

## MANDATORY RECONSIDERATION PRIOR TO APPEAL AND DIRECT LODGEMENT OF APPEALS WITH THE APPEALS SERVICE

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### BACKGROUND

1. This memo gives guidance on regulations<sup>1</sup> which enable the Department to require a person to apply for a decision to be revised (i.e. mandatory reconsideration) before they are permitted to appeal to The Appeals Service. The change comes into effect for decisions notified on or after 23 May 2016<sup>2</sup> where the notice of the decision includes a statement to that effect.

*1 Social Security, Child Support & Mesothelioma Lump Sum Payments (D&A) (Amdt) Regs (NI) 2016; 2 reg 1*

2. Following the completion of the mandatory reconsideration process, if the claimant still wishes to pursue an appeal then they must send their notice of appeal direct to The Appeals Service<sup>1</sup>. The Appeals Service will then send the notice of appeal to the appropriate office along with the mandatory reconsideration notice and any supporting documents to request that an appeal response is prepared.

*1 SS & CS (D&A) Regs (NI), reg 33(1)(b)*

3. When making their appeal to The Appeals Service, the claimant must provide with their notice of appeal, a copy of the mandatory reconsideration notice issued by the appropriate office. Where the mandatory reconsideration notice has not been included, The Appeals Service will follow up with the appropriate office.

## MANDATORY RECONSIDERATION BEFORE AN APPEAL CAN BE MADE

4. A person has the right of appeal in relation to a decision **only**<sup>1</sup> if the decision maker has considered, on application, whether the decision should be revised. The claimant must be given a notice that informs them<sup>2</sup>
  1. of the decision, whether as originally made or as revised **and**
  2. of the time limit for making an application for revision **and**
  3. that where the notice does not include a statement of reasons for the decision, the person may, within one month of the date of notification of the decision, request that a written statement is provided for the reasons of the decision **and**
  4. that there is a right of appeal against the decision but that this can be exercised only if the Department has considered an application for revision.

**Note:** There is no time limit within which the decision maker must carry out the mandatory reconsideration. Once a decision has been subjected to mandatory reconsideration, further dispute rights are not dependent upon a further mandatory reconsideration.

*1 SS & CS (D&A) Regs (NI), reg 3ZA(2); 2 reg 3ZA(1) & 3ZA(3)*

5. Where a claimant makes a late application for revision and the reasons for lateness are not accepted by the decision maker, the claimant has no right of appeal to The Appeals Service in relation to the original decision. A claimant will only be able to challenge the decision of the decision maker not to extend the time limit by means of a Judicial Review.
6. The normal time limit for applying for reconsideration (DMG 3063) can be extended if certain conditions are met which includes satisfying the “tests” of “reasonableness” and “special circumstances”. See DMG Chapter 03. These tests are not defined in legislation but should be interpreted broadly. Decision makers should therefore allow an application for an extension of time where the person is able to explain why their application for a revision is late and it is reasonable to accept it. Applicants are **not** expected to show unexpected or exceptional circumstances. But, if an applicant cannot explain why their application was not made in time, then the decision maker may not be able to consider their case. When considering whether to extend the time limit decision makers should also have regard to the claimant’s rights under article 6 of the European Commission for Human Rights - right to a fair trial - see Annex G of DMG Volume 1.
7. Where a written statement of reasons is requested it must be provided within 14 days of receipt of request or as soon as practicable afterwards<sup>1</sup>. If the

notification of the decision contains a statement of reasons then any further requests for a written notification has no effect.

*1 SS & CS (D&A) Regs (NI), reg 3ZA(4)*

8. Where there is no right of appeal against a decision as there has been no request for reconsideration, then any purported appeal may be treated as an application for revision<sup>1</sup>.

*1 SS & CS (D&A) Regs (NI), reg 3ZA(5)*

### **Example 1**

An Employment and Support Allowance claimant attends a Work Capability Assessment and the decision maker subsequently determines that they do not have Limited Capability for Work. The award is superseded so as to end entitlement to Employment and Support Allowance. The claimant disputes the decision and asks for reconsideration. No pending appeal award of Employment and Support Allowance can be made and they make a claim to Jobseeker's Allowance. Jobseeker's Allowance is awarded to the claimant. The decision maker decides that the decision cannot be revised and informs the claimant. The claimant lodges an appeal with The Appeals Service and submits medical evidence. They ask for Employment and Support Allowance to be re-awarded. The award of Jobseeker's Allowance is terminated by means of a supersession and a pending appeal award of Employment and Support Allowance is made without the need for a claim. Employment and Support Allowance is awarded from the day after Jobseeker's Allowance award ends.

### **Example 2**

A claim for Attendance Allowance is disallowed. The claimant disputes the decision in time and asks for reconsideration. The decision maker revises the decision to disallow benefit and makes an award of Attendance Allowance at the lower rate. The claimant considers that they are entitled to Attendance Allowance at the higher rate, decides to appeal this decision and sends the appeal to the Appeals Service within the time limit, including a copy of the mandatory reconsideration notice which shows the revised award of Attendance Allowance at the lower rate. Since the claimant has already had a mandatory reconsideration against the decision to disallow Attendance Allowance, the appeal can be accepted without a further mandatory reconsideration.

### **Example 3**

A Disability Living Allowance claimant receives notification of a decision that informs them that they are not entitled to Disability Living Allowance from and including 1.12.15. The claimant sends a letter of appeal to the Department. No mandatory reconsideration has been requested. The decision maker treats the letter of appeal as an application for revision.

## **ANNOTATIONS**

The number of this memo (DMG Memo Vol 1/106) should be noted against DMG paragraphs 3000, 6000, 42445 (main heading), 42465 & 45700 (heading).

## **CONTACTS**

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