DMG Chapter 01: Principles of Decision Making and Evidence

Subpages

- Who decides claims and applications 01001 - 01039
- Other decisions and determinations 01040 - 01079
- Referring a claimant for a medical examination 01080 - 01099
- Outcome decisions 01100 - 01149
- Finality 01150 - 01199
- General principles of common law 01200 - 01229
- General principles of European Community law 01230 - 01259
- European Convention on Human Rights 01260 - 01269
- Revising and superseding decisions of former authorities 01270 - 01299
- Evidence 01300 - 01419
- Evidence in certain situations 01420 - 01519
- Medical evidence 01520 - 01999
- Appendix 1: Areas where information gathering and decision making functions must always be undertaken by separate members of staff

Who decides claims and applications 01001 - 01039

Making decisions 01010 - 01029

What decisions are made by DMs 01030 - 01039

01001 Decisions on claims and applications are made by the Secretary of State. In practice the Secretary of State does not make decisions personally. Instead, under the Carltona principle officials act on the Secretary of State's behalf, provided that the Secretary of State is satisfied that they are suitably trained and experienced to do so. Throughout this Guide these officials are called decision makers (DMs).

01002 The Carltona principle dates from a judgment of the Court of Appeal in October 1943[1]. The judgment said that the Secretary of State could not possibly make every decision for which they are constitutionally responsible and accountable to Parliament. The Secretary of State is therefore entitled to authorize a person of suitable authority to exercise these functions on their behalf.

1 Carltona Ltd v. Commissioners of Works and others

01003 The Secretary of State provides training and approved guidance to DMs on how to make decisions on their behalf. The DMG itself is one such form of guidance, advising DMs how to apply SS law. DMs should note that approved guidance **must** be followed when applying the law to the facts of the case. However, DMs may request advice from DMA Leeds on the application or clarification of the DMG in cases of doubt.

Note: See DMG 01460 for guidance about legal advice as evidence.

01004 The DM takes all necessary actions on behalf of the Secretary of State, including

1. gathering information

2. making decisions on claims and applications

3. dealing with administrative matters such as suspension of payment.

Note: The DM is **not** an independent officer.

01005 Although a DM may undertake all these functions, in some circumstances it may be appropriate to divide functions between different members of staff. However, there are some areas in which functions must always be undertaken separately for business and/or system security. See Appendix 1 for details.

01006 The DM must make a decision by considering all the evidence and applying the law, including any relevant case law, to the facts of each case. Where the legislation specifies or implies discretion, the

DM's judgement must be reasonable and made with unbiased discretion.

01007 - 01009

Making decisions

01010 Generally, each decision must be given on the facts as they exist at the date of the decision and not in anticipation of a future state of facts[1]. But there are variations and exceptions, for example where entitlement begins after the date of the claim. Entitlement can be established from a date after the date of the claim under

1. the advance claim provisions[2] **or**

2. the principle that the DM must consider the claimant's circumstances down to the date on which the claim is decided.

See DMG Chapter 02 for further guidance on deciding claims.

1 R(G) 2/53; 2 SS (C&P) Regs, reg 13 to 15

01011 A decision may be revised or superseded for past periods when facts relating to the period were not known at the time. For further guidance on revision and supersession, see DMG Chapters 03 and 04.

Example

Following an investigation, an IS claimant is found to have been in remunerative work for a month over a year ago. The effect of the facts found is that there is no entitlement to IS for the one month period. The decision awarding IS is superseded to disallow IS for the period of remunerative work only. Entitlement after the period of work is unaffected.

01012 A fact is either a relevant circumstance or an occurrence which

1. exists at the time the decision is given **and**

2. is known, accepted or proved to be true.

01013 The DM may use the help of an expert in cases where a question of fact needs special expertise[1]. An expert is a person who appears to the DM to have knowledge or experience in determining a particular question of fact[2].

1 SS Act 98, s 11(2); 2 s 11(3)

Example

Norman claims DLA. There is insufficient evidence in the claim form and advice from Medical Services to

decide the disability questions. The DM requests a report from an examining HCP. The DM then considers all the evidence to decide whether Norman is entitled to DLA.

01014 In cases other than discretionary SF payments[1], if the decision is found later to be inaccurate it can be altered by

1. revision[2]

2. supersession[3]

3. appeal[4].

Note: See DMG 01270 et seq for revision and supersession of decisions made by former adjudicating and appellate authorities.

1 SS Act 98, s 36 & 38; 2 s 9 & 38; 3 s 10; 4 s 12

01015 A decision is valid as soon as it is properly recorded by the DM. If a decision is not acted upon or not communicated to the relevant parties, this does not invalidate the decision[1]. However a decision is not fully effective unless and until it is notified[2]. See DMG 01116 - 01117 for guidance on how decisions are notified.

1 R(P)1/85; 2 R (U) 7/81; R (Anufrijeva) v Secretary of State for the Home Department & Another [2003] UK HL 36

01016 - 01029

What decisions are made by DMs

01030 The DM

1. decides any claim for a relevant benefit (see Annex A to this Volume)

2. makes contribution decisions on HRP and credits (see DMG 01050)

3. makes any decision that is made under, or by virtue of, a relevant enactment (see DMG 01031).

These decisions are called outcome decisions. It is important that DMs distinguish between outcome decisions and other decisions and determinations. This is because only outcome decisions carry the right of appeal to the FtT[1]. See DMG 01100 - 01102 for further guidance on outcome decisions.

1 R(IB) 2/04

01031 A relevant enactment[1] is any enactment in

1. Chapter II of the SS Act 98

2. the SS CB Act 92 (except Part VII)

3. the SS A Act 92 (except Part VIII)

4. the SS (Consequential Provisions) Act 92

5. the JS Act 95

6. the SPC Act 02

7. Part 1 of the WR Act 07

8. Part 1 and section 30 of the Pensions Act 2014.

1 SS Act 98, s 8(4)

01032 - 01039

Other decisions and determinations 01040 - 01079

01040 There are other decisions made by DMs which are not outcome decisions. These are

1. the decisions in Annex E to this Volume, which are generally determinations made as part of an outcome decision

2. decisions on the discretionary SF[1] made in accordance with Directions and Guidance

3. determinations or findings of fact.

1 SS CB Act 92, s 138(1)(b)

01041 Determinations and findings of fact are not outcome decisions, but part of the process which goes towards making the outcome decision[1]. The DM should ensure that a determination is not notified as an outcome decision with appeal rights. Such a decision would be defective, and may be set aside as invalid on appeal to the FtT[2].

1 R(IB) 2/04; 2 R(IS) 13/05

Example

A person applies for SPC. The DM finds as fact that he is LTAMC with the owner of the house he lives in. The claimant is notified of the LTAMC determination, and that either he or his partner must make an application for both parties. No findings are made about income, capital, housing costs etc, and no decision on entitlement to SPC is made. On appeal, the FtT decides that it has no jurisdiction to hear the appeal as no outcome decision on the application for SPC has been made.

01042 The DM can not make a decision on

1. HB or CTB[1] which are administered by the LA

2. issues in respect of NI Contributions, SSP, SMP, statutory adoption pay or statutory paternity pay

which are decided by HMRC[2] (see Annex C to this Volume).

Note: See DMG 01047 - 01048 for guidance on the different roles of DWP and HMRC in RP cases involving GMP.

1 SS Act 98, s 8(4); 2 SSC (ToF) Act 99, s 8(1)

01043 - 01044

Reference to HM Revenue and Customs

01045 Entitlement to SS contributory benefits depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the Secretary of State to HMRC for a formal decision[1]. See DMG Chapters 03, 04 and 06 for guidance on how decisions and appeals are handled after a reference to HMRC.

Note: See DMG 01050 - 01053 where the dispute is about whether credits should be awarded.

1 SS CS (D&A) Regs, reg 11A and 38A

01046 The Secretary of State remains responsible for deciding whether the contribution conditions are satisfied in relation to benefits including

1. the earnings factor derived from them

2. which are the relevant income tax years

3. the years in which the contributions must have been paid or credited

4. the commencement of a PIW

5. the start of the relevant benefit year.

01047 In RP cases involving GMP, it is for HMRC to determine the amount of GMP from one or more occupational pensions[1]. The DM should then determine where appropriate the aggregate amount of GMP, and the amount of AP for the purposes of entitlement to RP[2].

1 Pension Schemes Act 93, s 170(2); 2 s 46; SS CB Act 92, s 45; R(P) 1/04

01048 DMs should note that

1. appeals against decisions about contributions matters made by HMRC are heard by the FtT (Finance and Tax Chamber)[1]

2. appeals against decisions about GMP made by HMRC are heard by the FtT (Social Entitlement Chamber) in the same way as SS appeals[2].

1 SSC (ToF) Act 99, s 11; R(IB) 1/09; 2 Pensions Schemes Act 93, s 170(6)

01049

Home Responsibilities Protection and credits

01050 The Secretary of State remains responsible for deciding HRP and credits questions[1]. In practice all HRP and some credits decisions are taken on his behalf by HMRC[2].

1 SS Act 98, Sch 3, paras 16 & 17; 2 SSC (ToF) Act 99, s 17

Credits awarded by HM Revenue and Customs

01051 HMRC considers whether to award credits for

1. SSP

2. SMP

3. Statutory adoption pay

4. WTC (including the disability element)

5. jury service

6. periods of wrongful imprisonment or detention in legal custody

7. auto credits for

7.1 16-18 year old people

7.2 men born before 6th October 1953

8. approved training where not awarded by DWP

9. Gulf crisis credits.

Credits awarded by DWP

01052 The DWP considers whether to award credits for

1. incapacity and LCW

2. maternity

3. unemployment

4. carers entitled to CA

5. approved training.

For further guidance on awarding credits, see Credit Title Guide.

01053 Where

1. a claim is disallowed because the contributions conditions are not satisfied **and**

2. the claimant alleges that they should be awarded credits for a past period

the DM should decide the credits issue before dealing with the dispute about the contributions conditions. This may mean referring the credits claim to HMRC for a decision where appropriate.

Example

A claim for ESA is disallowed because the claimant failed the second contribution condition in one of the relevant years. In that year the claimant had been awarded 48 unemployment credits through two awards of JSA. In the remaining period he had been on holiday. The claimant argues that he should be awarded credits for the missing weeks. The DM awards two unemployment credits, and revises the ESA disallowance to award benefit.

01054 - 01059

Determinations on incomplete evidence

01060 The DM can make assumptions about certain matters where the evidence required to make a determination for the purposes of an outcome decision is incomplete. This enables an outcome decision to be made without waiting for information. A further determination can be made and the decision revised or superseded as appropriate when the evidence is received. See DMG Chapters 03 and 04 for guidance on revision and supersession.

