

Mandatory Reconsideration decision

I have considered all the available evidence. This includes the evidence you provided when you provided when you made your claim to Universal Credit, at your Habitual Residence Test interview, from your Universal Credit account, National Insurance and Department for Work and Pensions records, and when you requested your mandatory reconsideration.

I sought advice from the Department's Legal Group. This included.

Finality of determinations

Normally, determinations embodied within an outcome decision are not conclusive for the purposes of a further claim for the same benefit¹.

SS Act 98, s 17(2)

Determinations embodied in an outcome for a different benefit, i.e. in this case Jobseekers Allowance, are not conclusive in a further claim for a different benefit. So the fact that a previous Decision Maker, when determining a claim for Jobseekers Allowance, noted that the claimant had a permanent right to reside under Regulation 15 of the Immigration (European Economic Area) Regulations 2006, does not bind the Decision Maker when considering the current claim for Universal Credit. The DM needs to be satisfied about all aspects of the evidence.

This is further complicated in a case like this because the determination that the claimant's representative asserts was made in the earlier Jobseekers Allowance claim is not a determination for the Secretary of State for Work and Pensions to make under the Social Security Act 1998. The Immigration (European Economic Area) Regulations 2006 is a piece of Home Office legislation and whenever it refers to the Secretary of State making a decision it means the Secretary of State for the Home department.

This is an important distinction to make because the way decisions are made and legislated for can be very different in the Home Office from the

LT54(UC)

Universal Credit, New Style JSA, New Style ESA: Decisions-Claims, revisions, supersessions, etc, determinations of questions and Mandatory Reconsiderations Department for Work and Pensions. For example, some rights that a citizen can have under the Immigration (European Economic Area) Regulations 2006 simply arise if the conditions are met. There is no need for a claim and there is no need for a decision. A permanent right to reside under Regulation 15 of the Immigration (European Economic Area) Regulations 2006 is like this. If a person meets the conditions, that person has a permanent right to reside – no claim and no decision by the Home Secretary is required. However, if a person wishes to benefit from such a right, that person has to be able to demonstrate it. Obviously, in the earlier Jobseekers Allowance case the claimant was able to demonstrate it to the satisfaction of the Decision Maker. The Decision Maker in the current case is not prepared to accept that earlier evaluation.

Contrast this with Regulation 19 of the Immigration (European Economic Area) Regulations 2016 for when a person wants a certificate of a permanent right to reside:

"Issue of a document certifying permanent residence and a permanent residence card

19.—(1) The Secretary of State must, as soon as possible, issue an EEA national with a right of permanent residence under regulation 15 with a document certifying permanent residence on application and the production of—

(a) a valid national identity card or passport issued by an EEA State; and

(b) proof that the EEA national has a right of permanent residence...."

For this, the person must apply and produce evidence before the Secretary of State for the Home Department will issue the certificate. The certificate is useful because in general it will mean that the claimant will not have to produce all the evidence for the satisfaction of a Decision Maker again. Therefore, although the certificate is not necessary to show a permanent right to reside, having it can make a person's life simpler.