class 2 contributions in her test period. She also has a P/T job working for an employer and earns £65 a week. She started on 7.1.18 and works every other week.

Her chosen 13 week earnings period is from 7.1.18 to 7.4.18. She is deemed to have earnings of an amount equal to the MA threshold because she could have paid but has not paid at least 13 Class 2 contributions and she has earnings from employment for seven weeks at £65 a week. So, for those seven weeks she has total earnings in each week of £95 (£65 earnings plus £30 deemed) and for the remaining six weeks of her chosen 13 weeks she has deemed earnings of £30 each week. All earnings are added together (a total of £845) and divided by 13 to arrive at her average weekly earnings.

She has average weekly earnings of £65, as this is below the amount needed for the standard rate of MA, the woman will receive 90% of her average weekly earnings. MA will be paid at £58.50.

Example 2

A woman satisfies the employment test by a mixture of employed and self employment. In her chosen 13 week earnings period, she has paid Class 2 contributions for the first seven weeks. She also had earnings of £250 per week for the remaining six weeks.

7 weeks (Class 2 standard rate MA £138.75 x 10 ÷ 9) £153.33 x 7 = £1073.31

6 weeks x £250 = £1,500

Total £ 2,573.31 ÷ 13 = £197.95

As her earnings are more than £153.18, she will receive the standard rate of MA from 7.4.14 of £138.18.

Paid other than weekly

62546 Where a woman is paid in multiples of a week, divide those earnings by the number of weeks covered by the payment.

62547 Where a woman is not paid weekly, the weekly earnings are calculated by dividing the payments made to her by the nearest whole number of weeks in the period in respect of which she is paid¹. The number of weeks used to divide payments may not be the same as the number of weeks covered by the payment. This is because the payment may cover part weeks at the beginning and end of the period. For the purpose of deciding the number of weeks covered by a payment, a week is a period of seven days beginning with Sunday².

1 SS (MA) (Earnings) Regs, reg 6(3); 2 SS CB Act 92, s 122(1)

62548 The following examples show

1. how payments are divided where the odd days are
 - 1.1 three or less **or**
 - 1.2 four or more **and**
2. the number of weeks covered by the payment.

Example 1

Joanne is monthly paid and receives a payment of £400 from her employer on 30.9.07. This payment is for the period 1.9.07 - 30.9.07, and therefore covers 30 days. In order to establish a weekly figure, 30 is divided by seven, which gives four weeks and two days. Her payment of £400 is divided by four, as this is the nearest number of whole weeks. Joanne is treated as having weekly earnings of £100 for six weeks for the purposes of the specified period. This is because September 2007 consists of six weeks, as part weeks are included.

Example 2

Becky receives a payment of £600 from her employer which covers payment for a period of 39 days from 1.3.07 - 8.4.07. The 39 days are divided by seven to give five weeks and four days. In order to establish the weekly amount, the £600 is divided by six, as this is the closest number of whole weeks. Becky is treated as having weekly earnings of £100 for seven weeks of the specified period. This is because the period 1.3.07 - 8.4.07 consists of 7 weeks, as part weeks are included.

Example 3

Anisa receives a payment of £800 from her employer on 30.4.07. This is payment for 1.4.07 - 30.4.07. The 30 days are divided by seven, which gives four weeks and two days. The £800 is divided by four, thus giving a weekly amount of £200. Anisa is treated as having five weeks payments of £200 for the purposes of the specified

period. This is because the month of April consists of five weeks when part weeks are included.

- 62549 Where consecutive periods of earnings are used, a payment may cover more than one period. When this happens only the highest amount is used.

Example

Karen is paid monthly. On 30.4.07 she receives £1,000 for the period 1.4.07 - 30.4.07 and on 31.5.07 she receives £1,200 for the period 1.5.07 - 31.5.07. The payment for April 2007 is for 30 days and is divided by seven, which gives four weeks and two days. The £1,000 is divided by four, the nearest number of whole weeks, giving a weekly amount of £250. Karen is therefore treated as having weekly earnings of £250 for five weeks because April 2007 has five weeks when part weeks are included. The payment for May 2007 is for 31 days and is divided by seven, which gives four weeks and three days. The £1,200 is divided by four, the nearest number of whole weeks, giving a weekly amount of £300. Karen is therefore treated as having weekly earnings of £300 for five weeks because May 2007 has five weeks when part weeks are included. However, the payments for both April 2007 and May 2007 cover week commencing 29.4.07. Therefore only the higher amount of £300 is used for this week.

Women who have worked abroad

- 62550 A woman who has

1. been absent from GB **and**
2. returned to GB **and**
3. throughout her absence remained ordinarily resident in GB

is in certain circumstances treated as having been engaged in employment as an employed earner and as having received an amount of specified payments equal to the LEL¹ (see DMG Chapter 07 for full guidance).

Note: See DMG 62521 for guidance on voluntary payment of Class 2 contributions in respect of periods of work outside the EEA.

1 SS (MA) (Work Abroad) Reg

62551 - 62552

