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Staying

What does 'Staying' mean

- 4000 'Staying' means to defer a decision.
- 4001 You can stay a decision if it involves the same point of law being challenged in the Courts in another case. The case at Court is known as **the lead case**. The case being considered is known as **the lookalike case**.
- 4002 Consider staying if:
- a decision is outstanding about whether an award of benefit should be:
 - made
 - revised **or**
 - superseded **and**
 - the case currently being considered i.e. the lookalike case, involves the same point of law that is being challenged in the lead case.
- See DMG Chapter 06**
- 4003 ACI Leeds will identify lead case appeals that are pending and will issue notification detailing the point of law in dispute and the type of benefits which are affected by the decision. ACI Leeds will also issue a certificate where the Secretary of State is considering an appeal.

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How to apply staying

- 4050 When it is decided staying is appropriate:
- stay the decision **or**
 - make the decision on a restricted basis.
- See DMG Chapter 04**
- 4051 Sometimes the point of law in dispute in the lead case affects only a part of benefit entitlement. In these cases pay any part of a customer's benefit that is not in doubt. Calculate benefit on the assumption that the lead case has

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been decided and the outcome is unfavourable to the customer in the lookalike case.

4052 The following example illustrates the principle.

Example

IBLT is paid at a basic rate and includes an Incapacity Age Addition (IAA) that is paid at either:

- higher rate - if the customer's period of incapacity for work began before their 35th birthday **or**
- lower rate - if the customer's period of incapacity for work began before their 45th birthday

Lead case

A customer aged 39 claims IB and is awarded a basic rate of IBLT and IAA at the lower rate. The customer appeals on the grounds that they should have been awarded IAA at a higher rate. The grounds of the appeal are that the regulations for IAA are discriminatory to persons aged 35 and over.

The appeal is heard by an AT, and is disallowed. The case is then referred to the Social Security Commissioner.

The Commissioner decides that the customer's case has merit and rules that all customer's under age 45 should be awarded at the higher rate of IAA.

On receipt of the decision, the DM decides to appeal to the Court of Appeal on the grounds of error of law.

Lookalike case

An IB customer aged 37 claims IB after the date of the Commissioner's ruling. The claim should attract the higher rate of IAA. The DM determines that the qualification for the lower rate IAA is already satisfied. The DM looks at the question of the higher rate IAA. The DM has an element of doubt about entitlement to this because it concerns the same question of law in dispute in the lead case. Therefore the DM assumes that the lead case has been decided and the outcome is unfavourable, i.e. that the higher rate of IAA is not payable.

The DM pays the lowest rate of IAA and stays the decision on the higher rate of IAA pending the final outcome of the lead case.

- 4053 There is no right of appeal against a decision to stay. If a customer challenges a decision to stay, reconsider the decision in the light of all the available facts, including any additional facts that are presented by the customer. If the claimant is suffering hardship, a determination on the substantive benefit issue should be made, and any payments due from that award must then be made.
- 4054 If the customer challenges the decision to stay and you decide that staying is still appropriate, the customer can apply to the Courts for a judicial review.

Step	Action
1	send DL/SUSTERM 9 to the customer
2	keep a copy of DL/SUSTERM 9 with the customer's records

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Hardship

- 4100 Hardship must be considered as part of the initial decision to stay a case.
- 4101 When a decision has been stayed, the draft letters that are sent to the customer invite them to contact the office if the decision will cause hardship. It is not necessary to contact customers before the decision is sent, unless this will provide information about possible hardship that would not otherwise be obtained.
- 4102 If the customer represents they are suffering hardship, you should obtain sufficient evidence.
- Note:** Consideration must be given to the actual benefit position. The original reason why the decision was stayed will still remain.
- 4103 If you decide it is more appropriate to make a decision on the case rather than to stay the decision:

Step	Action
1	send DL/SUSTERM 3 to the customer
2	keep a copy of DL/SUSTERM 3 with the customer's records

- 4104 See benefit specific guidance for further details when considering hardship.

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Action to take when the lead case is decided

4150 When the appeal to the courts on the lead case is decided, guidance will be issued on how to apply the decision to cases that have been stayed.

4151 Make decisions on cases that have been stayed based on the guidance that is issued.

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Staying when the customer appeals and an appeal is pending on another case

4200 Staying may also apply when:

- an appeal has been made to a tribunal or Commissioner **and**
- the decision under appeal involves making, revising or superseding:
 - an award of benefit;
 - a departure direction;
 - a reduced benefit direction **or**
 - a contribution to maintenance **and**
- an appeal has been made to a court in another case **and**
- in these circumstances, it is possible that the outcome of the appeal to a court will affect the determination of the other appeal.

See CAP Chapter 8

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