Housing costs - IS, SPC and ESA

01061 Where

1. the DM has to decide a claim or make a supersession decision **and**

2. a determination is required about what housing costs are to be included in an award of

2.1 IS[1] **or**

2.2 SPC[2] **or**

2.3 ESA[3] **and**

3. there is not enough evidence to make that determination

the DM can make the determination on the basis of the evidence already held[4].

1 IS (Gen) Regs, reg 17(1)(e), 18(1)(f) & Sch 3; 2 SPC Regs, reg 6(6)(c) & Sch II;
3 ESA Regs, reg 67(1)(c), 68(1)(d) & Sch 6; 4 SS CS (D&A) Regs, reg 13(1)

Other IS determinations

01062 Where

1. the DM has to make a determination about whether

1.1 the applicable amount is reduced or disregarded for persons affected by trade disputes[1] **or**

1.2 a person is treated as receiving relevant education[2] **or**

1.3 the applicable amount includes the SDP[3] **and**

2. there is not enough evidence to make that determination

the DM makes the determination on the basis that the missing evidence is adverse to the claimant[4].

1 SS CB Act 92, s 126(3); 2 IS (Gen) Regs, reg 12; 3 reg 17(1)(d), 18(1)(e) & Sch 2, para 13;
4 SS CS (D&A) Regs, reg 13(2)

SPC determinations

01063 Where

1. the DM has to make a determination about whether a claimant's appropriate minimum guarantee includes an additional amount for the severely disabled[1] **and**

2. there is not enough evidence to make that determination

the DM makes the determination on the basis that the missing evidence is adverse to the claimant[2].

1 SPC Regs, reg 6(4) & Sch 1, para 1; 2 SS CS (D&A) Regs, reg 13(3)

JSA determinations

01064 Where

1. the DM has to make a determination about whether

1.1 the applicable amount is reduced or disregarded for persons affected by trade disputes[1] **or**

1.2 a person is treated as receiving relevant education[2] **and**

2. there is not enough evidence to make that determination

the DM makes the determination on the basis that the missing evidence is adverse to the claimant[3].

1 JS Act 95, s 15; 2 JSA Regs, reg 54; 3 SS CS (D&A) Regs, reg 15

Other ESA determinations

01065 Where

1. the DM has to make a determination about whether a claimant's applicable amount includes the SDP[1] **and**

2. there is not enough evidence to make that determination

the DM makes the determination on the basis that the missing evidence is adverse to the claimant[2].

1 ESA Regs, reg 67(1), 68(1) & Sch 4, para 6; 2 SS CS (D&A) Regs, reg 13(2)

01066 - 01069

Deciding a claim with no election

01070 Where

1. a person claims a Cat A or Cat B RP, SAP or GRB **and**

2. an election is required[1] because entitlement is deferred **and**

3. no election is made at the date of claim

the DM may decide the claim before the election is made or treated as made[2]. See DMG Chapter 75 for guidance about deferring entitlement and making elections.

1 SS GRB Regs, Sch 1, para 12 or 17; 2 SS CS (D&A) Regs, reg 13A(1) & (2); reg 13A(3)

01071 The DM must revise the decision on the claim once the election is made or treated as made. See DMG Chapter 03 for guidance about revising decisions.

01072 - 01079

Referring a claimant for a medical examination 01080 - 01099

Reference by DM

01080 Before making a decision on a claim for, or entitlement to a relevant benefit (except where an IfW, LCW or LCWRA determination is required) the DM may refer the claimant to a HCP approved by the Secretary of State for an examination and report. The DM may make the referral at the initial, revision or supersession stage of a claim. The claimant is referred only when a medical examination is **necessary** to obtain information to enable the DM to reach a decision on the claim or entitlement to benefit[1].

1 SS Act 98, s 19(1)

Incapacity for work, limited capability for work and limited capability for work-related activity

01081 Where a DM is determining IfW, LCW or LCWRA whether on a claim for benefit or credits, the claimant can be referred for an examination[1] by a HCP approved by the Secretary of State.

1 SS CB Act 92, s 171A; SS (IW) (Gen) Regs, reg 8; ESA Regs, reg 23; reg 38

Reference by First-tier Tribunal

01082 The FtT may refer a claimant for a medical examination where information is needed to determine an appeal[1] and an issue raised by the appeal[2]

1. is whether the claimant satisfies the disability conditions for

1.1 AA[3] **or**

1.2 DLA[4] **or**

1.3 SDA[5]

2. relates to the period for which the disability conditions for AA or DLA are likely to be satisfied

3. is the rate of an award of AA or DLA

4. is whether the claimant is incapable of work

5. relates to the extent and assessment of disablement for IIDB (except REA) and SDA[6]

6. is whether the claimant suffers a loss of faculty as a result of an IA[7]

7. relates to a disease or injury for the purposes of IIDB (except REA)[8]

8. relates to Old Cases Schemes[9].

1 SS Act 98, s 20(2); 2 TP (FtT) (SEC) Rules, rule 25; 3 SS CB Act 92, s 64 & 65(1);
4 s 72(1) & (2) & 73(1), (8) & (9); 5 s 68; 6 Sch 6; 7 s 103; 8 s 108; 9 s 111 & Sch 8

01083

Meaning of health care professional

01084 A HCP is[1]

1. a registered medical practitioner

2. a registered nurse

3. a registered occupational therapist or physiotherapist[2] **or**

4. a member of such other regulated profession as prescribed[3].

Note: For the purposes of claims to the higher rate of DLA mobility component on the grounds of severe visual impairment, optometrists registered with the General Optical Council and orthoptists registered with the Health Professional Council are HCPs.

No other professions have been prescribed as HCPs at present.

1 SS Act 98, s 39(1); SS (C&P) Regs, reg 2(1); SS (IW) (Gen) Regs, reg 2(1); 2 Health Act 99, s 60;
3 NHS Reform & Health Care Professions Act 02, s 25(3); SS Act 98, s 39(1)

Meaning of medical practitioner

01085 A medical practitioner is defined in the UK as a registered medical practitioner. This definition includes a person outside the UK who has the equivalent qualifications as those of a registered medical practitioner[1].

1 SS A Act 92, s 191; SS (IW) (Gen) Regs, reg 2(1)

Failure to attend for medical examination

01086 In benefit cases where IfW is not an issue, the DM decides against the claimant if they fail, without good cause, to attend for or submit to a medical examination[1]. What decision is made depends on the reason for referring the claimant for examination. The DM can make adverse assumptions following the failure.

1 SS Act 98, s 19(3)

01087 Generally, in the case of

1. a claim, the DM should disallow

2. reassessment following a provisional award of IIDB, the DM should disallow

3. an application for revision, the DM should notify that the decision is not revised (see DMG Chapter 03)

4. an application for supersession, the DM should make a decision not to supersede (see DMG Chapter 04).

01088 There may be some cases where it is not appropriate to give a decision as in DMG 01087. This is where the DM was able to award benefit on the existing evidence, and the examination was required in order to establish whether a higher rate of benefit should be awarded.

Example

A claim for DLA is received. The DM accepts from the evidence that the claimant is entitled to the higher rate of the mobility component. The evidence for entitlement to the care component is inconclusive, and the DM refers the claimant to a HCP for examination and report. The claimant refuses to attend without good cause. The DM awards the mobility component, but decides that the conditions for the care component are not satisfied.

01089 The DM may also suspend and terminate benefit where a claimant fails, without good cause, to attend a medical examination **and**

1. the Secretary of State wished to check the correctness of an award **or**

2. the claimant had applied for revision or supersession[1].

See DMG Chapter 04 for further guidance on suspension and termination.

1 SS Act 98, s 24; SS CS (D&A) Regs, reg 19

01090 In cases where an IfW, LCW or LCWRA determination is required, and the person fails, without good cause, to attend or submit to a medical examination, the DM should follow the guidance in DMG Chapter 13 or DMG Chapter 42.

Has the appointment been cancelled

01091 People cannot fail to attend the medical examination if the appointment has already been cancelled by Medical Services[1]. The DM should investigate any indications that the claimant had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment has been left open for the claimant.

1 R(IB) 1/01

Good cause

01092 Good cause is not defined in legislation but a number of Commissioners' decisions deal with it. It includes any facts which would probably have caused a reasonable person to act as the claimant acted[1], for example

1. the claimant's health at the time

2. the nature of the claimant's illness

3. the information that the claimant received

4. whether the claimant was outside GB at the time

5. whether there was any postal delay.

1 R(SB) 6/83

01093 For details on how to obtain and weigh up the medical evidence see DMG 01520 - 01599.

01094 - 01099

Outcome decisions 01100 - 01149

01100 The most important issue for a claimant who makes

1. a claim **or**

2. an application for

2.1 revision **or**

2.2 supersession **or**

2.3 an IA declaration

is the outcome of that claim or application. For a claim, the claimant wants to know whether the claim has been successful, and if so, how much benefit will be paid and from when. The same principle applies to an application.

01101 The decision on a claim or application is called an outcome decision because it tells the claimant the outcome of the claim or application. An outcome decision incorporates all subsidiary determinations such as the separate elements of entitlement to benefit and the day that benefit will be paid.

01102 The claimant has a right of appeal against outcome decisions only[1] as listed in Annex D to this Volume. An outcome decision on a claim, for example, is whether or not the claimant is entitled to benefit. As part of the process of making that decision, the DM makes determinations or findings of fact which lead to the outcome. These determinations generally do not have the right of appeal - see Annex E[2]. Although an appeal is against the outcome decision, in practice the claimant may wish to focus on a component part of the decision. For further details on appeals see DMG Chapter 06.

1 SS Act 98, s 12 & Sch 3; 2 s 12 & Sch 2

Example 1

A woman is receiving IS as a lone parent with three children. Following investigation, the DM determines that she has been LTAMC with the father of her children since before the date of claim. The awarding decision is revised for ignorance of a material fact. The outcome decision is that she is not entitled to IS from the date of claim as her partner works F/T. The claimant has the right of appeal against that decision, although the issue under appeal is the question of LTAMC.

Example 2

A man who works P/T makes a claim for JSA. The DM makes determinations about treatment of earnings and availability. The outcome decision is that he is entitled to JSA.

01103 - 01104

First-tier Tribunals and outcome decisions

01105 The FtT is not required to substitute an outcome decision for the decision under appeal[1]. The power enabling them to deal only with the issues raised by the appeal[2] does not have the effect that they have to make a decision on every issue if there is a more appropriate way of dealing with those issues. Where the FtT decides the issue but does not give a new outcome decision, the case is sent back to the DM. See DMG Chapter 06 for more details about the FtT and outcome decisions.

1 R(IS) 2/08; 2 SS Act 98, s 12(8)(a)

01106 If the case is remitted to the DM, a new outcome decision should be made incorporating the FtT decision. The FtT decision is binding on the DM, subject to supersession or appeal. See DMG Chapters 04 and 06 for further guidance.

