**Personal Independence Payment superseding awards.**

Example case - e.g. the SSWP having made an award – dec date 12th September 2014 of the Enhanced rate of the Daily Living Component of PIP for the period 17th September 2013 – 7th September 2017.

The SSWP in the case above submits the award of PIP was superseded 16th December 2016.

This is a common appeal scenario is where an award of a fixed term of Personal Independence Payments is prematurely ended on a review prompted by the SSWP.

The evidence used is typically a form entitled PIP Award Review and a follow up form PA4 completed by a HCP.

The UT has made decisions to the effect that the decision of the SSWP should be set aside and the previous decision (12th September 2014) remains the primary decision as where there have not been provided by the SSWP any grounds for supersession or revision.

**Review/revision – reg 5 *Revision on any grounds reg 9. Official error, mistake etc***

1. *‘any grounds’* – where a person simply has to show that s/he disagrees with the decision reg 5 the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.
2. *‘specific grounds’* – *Revision on Specific Grounds c2 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.*

#### Official error, mistake etc.

**9.**  A decision may be revised where the decision—

(a)arose from official error; or

(b)was made in ignorance of, or was based on a mistake as to, some material fact and as a result is more advantageous to a claimant than it would otherwise have been

**Claimant**

In the scenario above a time limit of one (or in ‘special circumstances’ up to thirteen months) is set by the legislation for the claimant to challenge the original decision by revision on *‘any grounds’* *i.e.* 12th October 2015, Chapter 1 of the *Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013*.

**SSWP**

The SSWP, under the same legislation, may seek an any grounds revision, but only within one month from the effective decision made S8 or 10 of the Social Security Act 1998. The original decision may therefore be revised by the Secretary of State if the SSWP starts action within one month (before 12th October 2016.)

**Review/Revision conclusion**

If the original decision (in the example) of 12th September 2014 is not challenged by either the SSWP or the appellant within the time limit specified by law we submit that decision remains in effect unless the SSWP supersedes the award.

**Supersession – change of circumstances**

The power to change an award (supersede) exists where there is evidence (or information) of a relevant change of circumstances.

**23.Changes of circumstances**

**26.Medical evidence and limited capability for work etc.**

**33.Procedure for making an application for a supersession.**

**Claimant**

S8(2)(b) Social Security Act 1998 provides that if a claimant wants to receive a different level of benefit, or benefit for a longer period than that previously awarded, because of a change of circumstances since the decision awarding the benefit, then there must be a new claim.

**Reg 23** provides for the SSWP to make a decision where there has been a ***‘relevant change of circumstances’*** or one is expected to occursince the decision to be superseded had effect. Advance awards are legislated for also. You may want to note that becoming terminally ill is not a relevant change of circumstances unless an application for supersession is made which contains an express statement that the person is terminally ill*.* ***i.e. a new claim.***

General powers exist to require information under regulation 11 of the Social Security (Personal Independence Payment) Regulations 2013.

***Re-determination of ability to carry out activities***

*11. Where it has been determined that C has limited ability or severely limited ability to carry out either or both daily living activities or mobility activities, the Secretary of State may, for any reason and at any time, determine afresh in accordance with regulation 4 whether C continues to have such limited ability or severely limited ability.*

The SSWP writes to the appellant with a *‘review form’* using regulation 11 of the Social Security (Personal Independence Payment) Regulations 2013 and 26(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment Support Allowance (Decisions and Appeals) Regulations 2013. – We presume this as the SSWP submissions fail to explain at any point the legal powers available or how they’re used. The submissions simply state the legislation is available publicly.

If the claimant returns the form with claimed difficulties being indicated as more or less than previously assessed this may allow for a revision or supersession but only where there is indicated *ignorance of or a mistake as to material fact and as a result the award was more advantageous to a claimant than it would otherwise have been*

**Is there a requirement for the claimant to complete the form and/or go to the medical?**

**Yes:** 80(6) of the Welfare Reform Act 2012 specifies ***“negative determination”*** as being able to be made ‘if a person fails without a good reason to comply with a requirement to participate in a consultation, with a person approved by the Secretary of State at a place, date and time determined under the regulations.

Claims for PIP by experience are reviewed at intervals set by the HCP. The recommendation is an opinion for the guidance of the decision maker when considering the time limit of an award (if any) and is not a material fact. More so not one that could (or should) be known to the appellant.

In the present example the recommendation of the HCP report states it would be appropriate to review the claim in 2years (i.e. 8th September 2016.)

The SSWP in issuing the ‘review form’ and referring a claimant to a medical assessment is in effect *‘going fishing’* for information.

The form once received from the appellant could be used by the SSWP to deploy regulation 33 and treat the form issued by them as the claimants/appellants own application for a revision or supersession and proceed with application for a supersession under section 10 of the 1998 Act.

However, would that be a mistake in law if none of the provisions are met under regulations 5, 9, 23, 26, 33 or Schedule 1 Part 2 (Effective Dates For Superseding Decisions Made On The Ground Of A Change Of Circumstances.) *The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013*.

