Memo DMG 8/77

esa: chewing or swallowing food or drink

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| Contents | Paragraphs |
| Introduction | 1 - 2 |
| The Upper Tribunal decision | 3 - 4 |
| Contacts |  |
| Appendix |  |

 introduction

1 This memo advises decision makers of an update to the work capability assessment Handbook. The update clarifies the guidance for health care professionals on the interpretation of the support group descriptor about chewing or swallowing food or drink1.

1 ESA Regs(NI) 08, reg 20(g) & Sch 3, Activity 16

2 The update is issued in the light of a recent Great Britain upper tribunal decision1, and can be found in the Appendix to this memo.

1 WC v SSWP (ESA) [2015] UKUT 304 (AAC)

the upper tribunal decision

3 The only issue before the first tier tribunal and, on appeal, the upper Tribunal, was whether the claimant should be placed in the support group because he had difficulties swallowing food other than soup and pot noodles due to a reflux problem. The first tier tribunal dismissed the appeal, finding that he was able to swallow drink.

4 The upper tribunal held that the descriptor had to be interpreted as if it read: cannot either chew and swallow food, or swallow drink. A person who was unable to swallow food, but could swallow drink, would be able to satisfy the descriptor and be placed in the support group, as would a person who could swallow drink but not food, or could chew but not swallow food. On the facts of the case, the claimant was able to chew and swallow drink and soft food. Although the first tier tribunal had applied the wrong test, the error was not material to the outcome and the appeal was dismissed.

 Contacts

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appendix