01107

IIDB decisions

01108 In addition to decisions on claims, IIDB DMs make the following types of outcome decisions, both of which carry a right of appeal

1. in an IA case, an accident declaration[1]

2. an assessment of disablement[2].

Note: See DMG 01190 - 01191 for guidance on IIDB determinations.

1 SS Act 98, Sch 3, para 7; 2 SS CS (D&A) Regs, reg 26(c); SS CB Act 92, s 103 & 108 & Sch 6

01109 An assessment of the extent of disablement arising from a claim for an IA or a PD is a separate decision from the one awarding or disallowing benefit[1]. This means that on a first claim for benefit where an IA has resulted in a loss of faculty or an industrial disease has been diagnosed, the DM gives two separate outcome decisions

1. an assessment of disablement **and**

2. a decision awarding or disallowing benefit.

Note: Both decisions should be recorded in full on one LT54.

1 SS CS (D&A) Regs, reg 26(c)

01110 However, if the DM determines that there is no loss of faculty or the disease is not diagnosed, they make a single decision disallowing benefit which incorporates that determination (see DMG 01190 - 01191).

How is the decision recorded

01111 In most cases the decision is recorded on the Department's computer system. However, where a decision is revised or superseded, Departmental procedures may require that it is recorded clerically, e.g. on form LT 54. A revision or supersession must

1. identify the person to whom it relates

2. identify the decision it is changing

3. specify whether it is revising or superseding an earlier decision **and**

4. specify the grounds or authority for doing so.

For example, in a case where the claimant has previously passed the PCA, and on a further PCA fails to satisfy the test, the record of the decision should say

"I have superseded the decision dated ...[date] awarding incapacity benefit/credits. This is because the Secretary of State has received medical evidence following an examination by a HCP approved by the Secretary of State, since that decision was given.

...[The claimant] does not score 15 points for the physical descriptors or 10 points for the mental health descriptors, or an aggregate score of 15 points where both physical and mental health descriptors apply. The personal capability assessment is not satisfied.

As a result, ...[the claimant] is not incapable of work and is not entitled to incapacity benefit/credits from and including ... [date]."

01112 Where more than one decision needs changing on revision or replacing on supersession, each decision should be identified where possible. This is particularly important in overpayment cases.

Defective decisions

01113 Where a decision following revision or supersession is appealed, it is the formal record of the decision which will be considered by the FtT. Failure to set out the basis for the decision in the record may result in the FtT declaring it to be

1. defective **or**

2. unidentifiable as a revised or supersession decision.

DMs should ensure that this is not necessary by following the guidance in DMG 01111.

01114 In most cases the FtT should perfect or correct such decisions[1]. However, where it is not possible to identify whether the decision under appeal is a supersession or revised decision, the FtT may conclude that it is not possible to remedy any defects, for example because there is no effective date, or the decision is in reality a determination of fact. In such cases the DM may need to make a decision which complies with the requirements for revision or supersession as appropriate[2]. This may have the effect that the decision takes effect from a later date in cases where the effective date is the date of the decision. There may also be an impact on any overpayment decision.

1 R(IB) 2/04; 2 R(IS) 13/05

Example

The claimant is in receipt of IS as a lone parent. Following a fraud investigation, the DM makes a determination that the claimant is LTAMC with the father of her children. The determination is notified as an outcome decision with appeal rights, although it does not record what effect the LTAMC determination has on entitlement to IS.

A further decision is made about the overpayment of IS from the date that the claimant is found to be LTAMC. The claimant appeals the decision to the FtT. The FtT concludes that no overpayment decision can exist because one of the requirements for such a decision, a proper revision or supersession decision, has not been made. The DM has the power to make a proper revision or supersession decision, and to make a proper overpayment decision.

01115

How is the decision notified

01116 The written notification of an outcome decision is issued to the claimant either clerically or by computer[1]. The notification contains

1. information which gives the effect of the decision such as whether there is entitlement to benefit and where appropriate the amount payable and when it is payable from **and**

2. an explanation of revision and appeal rights[2] because a party who is notified of an outcome decision and is unhappy with that decision may apply for revision or appeal it.

1 SS Act 98, s 2(1)(a); 2 SS CS (D&A) Regs, reg 28(1)(c)

01117 The information about revision and appeal rights invites the claimant to ask for an explanation of the decision - see DMG 01120 - 01124. The claimant is also advised that a written statement of reasons can be requested if no reasons for the decision were given in the notification[1] - see DMG 01130 - 01135.

1 reg 28(1)(b)

When is the decision notified

01118 A decision is notified when it is

1. handed to the claimant or appointee **or**

2. sent by post to the person's last known address[1].

Where a decision is posted, DMs should bear in mind that the notification may not leave the office on the day that it is produced[2].

1 SS CS (D&A) Regs, reg 2(a); Interpretation Act 78, s 7; 2 R(IB) 1/00

Failure to notify the decision

01119 A decision is not effective unless and until it is notified - see DMG 01015. This can lead to disputes about whether the time for revision or appeal has expired, or whether the condition for making an overpayment decision is satisfied. It is therefore important to ensure that evidence is available to show that a decision has been notified. Evidence of notice can be a clerical or computer record[1].

1 R(CS) 4/07

Explanation

01120 Where

1. a claimant or their representative queries a decision by

1.1 asking for it to be explained

1.2 requesting a written statement of reasons

1.3 making an application for revision

1.4 making an appeal **and**

2. the decision is not changed by revision or supersession

the DM or another suitably trained officer should offer the claimant or representative an informal explanation of the decision. The claimant or representative should be contacted by telephone if possible, unless they have specifically requested a response in writing.

01121 The purpose of the explanation is to help the claimant understand the decision, and to clarify any areas of dispute in the event of an application for revision or appeal.

Note: An explanation is not a compulsory step in the revision or appeal process.

01122 The explanation must

1. be personalized

2. be given in a manner that is clear, understandable and effective

3. explain why the decision was made

4. explain the effects of the law on the facts

5. deal with any further points the claimant or representative may make

6. ensure that the claimant understands the decision even if they do not agree with it

7. ensure that the revision and appeal process including time limits is explained.

01123 If the claimant

1. cannot be contacted **or**

2. does not want an explanation **or**

3. is not satisfied with the explanation

the action which prompted the offer of an explanation should be continued in the normal way. For applications for revision, see DMG Chapter 03, and appeals, see DMG Chapter 06.

01124 Where

1. the explanation followed an application for revision or an appeal **and**

2. the claimant accepts the explanation

they should be asked whether they wish the application or appeal to go ahead. See DMG Chapter 06 for guidance on withdrawing an appeal.

01125 - 01129

Request for written statement of reasons

01130 Where an outcome decision is notified without a statement of the reasons for the decision, the claimant has one month from the day following the date of notification to ask for the written statement[1]. Claimants can ask for a written statement of reasons, for example by asking for an explanation of a decision, either orally, by telephone or in person at an appropriate office, or in writing. They **do not** have to use the specific words "request for a written statement of reasons". Where the application is made orally, the Department must keep a record of the conversation. The DM must supply the statement within 14 days of receiving the request or as soon as practicable afterwards[2]. See DMG Chapters 03 and 06 for guidance on extending the revision and appeal period where a written statement is requested.

1 SS CS (D&A) Regs, reg 28(1)(b); 2 reg 28(2)

01131 A written statement of reasons should

1. be personalized

2. give an explanation of why the decision was made

3. provide details of the law used to make the decision, and how it was applied

4. give information about the extended time limit for revision and appeal.

The DM should note when the statement is issued in order to calculate time limits for revision and appeal where appropriate.

01132 Where a decision is revised, the claimant can request a written statement of reasons for the decision in its revised form, even if a statement was provided for the original decision. This is because there is a right of appeal against a decision as revised. Rights to request a written statement should always be notified when a decision has the right of appeal.

01133 Where a decision is not revised, there is no right to request a statement of reasons for the refusal to revise, as this is not a decision with a right of appeal. The rights to request a statement or appeal the original decision still exist subject to time limits. See DMG 01130 and DMG Chapter 06 for guidance on time limits

01134 Where the request for a written statement is made outside the one month period in DMG 01130, the statement should still be issued so that the claimant can understand why the decision was made. However, the claimant should be advised that the time for applying for revision, or for an appeal, is not

extended.

01135 In exceptional circumstances a further written statement can be provided, for example where the claimant requires further clarification of the decision.

01136 - 01149

Finality 01150 - 01199

01150 A decision made by a DM, the FtT or the UT is final[1] unless it is

1. revised (decisions of DMs only)

2. superseded

3. terminated after an award has been suspended

4. changed or replaced on appeal

5. corrected **or**

6. set aside (decisions of the FtT or the UT only).

Note: See DMG 01180 - 01191 for guidance on finality of determinations.

1 SS Act 98, s 17(1)

01151 Where a decision is changed or replaced as in DMG 01150, the new or revised decision becomes the final decision on the claim or application, even where it does not change the outcome[1]. But see DMG 01152 - 01153 where an outcome decision is not replaced on appeal.

1 R(I) 9/63

Changing a First-tier Tribunal's decision

01152 Where the FtT

1. allows an appeal on the issue or issues raised

2. does not give an outcome decision

3. remits the case to the DM

the DM must follow the FtT's decision when dealing with the matters referred back for subsequent decision. See DMG 01105 - 01106 for further guidance.

01153 The FtT's decision on the issues it has dealt with is **final** unless

1. there are grounds to supersede the decision (see DMG Chapter 04) **or**

2. the DM considers it is erroneous in law and applies for leave to appeal (see DMG Chapter 06)[1].

1 SS Act 98, s 17(1)

01154 - 01159

Claim or award disallowed

01160 Where a claim is disallowed or an award is disallowed following supersession, a later claim for the same period cannot be determined. The DM should give a decision on the later claim from the date following the disallowance.

Example

A decision awarding ESA which is superseded and disallowed on 21 July from and including 9 July is effective down to 21 July. Entitlement can only be considered from 22 July if a claim is then made for any period before 22 July.

01161 Where a disallowance is given by a DM, the claim is disallowed for the period from the first date covered by the claim to the date of the decision. However, where the disallowance is confirmed on appeal to the FtT or the UT, the period of the disallowance is not extended up to the date of the new decision. This is because the FtT cannot take account of any changes after the date of the DM's decision[1].

1 SS Act 98, s 12(8)(b)

01162 - 01169

Revision following backdating request

01170 The DM should also consider whether a request for backdating, in a case where an award is made following termination of an earlier award for the same benefit, should be treated as an application for revision of the decision which ended that award. This applies where the claimant in the backdating request argues that

1. the decision ending the previous award was incorrect **or**

2. the fresh claim should be backdated to the day following the last day of the previous award.