**Where did it all go so wrong?**

Could the challenge of meeting the required legislation spread over numerous acts and regulations be a little too much?

Social Security Act 1998, Welfare Reform Act 2012, The Social Security (Personal Independence Payment) Regulations 2013 and The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

**What should happen?**

Awards of PIP are legislated to be made for a limited period under **s88** of the **Welfare Reform Act 2012.**

***88 Claims, awards and information***

*(1)A person is not entitled to personal independence payment for any period before the date on which a claim for it is made or treated as made by that person or on that person's behalf.*

*(2)An award of personal independence payment is to be for a fixed term except where the person making the award considers that a fixed term award would be inappropriate.*

*(3)In deciding whether a fixed term award would be inappropriate, that person must have regard to guidance issued by the Secretary of State.*

*(4)…*

The SSWP can’t just go changing their mind on the rate or length of award without relevant changes of circumstances or a material facts.

Where a claimant indicates no change there can there be a change of circumstances if the only information contrary to the present award is a report from a HCP? *A different opinion?*

In the case of indicating one or more activities as harder than at the time previously assessed then an assessment of their claimed difficulties must take place and where an assessment of the claimants disabilities has taken place, the results must be considered before applying the principles of revision and/or supersession.

SF v Secretary of State for Work and Pensions (PIP) - [2016] UKUT 481 (AAC)

*22. …the principles and guidance set out by Mr Commissioner Howell QC in R(M) 1/96 are not rendered redundant by the simple fact that the Secretary of State has instigated a Planned Review, obtained a fresh HCP report and concluded that there is now no longer any ongoing entitlement to PIP, making a supersession decision to that effect. The extent to which reasons have to be given in such a case will obviously be context-dependent. However, in a case such as the present, where there was such a stark contrast between the two decisions, the FTT could not simply pretend that the award the previous year was simply a matter of ancient history and of no current potential relevance. It was incumbent on the FTT at least to express a view e.g. that there had been a significant improvement in the Appellant’s condition and functioning in the intervening 15 months. That may well have been the situation in the present case, but the FTT did not say so and certainly did not make the necessary findings of fact to support such a conclusion. I therefore allow the appeal on this ground too.*

*However, the existence of new HCP medical evidence does not, of itself, preclude supersession on the alternative ground of a relevant change of circumstances. As Mr Spencer very fairly observes, a subsequent HCP report may support an increase in the claimant’s PIP award due to further needs which had already been previously and promptly notified by the claimant under regulation 23(1)(a). Unthinking and automatic resort to the new HCP report under regulation 26 in such a case would result in the claimant potentially losing out as regards arrears of benefit. Although I have not had full argument on the point, it seems to me in principle that Mr Spencer is correct in arguing that (with emphasis as in the original):*

R(IB) 2/04 is helpful in explaining the circumstances of revising or superseding during renewal of an award..

*149….*

*(a) The submission is in our judgment misconceived to the extent that (i) it concentrates solely on whether the Secretary of State was, on the material before him on 9 August 2000, justified in purporting to supersede the 1996 decision with effect from the date he did, and (ii) it assumes that if the appeal tribunal finds that the Secretary of State was not justified in doing so then his decision must simply be set aside.* ***The question for the tribunal was whether, on the evidence before it, the Secretary of State had discharged the burden of establishing that there was a ground for supersession (whether the ground apparently relied upon by the decision-maker or some other ground) and, if so, that the 1996 decision ought to be superseded.*** *Section 12(8)(b), in providing that an appeal tribunal shall not take into account circumstances not obtaining at the time when the decision under appeal was made, plainly does not prevent an appeal tribunal taking into account evidence (e.g. an EMP report) coming into existence subsequently, provided that it is of relevance to circumstances down to the date of the decision under appeal.*

*(b) The potentially available grounds for supersession appear to have been those in regulation 6(2)(a)(i) (change of circumstances) and 6(2)(c) (mistake of fact). Even if the supersession decision of 9 August 2000 was based on change of circumstances, the tribunal was not prevented from also considering mistake of fact.*

Therefore whilst the SSWP is able to determine afresh under regulation 11 of the Social Security (Personal Independence Payment) Regulations 2013 and issue a request for information, to instigate a redetermination the primary decision can only be revised or superseded within the limits of the legislation provided by identification of relevant facts and dates.

**Renewals**

33 (2) of The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 provides that where there is an existing award of PIP **the claimant** may make a further claim during the period of 6 months immediately before the existing award expires.

Under that regulation the SSWP may, on application by the claimant, treat the claim as made on the first day after the expiry of the existing award and award PIP, subject to the condition that the person satisfies entitlement on that first day after the end of the existing award

Therefore an advance award could only be made on the claimants volition in the period of 6 months immediately before the existing award is due to expire to be able to commence immediately after the first award.

In the example case between **7th March – 7th September 2017.**

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