

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 14

Amendment 26 - Oct 2011

1. This letter provides details on Amendment 26; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer and significant changes are sidelined for ease of identification.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/dmg%20amendment%20packages/index.asp#>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 26 affects Chapters 84 and 86. The changes
 - includes removal of guidance on specific accommodation deleted by S.I. 2010/641 and expansion of the guidance on what a payment made in consequence of personal injury means to chapter 84
 - incorporate minor amendments into chapter 86.
4. The last two amendment packages amending Volume 14 were

Amendment 24 [February 2011]

Amendment 23 [October 2010]
5. **For reference purposes Decision Makers may find it useful to retain deleted pages for a short period after the introduction of this package.**
6. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Health in pregnancy grant

84403 This grant is payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It will be a one off non-taxable payment. This payment is to be disregarded when calculating the capital of the claimant¹.

1 SPC Regs, Sch V, para 23B

84404 - 84405

Life insurance policies

The law

84406 The surrender value of a life insurance policy still in force is disregarded indefinitely¹.

1 SPC Regs, Sch V, Part I, para 10

Meaning of life insurance policy

84407 Life insurance policy means a written document which states a payment of money is made

1. on death (but not one which states payment is made only if the death is accidental) **or**
2. if death happens
 - 2.1 in certain circumstances **or**
 - 2.2 during the period a person has agreed to pay premiums¹.

1 SPC Regs, reg 1(2)

Investments which include life insurance

84408 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**
2. equal to **or**
3. less than

what the person can get if the investment is surrendered the day before the date of death¹.

1 R(IS) 7/98

Life interest or life rent

84409 The value of the right to receive income

1. under a life interest **or**
2. from a life rent

is disregarded indefinitely¹.

Note: This disregard applies only for the purposes of determining deemed weekly income.

1 SPC Regs, Sch V, Part II, para 24

Payment for personal injury

84410 The amount of any payment made to claimants, or their partners if they have one, as a consequence of any personal injury is disregarded indefinitely¹. Any of that amount is also disregarded indefinitely² if it is administered

1. in England and Wales
 - 1.1 by the High Court or County Court under certain rules³ **or**
 - 1.2 by the Court of Protection (see DMG 84282) **or**
 - 1.3 on behalf of a person where payment can only be disposed of by order or direction of any such court **or**
2. in Scotland by the Sheriff Court under certain rules⁴ **or**
3. in accordance with the terms of a trust set up for the benefit of those claimants or partners.

Note: The meaning of made as a consequence of a personal injury can include where the claimant's solicitor fails to secure the personal injury payment and the claimant sues their solicitor for professional negligence and receives a compensation payment to the value of what they should have received. However if any damages are also paid for any additional loss created by the professional negligence then this would not be disregarded.

1 SPC Regs, Sch V, Part I, para 16(1); 2 Sch V, Part I, para 16(2); 3 Civil Procedure Rules 1998, Rule 21.11(1); 4 Ordinary Cause Rules 1993, Rule 36.14; Rule 128

84411 A trust exists if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

84412 The disregard at DMG 84410 does not apply if the injury was to a claimant's deceased partner¹.

1 R(IS) 3/03

84413 - 84420

Deemed weekly income from capital

The law

Deemed weekly income from capital

84911 The amount of deemed weekly income from capital is £1

1. for each £500 over £10,000 **and**
2. for any capital which is left and which is not a complete £500¹.

1 SPC Act 02, s 15(2) & SPC Regs, reg 15(6)

84912 - 84920

How to work out the amount of deemed weekly income

Total amount of capital

84921 The total amount of capital each person has is the total of the value of each item of actual capital **and** notional capital that person has. The total amount of capital of claimants is

1. the total amount of their capital if they do not have a partner **or**
2. the total amount of their capital and the total amount of their partner's capital if they have a partner¹.

1 SPC Regs, s 5 & s 12(2)(d) & reg 8 & Sch III, para 1(4)

When does income become capital

84922 Where a claimant receives income, at a certain point that income becomes capital. This point is reached when the period for which the income is paid has expired. So the DM should have regard to receipts of income when calculating tariff income deemed to be generated from a claimant's capital¹.

Example

Bill submits a claim for SPC on 21 August. He provides a bank statement dated 18 August showing a balance of £12,335.46. If tariff income were calculated on this amount it would be £5.00 per week. Bill also receives RP of £415.63 which is paid four weekly directly into this bank account. He last received a payment on 17 August

to cover the period 17 August to 13 September. At the date of claim, as the period for which the RP was paid has not yet expired, his capital should be reduced by the amount of his 4 weekly payment of RP. This reduces his capital to £11,919.83 which produces a tariff income of £4.00 per week.