01171 - 01179

Finality of determinations

01180 Normally, determinations embodied within an outcome decision are not conclusive for the purposes of a further claim for the same benefit[1].

1 s 17(2)

Example

Following a change of address, a claimant is found to be LTAMC. Her award of IS is superseded on a relevant change of circumstances and disallowed from the date of the change. The DM also decides that the overpayment is recoverable due to the claimant's failure to disclose. On an appeal against the overpayment decision, the DM's findings on LTAMC in the supersession decision is not binding on the FtT. The finding is also not conclusive on a further claim for IS.

Incapacity for work

01181 DMG 01180 does not apply where the determination is about IfW. Where the DM makes a determination that a person is, or is treated as, capable or incapable of work, any DM should use those findings as conclusive for the purposes of further benefit decisions[1].

1 SS CS (D&A) Regs, reg 10(1)(a) - (b) & (2)

Example 1

A man is awarded IB because he is suffering from chronic arthritis. He is also awarded IS. He has been incapable of work for 196 days and the DM applies the PCA. The DM considers all the evidence relevant to the PCA and determines whether the man is incapable of work. The determination on the man's IfW is then conclusive in determining his ongoing entitlement to IS.

Example 2

A woman claims JSA (Cont) and is looking for work as a typist. She recently had an accident and has broken her leg. When she applied for IB she was found capable of work. The DM uses the determination on IfW as conclusive when considering the woman's capability for work for the purposes of JSA.

Limited capability for work

01182 DMG 01180 also does not apply where the determination is about LCW. Where the DM makes a determination that a person has or does not have, or is treated as having or not having, LCW, any DM

should use those findings as conclusive for the purposes of further benefit decisions[1].

1 reg 10(1)(c) - (d) & (2)

01183 - 01189

IIDB

01190 Determinations on

1. date of onset[1] **and**

2. diagnosis, made either before 5.7.99 or on or after 18.3.05[2]

are exceptions to the general rule in DMG 01180 and are conclusive for decisions made on that claim and further claims including REA. (Note, however, that determinations on diagnosis made on or after 5.7.99 but before 18.3.05 are not conclusive.)

1 SS (Industrial Injuries) (Prescribed Diseases) Regs, reg 6; 2 reg 5(2); R(I) 2/03; R(I) 2/04

01191 This means that they are binding on future DMs, and cannot be changed unless the outcome decisions in which they are incorporated can be altered by one of the methods in DMG 01150.

Example 1

On a claim for IIDB made on 14.4.96, the Adjudicating Medical Authority decides that the claimant is not suffering from PD A11. The adjudication officer disallows the claim on 4.6.96. A new claim for the same disease is made on 5.9.05. Medical opinion is that the claimant is suffering from the disease and has done so since 1.4.85. The previous determination on diagnosis was binding, so unless there are grounds for revising or superseding the decision of 4.6.96, the date of onset cannot be earlier than 5.6.96.

Example 2

On a claim for IIDB made on 7.9.01, the DM determines that the claimant is not suffering from PD A11. The claim is disallowed on 16.11.01. A further claim is made on 5.9.05 for the same disease. Medical advice is that the claimant has been suffering from PD A11 since 1.1.80 with an assessment of disablement of 4%. The DM is not bound by the diagnosis on the previous claim and determines that 1.1.80 is the date of onset.

Example 3

On a claim for IIDB made on 14.6.05, the DM determines that the claimant is not suffering from PD A11. The claim is disallowed on 19.7.05. A further claim is made on 22.11.05 and the Medical Adviser is of the opinion that the claimant has been suffering from the disease since 1.4.85. The DM considers all the evidence and decides that the latest medical evidence is only a change of opinion and that there are no

grounds to revise or supersede the decision of 19.7.05. The previous diagnosis determination is binding and the date of onset cannot be any earlier than 20.7.05.

Example 4

On a claim for IIDB made on 14.6.05, the DM determines that the claimant has been suffering from PD A11 since 3.1.05 and assesses disablement at 15% from 7.4.05 indefinitely. A claim for REA is received on 6.8.05 and accompanying medical evidence suggests that the claimant has suffered from the disease since 1989. The previous determination on the date of onset is binding and cannot be changed unless there are grounds for revising or superseding the assessment of disablement. As the DM decided that grounds do not exist, the claim for REA is disallowed.

01192 - 01199

General principles of common law 01200 - 01229

01200 The DM must make a decision taking account of common law principles and European law (see DMG 01230). The common law principles are

1. definitions of words and phrases

2. relevant law

3. estoppel (personal bar in Scotland) and res judicata

4. natural justice.

Definitions

01201 The DM can find definitions of words and phrases

1. within the Acts

2. at the beginning of each set of regulations

3. in case law (the UT, Court of Appeal, Supreme Court and the ECJ)

4. in the Interpretation Act 1978.

The DM may use a dictionary if none of these sources contains a definition[1].

1 R(SB) 28/84

01202 Headings and side notes can be helpful in understanding a provision as can the explanatory memorandum attached to a statutory instrument. These are not part of the legislation but are permissible aids to construction[1] which can be used to aid understanding.

1 R v. Montila & Ors

01203 - 01204

Relevant law

01205 When a DM is determining a claim or an application, the relevant law is the law applying at the time the claim or application is made. Where there is a change in a particular legal provision so that it

1. ceases to have effect **or**

2. begins to take effect

during the period of a claim or application, the DM should apply the change in the law only from the date of the change[1] unless the legislation has retrospective effect or there are specific transitional provisions.

1 R(I) 4/84

Uprating

01206 Legislation provides for benefit rates to be altered in accordance with the Uprating Order without the need for the DM to supersede the previous awarding decision[1]. But in certain JSA, IS and SPC cases the DM is still involved in giving a supersession decision[2] (see DMG Chapter 04).

1 SS A Act 92, s 155(3); 2 SS CS (D&A) Regs, reg 14

01207 - 01209

Estoppel (personal bar in Scotland)

01210 In general law the doctrine of estoppel, known in Scotland as personal bar, has the effect of blocking or preventing a person from alleging or proving in later proceedings, matters which have already been decided in earlier proceedings[1]. When this doctrine is applied by DMs it is called res judicata (see DMG 01212 - 01213).

1 R(I) 9/63

Example

A DM decides that a woman has had an IA. The woman appeals against the rate of benefit paid and the case goes to the FtT. At the FtT hearing the woman argues further points about the IA. The issues surrounding the IA have already been decided by a DM therefore estoppel applies.

01211 The doctrine of estoppel does **not** apply where the claimant

1. on the advice or a promise given by the Secretary of State, has formed a view about future benefit rights **and**

2. has taken a particular course of action.

The DM must decide the matter solely on the basis of the relevant legislation, even though the decision may be contrary to the original advice or promise[1].

1 R(P) 1/80, R(SB) 8/83 & R(SB) 4/91 Appendix

Example

A claimant in receipt of JSA(IB) is considering extending his mortgage. He rings his local Jobcentre Plus office and is told that the new mortgage would be met as part of his housing costs. He takes out the new mortgage. The DM decides that the loan is not eligible for housing costs. Estoppel does not apply, because the DM is not bound by the advice given by another person in the Department.

Res judicata

01212 Res judicata prevents a judicial authority from deciding a matter that has already been decided by a person of similar status. This principle is given effect for DMs by a provision in legislation[1] and is also known as the principle of finality (see DMG 01150 et seq).

Note: This does not apply to most determinations and findings of fact - see DMG 01180 et seq.

1 SS Act 98, s 17

01213 Once a DM has made a decision, a further decision cannot be given on the period of that claim, or the outcome of an application for revision or supersession, **except** where the later decision is given by way of

1. revision **or**

2. supersession **or**

3. appeal[1].

1 R(S) 1/83(T), R(SB) 4/85

01214 - 01219

Natural justice

01220 There is a common law requirement that DMs should observe the rules of natural justice. The rules are not prescribed collectively but they represent the manner in which justice is expected to be achieved. An unbiased approach is needed, reflecting the principle that impartiality is at the heart of the judicial process.

General principles of European Community law 01230 - 01259

01230 The following paragraphs set out the general principles of EC law that apply to SS legislation. Detailed guidance on its application is in DMG Chapter 07.

01231 When interpreting EC legislation, the DM must consider the purpose of the provisions and not just the meaning of the words[1]. Cases of difficulty should be referred to DMA Leeds for advice.

1 R v. Henn [1981] AC 850

01232 The main sources of EC law are

1. treaties establishing the EC. The EC can only legislate on matters in areas where it has been given powers to do so by the treaties

2. secondary legislation (regulations, directives, recommendations, decisions and opinions)

3. judgments of the ECJ.

01233 - 01234

Regulations

01235 Regulations apply to all EEA countries[1]. See DMG Chapter 07 part 1 for a list of EEA countries. They become part of national law as soon as they are agreed by the Council of Ministers. There is no need for a separate Act of Parliament or secondary legislation.

1 Treaty of Rome, Art 249

Directives

01236 Directives are binding, in terms of the result to be achieved, upon each Member State to which they are addressed. But it is left to the national authorities to decide the form and methods used to achieve the result. In the UK, an Act of Parliament or regulations made under statute[1], is usually needed.

1 European Communities Act 1972

01237 A Directive may have direct effect if

1. it, or part of it, is clear and precise

2. it, or part of it, is unconditional **and**

3. the time limit within which it had to be implemented has passed.

"Direct effect" means that a person may rely on a provision of a Directive.

Example

Directive 79/7/EEC was issued in 1978 and gave Member States six years to implement equal treatment in SS (see DMG Chapter 07). The Directive took effect on 23.12.84 and is binding on all Member States from that date. Most necessary changes to UK law were made by that date to conform to the Directive.

Opinions and recommendations

01238 Opinions and recommendations have no legally binding force but they state the collective view of the EC. The ECJ and national courts must take opinions and recommendations into account when deciding cases[1].

1 Case 322/88, Grimaldi

Supremacy of European Community law

01239 EC law is supreme[1]. This means that where there is a conflict between the provisions of EC law and that of any EEA national law

1. EC law must be applied **and**

2. the national law must be set aside[2] or amended as appropriate.

1 Case 48/71 Commission v. Italy, Case 36/75 Ruttili, Case 106/77 Simmenthal;
2 European Communities Act 1972, s 2 & 3

01240 Where EC law is applied directly to set aside or amend UK law, the UK law may be changed so that

the disadvantaged group is brought up to the level of the advantaged group. This is called levelling up[1].

1 Case 43/75 Defrenne v. Sabena

01241 Where an EEA country amends its national legislation to provide equal treatment for men and women[1], it can specify any conditions provided that from 23.12.84 those conditions apply equally to men and women. This is so even if the conditions are harder to satisfy after 22.12.84 than before that date. This is called levelling down. For further details on equal treatment see DMG Chapter 07.

1 Directive 79/7/EEC

01242 - 01249

Judgments of the European Court of Justice

01250 Judgments of the ECJ are not generally available to DMs. The DM should contact DMA Leeds for information about these decisions.

Referring questions to the European Court of Justice

01251 When in doubt about the correct interpretation of EC legislation on an individual case

1. the FtT (but see DMG 01255)

2. the UT **or**

3. the Court of Appeal

can refer a question to the ECJ for a preliminary ruling[1].

1 EC Treaty, Art 234

01252 If a case is before the Supreme Court and there is still an outstanding question involving EC law, the Supreme Court **must** refer a question to the ECJ. When the ECJ has answered the question, the Supreme Court decides the appeal.

01253 As a general rule, where an appeal can be made to a higher court from the authority currently considering the case it is better to give a decision on the question at that level and leave the higher court to make a reference[1] to the ECJ.

1 R(S) 5/83

01254 Where the question of a referral arises during the course of the FtT, the DM should ask the FtT to consider the matter **without** referring the question to the ECJ at that stage. If the FtT refuse to decide the question before them, the DM should ask for an adjournment so that legal advice and representation

can be arranged.

01255 If the FtT refuse to adjourn, the DM should ask for the request and refusal to be included in the note of evidence. The DM should then pass the papers to DMA Leeds for advice.

01256 - 01259

European Convention on Human Rights 01260 - 01269

Human Rights Act 1998 01261 - 01269

01260 The European Convention for the Protection of Human Rights and Fundamental Freedoms is a treaty of the Council of Europe. The Convention contains Articles which guarantee a number of basic human rights. In addition, Protocols have been signed which are to be regarded as additional articles to the Convention. The main Convention Rights are set out in Annex G to this volume.

Human Rights Act 1998

01261 The Human Rights Act 1998 which gives effect in the UK to the rights and freedoms guaranteed under the European Convention on Human Rights came into force 2.10.00.

01262 Public authorities, including courts and both the FtT and the UT are under a duty to act compatibly with the Convention rights and all legislation must be read compatibly with the Convention rights as far as it is possible to do so. Also, courts and both the FtT and the UT should have regard to the jurisprudence of the European Court of Human Rights and decisions and opinions of the Commission and Committee of Ministers.

01263 DMs applying the normal principles of decision making, which are

1. natural justice

2. consideration of evidence

3. standard of proof **and**

4. application of relevant law

should not find themselves in breach of Article 6 of the Convention. This is because they are already expected to determine questions without bias or discrimination and within a reasonable timescale.

01264 For further guidance on appeals to the FtT and the UT involving human rights, see DMG Chapter 06.

01265 - 01269

Revising and superseding decisions of former authorities 01270 - 01299

Introduction

01270 Decisions on benefits current in 1999 made by adjudicating and appellate authorities before the coming into force of current legislation[1] can be revised or superseded under the new system of decision making. This is made possible by treating them as decisions made under current legislation[2].

1 SS Act 98; 2 s 8(1)(a) or (c); Commencement Orders

01271 Decisions on former benefits can also be revised or superseded. They are prescribed as relevant benefits for the purposes of decision making. Decisions on these benefits are also treated as decisions made by the Secretary of State under the Act. See Annex A to this Volume for a list of relevant benefits.

01272 The Act came into force on different days for different benefits. These are

1. 5.7.99 for IIDB

2. 6.9.99 for RP, WB, IB, SDA and MA

3. 18.10.99 for AA, DLA, CA, JSA and credits

4. 29.11.99 for IS and SF Maternity, Funeral payments and CWPs

5. 16.10.06 for prescribed former benefits.

01273 - 01279

Meaning of adjudicating authority

01280 An adjudicating authority is

1. an adjudication officer

2. an adjudicating medical practitioner

3. a specially qualified adjudicating medical practitioner

4. a medical board

5. a special medical board.

Meaning of appellate authority

01281 An appellate authority is

1. a disability appeal tribunal

2. a medical appeal tribunal

3. a SS appeal tribunal

4. a SS Commissioner.

Decisions of adjudicating authorities

01282 Decisions of adjudicating authorities made before the day in DMG 01272 are treated as decisions of the Secretary of State. This means that they can be revised[1] or superseded[2] under the new provisions.

1 SS Act 98, s 9(1); 2 s 10(1)(a)

Decisions of appellate authorities

01283 Decisions of appellate authorities made before the day in DMG 01272 can be superseded[1] under the new provisions.

1 s 10(1)(b)

01284 - 01299

Evidence 01300 - 01419

Introduction

01300 The guidance in the following paragraphs sets out the general principles which the DM should follow regardless of the benefit or business area involved. See DMG 01001 for details of the authorization of suitable people to exercise the function of DM on behalf of the Secretary of State.

01301 The DM should approach the determination of claims and applications objectively by always

1. considering the evidence

2. from that evidence, establishing the facts of the case

3. applying the law to those facts.

01302 Proper consideration and careful recording of evidence when making and recording decisions are essential. It is particularly important that telephone conversations and interviews are accurately recorded. This approach assists DMs dealing with disputes and may avoid appeals. It also helps in any subsequent appeal proceedings.

01303 The provision of sufficient information or evidence to establish the national insurance number is a

specific requirement for certain benefits. For details see DMG Chapter 02.

01304 - 01309

Types of evidence

01310 DMs, like any other statutory authority, must base all decisions on evidence. There are three types of evidence

1. direct - for example, a statement by a witness to an IA

2. indirect - for example, a statement by someone who did not see the accident but saw the victim immediately afterwards and saw the injuries and the circumstances which probably caused them

3. hearsay - for example, a statement by someone recording what they were told about the accident.

01311 Each type of evidence may be either

1. documentary - for example, certificates or wage slips

2. oral - for example, a statement given verbally (such as in a telephone call)

3. real - something tangible, for example, a wage packet with the money in it.

01312 The DM can use all three types of evidence. Some carry more weight than others[1]. The weight given should be carefully judged in the circumstances of the particular case. As a general rule, direct evidence is more significant than indirect or hearsay evidence. Also, the closer in time to the event the DM obtains and considers the evidence, the more helpful it is likely to be.

1 R(I) 4/65

01313 There may be situations where the DM has “secondary” evidence as opposed to “primary” evidence, for example where a medical report refers to a video recording which is unavailable or no longer exists. The lack of the primary evidence does not mean that the secondary evidence is not admissible, and appropriate weight should be given to it.

Example

Joanne, in receipt of higher rate mobility and lowest care components of DLA, was videotaped by private investigators in a personal injury claim. The tapes were shown to her consultant and he wrote a report, part of which said “It is clear that she is able to walk and would be able to perform the majority of household chores”. The decision awarding DLA was superseded and the award terminated. Through various delays, by the time the claimant’s appeal is heard by the FtT, the video is no longer available but the report is. The claimant argues that without the tape (primary evidence) the secondary evidence should not be relied upon to withdraw the claimant’s benefits. The FtT has to have regard to all the

evidence before it, including the report, and has to weigh all such evidence and reach a conclusion.

01314 - 01319

Responsibility for collecting evidence

01320 Evidence on which the DM decides the claim or application is collected on behalf of the Secretary of State. In some cases this person will also be the DM. Evidence can be collected by telephone, letter or interview. Where evidence is collected by letter, a copy of a letter asking specific questions should always be kept with the reply. Where evidence is collected by telephone, the questions asked should be recorded along with the replies. See DMG 01451 et seq in fraud cases. Except where DMG 01322 applies, documentary evidence carries the most weight and is preferred.

01321 The circumstances in which statements are obtained - that is, voluntarily or during an interview under caution - can be important. Where the circumstances are not clear, an explanation should be attached to the statement.

Relationship breakdown

A1322 A claim may be made following a breakdown in a relationship because the claimant has been the victim of domestic violence. In these circumstances, it will often be difficult, if not impossible, for the claimant to provide documentary evidence. In these circumstances it is reasonable for the DM to accept the claimant's oral evidence.

Contacting third parties

01323 In all cases, DMs should only contact a third party to obtain evidence pertaining to a claimant where there is a lawful basis to do so or it is relevant to their claim.

Note: See DMG 01440 et seq for guidance on evidence given in confidence.

01324 - 01329

Evidence from HM Revenue and Customs

01330 Any information held by HMRC for the purposes of

1. contributions functions (see DMG 01042 **2.**)

2. SSP

3. SMP

may (or on request by an officer authorised by the Secretary of State must) be given to an officer of the DWP where the information is required for SS purposes[1]. This enables the DM to obtain information

about matters such as contribution records and employed earners employment.

1 SS A Act 92, s 121E

01331 In the same way information held by the DWP for SS purposes may be given to HMRC where necessary for their functions in DMG 01330[1].

1 SS A Act 92, s 121F

01332 - 01333

Evidence from a local authority or county council

01334 When a claimant supplies information to a LA for the purpose of claiming HB or CTB and this information is supplied to DWP, the Secretary of State must use the information without verifying its accuracy[1]. This information can be used for the purpose of a claim for, or award of, specified benefits[2].

1 SS (C&I) Regs, reg 3(2); 2 reg 3(1)(b)

01335 Information provided as in DMG 01334 does not have to be used without carrying out further checks on its accuracy if

1. it is supplied more than twelve months after it was used by a LA for HB or CTB purposes[1] **or**

2. the information is supplied within twelve months of its use by the LA but the Secretary of State has reasonable grounds for believing the information has changed in the period between its use by the LA and its supply to him[2] **or**

3. the date on which the information was used by the LA cannot be determined[3].

1 SS (C&I) Regs, reg 3(3)(a); 2 reg 3(3)(b); 3 reg 3(3)(c)

Example

A claimant provides evidence of his savings to support his claim for HB. The LA verifies that his savings are £10,000 - this includes shares. This information is sent to DWP. Eight months later a claim for IS is made. The Secretary of State requests that the claimant provides evidence of his savings due to the likelihood that the value of his savings will have changed.

01336 Where SS information is verified by a LA and forwarded to DWP the Secretary of State must use this information without verifying its accuracy for the purpose of a claim or award of a specified benefit[1]. However, information may be checked if

1. the Secretary of State has reasonable grounds for believing the information is inaccurate **or**

2. the information is received more than four weeks after it was verified by the LA[2].

1 SS (C&I) Regs, reg 4(2); 2 reg 4(3)

Meaning of social security information

01337 SS information means

1. information relating to SS, child support or war pensions **or**

2. evidence obtained in connection with a claim for or an award of a specified benefit[1].

1 SS A Act 92, s 7B(4)

Meaning of specified benefit

01338 The term "specified benefit" means one or more of the following benefits[1]

1. AA

2. BA

3. BPT

4. CA

5. DLA

6. ESA

7. IB

8. IS

9. JSA

10. RP

11. SPC

12. WPA

13. WFP.

1 SS (C&I) Regs, reg 1(3)

01339 Claims for some SS benefits can also be made at LAs, and county councils in England, known as

alternative offices[1]. See DMG Chapter 02 for further guidance. Information or evidence supplied to, or obtained by alternative offices relating to the claim may be verified, recorded and forwarded to DWP as soon as possible[2].

Information or evidence which relates to an award of benefit may be received, verified, recorded and forwarded to DWP by county councils[3].

1 SS A Act, s 7A; SS (C&P) Regs, reg 4(6B)(b), 4D(4), 4(6A)(c & d); 2 reg 4(6C)(d); 3 reg 32B

Further Information Sharing Provisions

01340 LAs may provide information to the Secretary of State of the type set out in DMG 01341 where related to the following benefits[1]

1. AA

2. DLA

3. JSA(IB)

4. ESA(IR)

5. IS

6. SPC

7. HB

8. CTB

9. PIP.

1 The Social Security (Information-sharing in relation to Welfare Services etc) Regulation 2012, reg 4

01341 The information referred to in DMG 01340 is[1]

1. whether a resident is meeting in full the cost of the provision to them of residential care and if so the date this started and the period over which the cost is intended to be met

2. whether the LA is funding or has funded in full or in part the cost of the provision to a resident of residential care and if so

2.1 the date from which the funding started and the period covered or intended to be covered by it

2.2 the date the funding stopped or is intended to stop

2.3 the enactment under which the funding is being or was provided

2.4 whether there exists any agreement enabling the LA to recover the cost of the funding on the sale of the resident's home and if so, whether that recovery has commenced or when it is intended to commence

2.5 whether the LA has entered into a deferred payment agreement with the resident and if so the date this started and the period the agreement is intended to cover

Note: This also includes information about when the provision of the service begins or ends or is likely to do so.

1 The Social Security (Information-sharing in relation to Welfare Services etc) Regulation 2012, reg 3

01342 The Secretary of State may provide information to an LA or an authority which administers HB (or their service providers or persons exercising functions on their behalf) for[1]

1. determining a person's eligibility or continued eligibility for a disabled person's badge

2. determining whether to make to any person a disability adaptation grant, a disabled facilities grant or a discretionary housing payment and if so the amount of that grant or payment

3. determining whether a person applying for housing support services, the provision of domiciliary care or the provision of residential care is liable to contribute towards the cost of the service and if so the amount

4. identifying households eligible for support under the troubled families programme and providing appropriate types of advice, support and assistance to members of such households under that programme

Note: 4.4 applies to LAs in England

1 The Social Security (Information-sharing in relation to Welfare Services etc) Regulation 2012, reg 5

Standard of proof - balance of probability

01343 The DM must decide claims and applications on the balance of probability. This is not the same as "beyond reasonable doubt", the standard test for proof in criminal trials.

01344 The balance of probability involves the DM deciding whether it is more likely than not that an event occurred, or that an assertion is true[1]. It does not mean that the claimant can be given the benefit of the doubt[2]. If the evidence is contradictory the DM should decide whether there is enough evidence in favour of one conclusion or the other to show which is the more likely. The DM may decide on the basis of findings made on the balance of probability or may find that there is not enough evidence to satisfy

them about findings one way or the other.

1 R(I) 4/65; 2 R(I) 32/61

01345 Alternatively the DM may find that there is insufficient evidence to establish the facts one way or the other and ask for more evidence[1]. Claimants must supply all information and evidence required in connection with the decision[2]. The DM should do as much as possible to see that all the necessary evidence is brought to light.

1 R v. Secretary of State ex parte CPAG [1990] QB540; 2 SS (C&P) Regs, reg 7(1), JSA Regs, reg 24

01346 - 01349

Failure to provide evidence

01350 If the claimant fails to provide the requested evidence or information a penalty may be imposed

1. for failure to sign a declaration in claims for JSA

2. in CS cases, by way of a RBD.

01351 Evidence requirements for IS and JSA are in benefit specific guidance.

01352 When making a decision, the DM should decide the importance of the failure and any reasons given for not providing evidence, as this could cast doubt on the facts previously provided. See DMG 01405 for guidance on the burden of proof.

Example 1

An IS claimant states that there is no capital or income from the sale of her business, because the money from the sale was used to clear the business debts. The DM asks for evidence of the transaction. The claimant is unable to produce any. The transfer of the business was within the family. The DM is entitled to take the view that it is more likely that the claimant has not disposed of the assets of the business.

Example 2

A jobseeker states he left his employment because of a grievance with the employer, but on being asked to provide more details, does not reply. The DM can impose a sanction because the jobseeker has not proved just cause for leaving his employment voluntarily.

01353 - 01369

Treated as capable of work

01370 Where the claimant has not replied to enquiries requesting evidence of IfW[1], there are special rules to treat a person as capable of work. They apply if the claimant fails without good cause to

1. return the questionnaire for the PCA[2]

2. attend or submit to a medical examination[3] for the OOT or PCA.

See DMG Chapter 13 for details.

1 SS (IW) (Gen) Regs, regs 6, 7 & 8; 2 reg 7; 3 reg 8

01371 DMs should note that a claimant cannot be treated as capable of work for a period where they have failed to provide medical evidence. The appropriate test of incapacity must be applied. See DMG 01545 and Chapters 04 and 13 for further guidance.

Treated as not having LCW

01372 Where the claimant has not replied to enquiries requesting evidence of LCW[1], there are special rules to treat a person as capable of work. They apply if the claimant fails without good cause to

1. return the questionnaire for the WCA[2]

2. attend or submit to a medical examination[3].

See DMG Chapter 42 for details.

1 ESA Regs, regs 21, 22 & 23; 2 reg 22; 3 reg 23

01373 DMs should note that a claimant cannot be treated as not having LCW for a period where they have failed to provide medical evidence. The appropriate test of LCW must be applied. See DMG 01551 and Chapters 04 and 42 for further guidance.

01374 - 01379

Corroboration of evidence

01380 There is no rule of law that corroboration of the claimant's own evidence is necessary[1]. But the DM should not accept evidence, from the claimant or anyone else, uncritically. It needs to be weighed carefully, in the light of the circumstances of the case.

1 R(I) 2/51; R(SB) 33/85

Example

A man claims IS. He states he has capital of £20,000. The DM therefore decides that he is not entitled to IS. Four weeks later the man makes another claim for IS. He states that he has spent all of his capital, but he cannot produce evidence of any expenditure. The DM decides that the man still has capital of £20,000 and that he is not entitled to IS.

01381 - 01384

Evidence provided by local authority or county council

01385 Evidence verified by a LA or county council and supplied to DWP should not be verified by DWP where it is used for the purposes of claims for or awards of certain benefits. But see DMG 01334 - 01339 for exceptions to this rule.

01386 - 01389

Contradictory evidence

01390 If the evidence is contradictory, the DM should

1. try to resolve the discrepancy **or**

2. decide that there are sufficient grounds to decide the point on balance of probability - see DMG 01340 et seq.

Example

A woman has been in receipt of IS for three years for herself and her partner. She has not notified the Department of any change of circumstances. Her partner makes a claim as a single person stating that he and the woman are no longer living together as a married couple. The claimant and her partner are interviewed. The evidence at the interviews points to a deterioration in the relationship but not to separation. The DM accepts the woman's statement that she and her partner continue to live together as a married couple and disallows her partner's claim.

Self-contradictory evidence

01391 The claimant’s own evidence may include statements which conflict with each other. These mutually contradictory statements usually need explaining.

Example

An IB claimant suffering from low back pain fails to attend for a medical examination. He states that he is unable to travel to the medical centre by public transport due to his disability and cannot afford taxi fares. When asked how he manages for shopping etc he replies that he needs very little because he takes the bus to his parent's house each day and they provide his meals. The distance between the claimant’s house and his parent's is similar to that between his house and the medical centre. The DM decides that the claimant’s reason for not attending the medical is not enough on its own to excuse the failure.

Inherently improbable evidence

01392 The DM may decide that a claimant’s statement is inherently improbable. This is where it is very

unlikely that what has been asserted can be true.

Example

Following an investigation, the DM finds that the partner of a JSA claimant is in remunerative work and disallows the award of JSA. The claimant states that he had no idea that his wife had been working as a cleaner for five hours every weekday evening for the past three years. The DM decides that this is inherently improbable, and that the overpayment is recoverable.

01393 In some cases the DM may decide that uncorroborated evidence (that is, evidence not supported by any other evidence) cannot be accepted because it is self-contradictory or improbable. Such evidence may contradict itself, or other evidence before the DM, or the DM may consider that it is unlikely to be true. In such cases the DM may request further evidence. If none is available the DM should decide the claim or application on the evidence provided already.

01394 - 01399

Claimant's own evidence

01400 A claimant’s statement, whether oral or in writing, is evidence. It is often the best evidence and sometimes the only evidence available, even after enquiries. In such a case, the DM must decide whether the claimant has discharged the burden of proof. See DMG 01405 et seq.

Example 1

A claimant was overpaid JSA for several years because an increase in the hourly rate for his P/T work was not taken into account. During the investigation he stated that he had declared the increase at an interview at the Jobcentre Plus office. He said he remembered the conversation in detail, including the fact that the interviewer said that she would write down the details and make sure that the increased income was taken into account. The claimant could not remember any other details of the interview or completing the claim form which stated that his P/T earnings had increased. The DM decided that the statement was unlikely to be true. This view was reached after considering the claimant's selective memory of events and was reinforced because he had not disclosed recent changes in his hours and income. The DM decides that the claimant has not discharged the burden of proof.

Example 2

A woman declared P/T work at the beginning of her claim and regularly reported changes. During a check on employment details it is found that a pay rise has not been taken into account for three months. There is no record of disclosure of the increase in the claim file. The claimant states that she declared the additional income in a letter in which she also reported that her son had left the household. The letter cannot be found but the claim had been adjusted to exclude the child around the date of the alleged letter. The DM decides that, on the balance of probability, the claimant had reported the change in income and it had been overlooked in dealing with the family circumstances.

01401 The DM should look at each statement made by the claimant and assess it on its merits. A statement may occasionally be so extraordinary that it casts doubt on the credibility of the person and any other statements they have made. The DM should

be careful in assessing these matters on written evidence alone. It may be necessary to interview the claimant to get clarification or further information.

01402 If it is clear from the case papers that a claimant has previously made statements which have proved to be incorrect, the DM is entitled to regard evidence provided by that claimant critically, regardless of whether these statements were genuine errors or attempts to mislead.

Example

An IB claimant is claiming for a partner who has earnings which he states are the same each month. The papers show that on occasion his partner has not told him of overtime and bonus payments. The overpayments are not recoverable because the claimant did not know the facts and could not be expected to disclose the additional earnings. The DM cannot rely on the claimant's evidence and asks to see the pay slips each month.

01403 - 01404

Burden of proof

01405 A clear understanding of where the burden of proof lies helps the DM to weigh the evidence and decide whether further evidence should be sought. DMs should note that

1. initially the burden lies with the claimant to prove that the conditions for a claim or application are satisfied[1] but they should do as much as possible to ensure that the claimant has every opportunity to provide all relevant evidence and where the information is available to them rather than the claimant, then they must make the necessary steps to enable it to be traced

2. where they wish to show that an exception to a condition of entitlement is not satisfied, the burden of proof rests with them[2]

3. there is no presumption in favour of the claimant though for IIDB the claimant is normally presumed to have the PD if he has worked in the prescribed occupation; for example, a cotton weaver with byssinosis (see DMG Chapter 67 for full guidance)

4. where an allegation is denied by the claimant it is generally for DMs to prove the facts.

5. the burden of proving that the conditions for revision or supersession are satisfied lies with the person who applies for revision or supersession

6. in overpayment cases the burden of proof for the purposes of determining the sum to be recovered falls on them[3] (see DMG Chapter 09).

7. where a criminal court convicts a person of an offence related to obtaining or receiving benefit, that conviction shifts the burden of proof relating to the same benefit and period at issue from them to the claimant[4].

Note 1: An example of **2.** is where there is a claim for a SF funeral payment, it is for the DM to show that the claimant is not entitled because a close relative is not in receipt of a qualifying benefit.

Note 2: Where **5.** applies the question of whether the **conditions** for revision or supersession are satisfied must be considered separately from the question of whether the decision should be revised or superseded.

1 R(SB) 2/83(T); 2 Department for Social Development v Kerr [2004] UKHL 23;
3 SS A Act 92, s 71; CS Act 91, s 16 - 19 & s 71; R(SB) 34/83; 4 R(S) 2/80

01406 - 01419

Evidence in certain situations 01420 - 01519

Destruction of documents

01420 The Department destroys documents in order to meet the obligations of the Data Protection Act. No one can make any presumptions about what evidence the documents might have contained[1]. This means that claimants cannot say that the destroyed documents must have supported their case. This principle does not apply if the claimant can prove that the documents were disposed of with the sole intention of destroying evidence.

1 R(IS) 11/92

01421 The DM should take account of any available evidence and make a decision on the balance of probabilities. Where it is impossible to reconstruct the document the DM should not assume any fact but decide the question on the basis of any other evidence.

01422 The DM must consider the burden of proof when looking at evidence. This can rest with either the claimant or the DM.

01423 - 01429

Evidence of Departmental procedures

01430 Where a case relies on systems of work or Departmental forms no longer available, the DM should

1. get evidence of the system of work **or**

2. explain why the original form is not available.

The DM could then decide on the balance of probabilities whether the procedures were properly followed.

Example

An overpayment has been identified. The DM is looking at recoverability. Benefit is paid to the claimant by direct payment. The DM knows the benefit cannot be paid by direct payment unless the claimant signs a declaration of understanding and agreement that overpayments may be recovered[1].

The DM decides that the prescribed conditions for recoverability are satisfied even though the original document has been destroyed under normal destruction procedures.

1 SS (POR) Regs, reg 11(2)(b)

Evidence of a decision

01431 It may be necessary for the Secretary of State to produce evidence of a decision of a DM, for the purpose of an appeal for example. If so, the evidence of the decision should contain a certificate signed on behalf of the Secretary of State stating that the document is such a record. The certificate must be signed by an officer specifically authorized to do so[1].

1 SS Act 98, s 39ZA

01432 A certificate should **not** be produced where there is no evidence that a decision was made or recorded, or that the decision was different from that provided in any explanation or recorded in a submission to the FtT.

Example

The claimant is in receipt of IS as a lone parent. Following an investigation, the DM records a determination that the claimant is LTAMC with the father of her children, and has been for three years. He is in remunerative work. The award of IS is terminated from a current date. The DM's determination is incorrectly notified with appeal rights. The Secretary of State cannot certify that the determination is a decision superseding and ending entitlement from the date the claimant began to LTAMC.

01433 Where DMG 01432 applies, the DM should not use the certification process to construct a record of what ought to have been decided. DMs should be aware that it is a false statement which could lead to criminal sanctions[1].

1 Perjury Act 1911, s 5

01434 Where the decision was made electronically, the DM should

1. produce a computer printout showing the decision history **and**

2. provide an explanation of codes used in the computer record.

See DMG 01111 - 01113 for guidance on recording decisions.

01435 - 01439

Evidence given in confidence

01440 If evidence raises any question of confidentiality, the matter must be resolved before it is put to the DM. If any confidential evidence is disclosed to the DM, that evidence must be disclosed to the FtT. However, the FtT may make an order prohibiting the disclosure or publication of confidential evidence[1].

1 TP (FtT) (SEC) Rules, rule 14

01441 All evidence available to the DM should be available to the FtT[1] and disclosed to the claimant or representative[2] except medical evidence that is harmful to the claimant's health.

1 TP (FtT) (SEC) Rules, rule 24(4)(b); 2 R(S) 1/58

01442 Information obtained in the course of deciding a claim or application is confidential between the claimant and the statutory authorities. Nonetheless, when deciding a claim or question in relation to a claimant, the DM may use information that the DWP holds for another claimant[1]. This is subject to the following:

a) there is reason to consider that the other person's records contain material that is relevant to the claim or question before the DM;

b) the material cannot easily be obtained elsewhere; **and**

c) examination of the other person's records should be confined to those parts that are likely to contain information or evidence relevant to the particular issues which the DM is required to determine.

1 SS Act 98, s 3; Kerr v Department for Social Development (Northern Ireland) [2004] UKHL 23, [2004] 1 WLR 1372

01443 Information given in confidence from a third party, such as

1. social workers **or**

2. doctors **or**

3. letters containing allegations where the writer has not given written permission for the contents to be disclosed

should not be available to the DM when making the decision.

01444 All information obtained in the course of deciding an application should be regarded as confidential.

01445 All the evidence that is put to the DM must be put to the FtT if a claimant appeals. This includes confidential evidence. See DMG Chapter 06 for details.

01446 - 01449

Appeals: Address of partner from whom claimant is separated

01450 Where a document shows any details which could lead to the location of the claimant being discovered by the other party, these details must not be made known to the FtT if the separated partner has asked for their whereabouts not to be divulged. If this information is not to be released the DM should

1. prepare a note to the Presenting Officer to explain the omission to the FtT **and**

2. make sure that all copies of the document have the information blanked out.

Fraud

01451 To ensure that DMs act independently and fairly officers involved in fraud work do not make decisions with regard to payment of benefit. Cases of suspected fraud which need a decision must be referred to an officer who is not a fraud specialist. See Appendix 1.

01452 Full-time fraud specialists temporarily engaged on other duties and staff who are employed part-time on fraud work may make decisions while they are carrying out duties unrelated to fraud work. They must not give a decision on any case

1. which is the subject of current fraud action **or**

2. in which they have been engaged in investigating fraud.

01453 - 01459

Advice on the law

01460 Advice produced for the purposes of litigation e.g. advice on a particular case or advice on potential legal challenges, for example from DWP Legal Services or DMA Leeds, does not need to be disclosed to the claimant, the claimant's representative or the FtT. This type of information is covered by

legal professional privilege. There is also no obligation to supply the advice where there is a request to disclose it under the Data Protection Act 1998[1]. However, if a request to disclose is made under the Freedom of Information Act 2000[2] the information may be disclosable if it is in the public interest to do so. Advice provided outside of a litigation context will be disclosable unless it comes from a solicitor or barrister.

1 Data Protection Act 98, Sch 7, para 10; 2 Freedom of Information Act 2000, ss 2 and 42

01461 - 01469

Decisions given by other courts

01470 In making decisions, DMs should take account of

1. their own independent conclusions **and**

2. decisions of appellate authorities including reported UT decisions.

01471 The DM is bound by decisions of the appellate authorities (see DMG 01475) on questions which are identical to those they have to decide.

01472 - 01473

Appellate Authorities

01474 The appellate authorities are

1. the UT **and**

2. the higher courts.

Upper Tribunal decisions

01475 Reported decisions are those of general importance. They

1. deal with points of construction on statutes and regulations

2. add to the consistent and orderly development of the law

3. have the agreement of at least the majority of the UT

4. often deal with important questions of interpretation of provisions in the Acts and regulations

5. have been selected for reporting by the editorial board of the UT.

01476 Reported decisions are now numbered using neutral citation, - see Annex K - an example of which KS v Secretary of State for Work and Pensions (JSA) [2009] UKUT 122 (AAC); [2010] AACR 3. To explain

the composition of the citation, it is broken down below into its component parts

1. KS v Secretary of State for Work and Pensions (JSA) refers to the parties to the appeal and the benefit involved;

2. [2009] UKUT 122 (AAC) refers to the year the decision was made, United Kingdom Upper Tribunal and the neutral citation number; i.e. the consecutive number of the case within the year's series and the name of the chamber making the decision;

3. [2010] AACR 3 refers to the year the decision was reported, the name of the publication it is reported in and the consecutive reporting number within that year's series.

01477 At the head of each reported decision is printed

1. a brief note of the facts of the particular case **and**

2. the substance of the decision.

This headnote is not part of the decision and carries no authority. A guide to reported decisions can be found in Neligan[1]. Annex L contains an explanation of the previous reported decision serial numbers and the benefits to which they relate.

1 Neligan - Social Security Case Law, Digest of Commissioners' Decisions

01478 Copies of all reported decisions are held by

1. the President of the TS

2. TS regional offices.

DMs in all offices of the DWP should have access to all reported decisions.

01479 Reported decisions have the support of the majority of the UT and contain points of general importance about the interpretation of the law. Both reported and unreported decisions are sources on the interpretation of legislation. The DM should rely

primarily on reported decisions. Many unreported decisions do not deal with matters of general importance and are specific only to the facts of a particular case.

01480 Great care is needed before using an unreported decision as the basis for general application in similar cases. If decisions of the UT conflict, then a reported decision has more weight than an unreported one[1]. A decision of the UT consisting of 2 or 3 Judges should be preferred to that of a single UT Judge[2]. Where a claimant or a representative produces a decision without warning at a tribunal, the presenting officer can seek an adjournment so that a copy of the decision can be obtained and made available to all parties.

1 R(IS) 9/08; 2 R(I) 12/75

01481 - 01489

Court of law

01490 The conviction of a claimant in a court of law for falsely obtaining benefit should not be ignored and should have a bearing on the case relating to benefit[1]. When a prosecution has taken place the DM should try to obtain

1. all the evidence that was available for the criminal proceedings **and**

2. evidence of the conviction itself

before giving a decision on benefit, or revising a decision which has already been given.

1 R(S) 2/80

01491 The initial responsibility of showing that the conviction relates to the benefit and period at issue rests on the DM. A conviction for an offence relating to the same benefit and period at issue before the decision making authorities has the effect, on reconsideration, of shifting the burden of proof on to the claimant who has been convicted. The claimant must show, on the balance of probability, that there is entitlement to the benefit at issue.

Rehabilitated offenders

01492 It is a criminal offence for anyone whose official duties involve access to official records to disclose information about spent convictions of rehabilitated offenders other than in the course of those duties[1]. See DMG 01494 et seq.

1 ROO Act 74, s 9

01493 An offender who has been sentenced on conviction to

1. a term of imprisonment **or**

2. detention in legal custody of not more than 2½ years

can be rehabilitated by avoiding re-conviction for a serious offence within a specified period beginning with the date of conviction[1].

1 ROO Act 74, s 4(1)(a)

01494 When an offender has completed the rehabilitation, the conviction becomes spent and evidence relating to it is only admissible in proceedings before a judicial authority[1]. DMs are judicial authorities

within the meaning of the Act.

1 s 7(3)

01495 The DM should only consider evidence relating to spent convictions when that evidence is essential to the determination of the claim. The DM is then acting within official duties for the purposes of the Act.

01496 - 01499

Employment tribunals

01500 Decisions of Appeal Tribunals are not binding on Employment Tribunals or vice versa. Although the issues before the tribunals have much in common, they are not identical[1]. The DM should consider any relevant evidence given to an Employment Tribunal, but does not have to take the same view of its credibility or draw the same inferences.

1 R(U) 2/74; R(U) 4/78

01501 - 01509

Coroner's court

01510 A Commissioner declined to follow the decision of a Coroner's jury, declaring that it was the duty of Commissioners to determine the probabilities, having regard to the evidence before them[1]. DMs have the same duty.

1 R(I) 25/60

01511 - 01519

Medical evidence 01520 - 01999

01520 In general, medical evidence should be treated in the same way as any other evidence. Medical training is not required, but there are additional considerations for DMs.

01521 Medical evidence is often given as a medical opinion and is not conclusive. See DMG Chapter 04.

01522 The DM is entitled to reject an opinion[1] where there is direct or circumstantial evidence which raises a strong inference against the opinion. Where doctors or HCPs disagree, the DM has to decide, on the balance of probabilities, which of the contrasting opinions is more likely to be correct. The view of the claimant's own doctor is not conclusive[2].

1 R(S) 4/60; 2 R(S) 4/56

01523 Where a decision hinges on a medical issue the DM must seek advice from Medical Services if they have any doubt about

1. whether the evidence is sufficient to make a decision, **or**

2. how it should be interpreted.

01524 It should be remembered that the onus is on the claimant to provide evidence in support of their claim or application. The DM may consider that additional evidence will help Medical Services give better advice. If this can be obtained quickly, either from the claimant or elsewhere, it should be requested. However, if the information is then delayed, the claim form or application should be sent to Medical Services who should be told that further evidence has been sought but not received. It will be for Medical Services to decide how then to proceed.

01525 The DM may refer any question of special difficulty to one or more experts for examination or report[1]. An expert in this context may include, for example,

1. a registered medical practitioner

2. a physiotherapist

3. a nurse.

Examination includes a physical examination if the claimant agrees[2]. Referral to an expert may be made through Medical Services. See benefit specific guidance for more details.

1 SS Act 98, s 11(2) & s 19; 2 R(I) 14/51

01526 The DM should decide the claim or application in the light of all the evidence including the HCP's report.

01527 - 01539

The role of Medical Services

AA and DLA

01540 When a person makes a claim for AA or DLA, they complete a claim form, including a self-assessment of how their disability affects their daily life. This contains personal details such as name, address and whether they normally live in GB. They may also supply

1. a statement from another person, for example from a carer or a doctor, about the claimant's illness and disability

2. a corroborative statement from a third party to verify the claimant's disability.

01541 Although DLA and AA claims can be decided on the basis of the evidence in DMG 01540, DMs can

1. seek further evidence themselves **or**

2. refer the claim to Medical Services for advice.

01542 The main role of Medical Services is

1. to arrange references to a HCP approved by the Secretary of State

2. to provide advice, either by report or verbally (using the helpline), to the DM on claims and applications.

01543 - 01544

IB and NI credits

01545 When a person claims IB or NI credits, and the PCA is the test of incapacity, they are usually required to complete a questionnaire, which enables them to describe how their incapacity affects their ability to perform specified tasks. The DM refers this to Medical Services.

01546 Medical Services gives an opinion on

1. whether the person passes the PCA without the need for examination and report **or**

2. arranges for the person to be referred to a HCP for examination and report.

01547 In cases where

1. the PCA has to be applied because the claimant has stopped sending in medical statements **and**

2. the claimant has been treated as capable of work because they failed to

2.1 return the questionnaire **or**

2.2 attend for and submit to a medical examination **and**

3. limited or no evidence of IfW is available

Medical Services is unlikely to be able to give an opinion on IfW. The DM should weigh the available evidence, and make assumptions about the PCA on the balance of probabilities.

Example

The claimant sends in form SC1 followed by a medical statement which states he should refrain from work for two weeks due to back pain. No further medical statements are received from the claimant, and he does not return the questionnaire. The DM does not refer the case to Medical Services, and on the balance of probabilities assumes that the claimant scores 0 points on the PCA after treating the claimant as capable of work for failure to return the questionnaire.

01548 - 01550

ESA and credits

01551 To be entitled to ESA a claimant must have LCW[1]. Claimants who are not treated as having LCW have to answer a questionnaire. The questionnaire is designed for the claimant to give as much information as possible about their condition and how it affects them in their daily functioning and how they manage their condition. Medical Services are responsible for gathering the information required. This includes sending the questionnaire.

1 WR Act 07, s 1(3)(a)

01552 Medical Services will also provide an independent medical opinion on the claimant's condition, functionality and their ability to perform activities related to work. They do not provide a diagnostic examination.

01553 The questionnaire and the medical opinion are referred to the DM to consider whether the claimant has LCW. See DMG Chapter 42 for full guidance.

01554 - 01559

IIDB and SDA

01560 Where there is a claim for IIDB or SDA, a reference to Medical Services will usually be required. This is particularly important in relation to IIDB, because the HCP who advises the DMs will have experience in dealing with these benefits and DMs must have regard to that fact when making their decision[1]. See DMG Chapters 57 and 64 - 73 for details on the handling of claims for these benefits.

1 SS CS (D&A) Regs, reg 12(3)(b)

01561 When a claimant notifies that their condition has deteriorated, the DM should seek medical advice on whether there has been a change and, if so, the date it occurred. In relevant PD cases[1], the DM should ask whether a recrudescence question arises (see DMG 04425 and 67215). Medical advice may be that the claimant's condition has deteriorated, stayed the same or improved. It may also cast doubt on the original diagnosis or loss of faculty (see DMG 04331 for guidance on distinguishing medical opinion from fact). See DMG Chapter 04 for guidance on what decisions are required following the advice.

1 SS(II)(PD) Regs, reg 7

01562 - 01564

REA

01565 In determining the relevant loss of faculty on a claim for REA a DM

1. is not bound by an opinion given by medical experts

2. is concerned with a claimant's capacity or otherwise, for their regular occupation

3. cannot award the allowance for any period outside the period of assessment of disablement

4. can admit and accept evidence from other sources, which tends to illustrate the disabling effects, if any, of the loss of faculty[1].

1 R(I) 7/64

01566 - 01569

Exchange of medical reports

01570 A claimant may argue that a medical report produced for another benefit should be used to decide a claim or dispute. The DM should, if possible, obtain a copy of the report and take it into account when making the decision.

01571 The same applies when a DM is sent a medical report by another officer of the Department. For

example, an officer dealing with a claim for IIDB may be sent medical reports obtained for the purpose of a compensation recovery case.

01572 DMs should bear in mind that medical reports are produced in order to determine whether the person satisfies the conditions of entitlement for a particular benefit and that some of the findings might not be relevant to another benefit. If reports appear to conflict, DMs must take into account the level of expertise of the HCPs concerned. For example, a HCP is specially trained to assess disability in the context of a claim for DLA or AA and their evidence would therefore be preferable to that of another HCP when deciding a claim for those benefits. DMs should consult Medical Services if they have difficulty interpreting the medical evidence.

01573 The DM also needs to be aware of other factors which may affect the weight to be given to the report as evidence. For example, where a PCA report is used as evidence to disallow an award of IB or credits, and the decision is overturned on appeal, the PCA report may not be a useful source of evidence when deciding a claim for DLA.

01574 - 01589

Consent and harmful medical evidence

01590 Claims for IB, SDA, AA, DLA and IIDB to collect medical evidence include consent to the information being made available to the decision making authorities. The whole report should be disclosed to the claimant or representative unless DMG 01591 applies.

01591 Medical evidence should not be disclosed to the person to whom it relates if disclosure would be harmful to the health of that person. If a report from a GP or consultant is signed to indicate that no information need be withheld, the report can be disclosed on request as normal. Where the GP states that information in the report is harmful, the DM should consider whether it should be disclosed, asking Medical Services for advice in cases of doubt. The DM should take account of the evidence where it is relevant.

01592 Where the DM considers that disclosure of medical evidence would be harmful, the evidence should not be disclosed to anyone acting for the person concerned unless the DM is satisfied that it is in the interest of the person to do so. If the evidence is disclosed it should be on the understanding that it will not be disclosed to the person to whom it relates.

01593 - 01594

Appeals

01595 Where

1. medical evidence used to make a decision is considered by the DM to be potentially harmful **and**

2. an appeal is made against the decision, the appeals officer should prepare two appeal bundles

including the appeal response or supplementary submission.

01596 The first bundle should have all evidence including that considered to be potentially harmful medical evidence, with a form which

1. explains what evidence is considered to be potentially harmful medical evidence

2. asks the FtT for a ruling on disclosure[1].

1 TP (FtT) (SEC) Rules, rule 14

01597 The other bundle should have the potentially harmful medical evidence obliterated. The appeal response or supplementary submission should not be sent to the appellant.

01598 On receipt of the FtT's ruling, please refer to operational guidance for next steps.

01599 The Department's file should be noted to ensure that the ruling is followed in any contact with the claimant or representative. The appropriate appeal response or supplementary submission should be issued to the presenting officer if there is to be one.

01600 - 01999

Appendix 1: Areas where information gathering and decision making functions must always be undertaken by separate members of staff

1. Allocation of NI numbers

2. Determinations about LTAMC and LTACP

3. Fraud investigation

4. Instrument of payment replacement

5. Social Fund.

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