1 R(PC) 3/08

- 84923 If any amount is withdrawn from an account which includes income and capital, the amount of capital is reduced if there is evidence to show the money withdrawn is from capital. The assumption is that income is spent before capital.

Example

On 2 February Wendy makes a claim for SPC. She has £11,550 in a bank account. This includes a month's occupational pension of £250 which Wendy receives on the last day of each calendar month. The DM decides that Wendy has capital of £11,300 because the period for which her occupational pension of £250 is paid has not yet expired and so has not become capital. On 16 February Wendy, withdraws £320 from her bank account to pay her car insurance. There is no evidence of any other withdrawals since 2 February. The DM decides that Wendy has spent her occupational pension of £250 and that her capital has reduced by £70 (i.e. the difference between the amount withdrawn and the amount of the occupational pension payment) to £11,230.

Deemed weekly income

- 84924 The total amount of capital of the claimant is used to work out the deemed weekly income. See Appendix 1 for a table which shows how to work out deemed weekly income on the total amount of capital. See DMG 85030 et seq for how to take the deemed weekly income into account.

84925 - 84999

Earnings of employed earners - explanation of terms

Meaning of employed earner

- 86030 The term employed earner means¹ a person who is gainfully employed in GB
1. under a contract of service **or**
 2. in an office (including any elective office) where payments are taxable under Schedule E (PAYE).

1 SPC Regs, reg 17A(5)

86031 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

86032 The phrase in an office includes directors of limited companies, clergy, LA councillors, Members of Parliament and sub-postmasters and mistresses.

Meaning of earnings

- 86033 Earnings means any pay or profit derived from employment and includes¹
1. bonus or commission² (see DMG 86059)
 2. PILOR³ (see DMG 86090 and 86153)
 3. PILON⁴ (see DMG 86156)
 4. holiday pay⁵ (see DMG 86160)
 5. retainers⁶ (see DMG 86091)
 6. payment made by the employer for expenses which are not wholly exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for
 - 6.1 the employee's travelling expenses between home and work⁷ (but see DMG 86081 for councillors) **or**
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is at work⁸ (see DMG 86085)
 7. any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of social security contributions to deduct⁹ (see DMG 86101)
 8. SSP and SMP¹⁰
 9. statutory paternity pay¹¹
 10. statutory adoption pay¹²
 11. employers sick or maternity pay¹³.

This list is not exhaustive. See DMG 86050 - 86102 for more examples of what are and what are not earnings.

*1 SPC Regs, reg 17A(2); 2 reg 17A(2)(a); 3 reg 17A(2)(b); 4 reg 17A(2)(c); 5 reg 17A(2)(d); 6 reg 17A(2)(e);
7 reg 17A(2)(f)(i); 8 reg 17A(2)(f)(ii); 9 reg 17A(2)(g); 10 reg 17A(2)(h); 11 reg 17A(2)(i);
12 reg 17A(2)(j); 13 reg 17A(2)(k)(i) and (ii)*

86034 Earnings do not include¹

1. payments in kind (see DMG 86088 - 86089)
2. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment²
3. payments of occupational pension³
4. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme⁴
5. any payment of compensation made by an Employment Tribunal because of unfair dismissal or unlawful discrimination⁵.

1 SPC Regs, reg 17A(3); 2 reg 17A(3)(b); 3 reg 17A(3)(c); 4 reg 17A(3)(d); 5 reg 17A(3)(e)

Meaning of derived from

86035 The words “derived from” mean having their origins in¹. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 86034.

1 R(SB) 21/86

Meaning of gross earnings

86036 Gross earnings means the amount of earnings

1. after the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ but
2. before any authorized deductions are made by the employer. These may include
 - 2.1 income tax
 - 2.2 pension contributions
 - 2.3 SS contributions (sometimes called NI contributions)
 - 2.4 TU subscriptions
 - 2.5 payments under a court order
 - 2.6 recovery of any debt.

Note: Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings².

1 R(IS) 16/93, 2 R(TC) 02/03

Calculation of net earnings

Deductions from gross earnings

- 86037 Net earnings are gross earnings less¹
1. income tax **and**
 2. Class 1 SS contributions **and**
 3. half of any sum paid by the employee towards an occupational or personal pension scheme².

1 SPC Regs, reg 17(10); 2 reg 17A(4A)

Income tax

- 86038 Deduct from gross earnings any income tax deducted by the employer.

Social Security contributions

- 86039 SS contributions are often called National Insurance Contributions. Reduce gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

- 86040 Deduct from the employee's gross earnings for a normal pay period one half of any amount which
1. a person pays into an occupational pension scheme for that period **or**
 2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension scheme for that period **or**
 3. a person contributes towards a personal pension scheme for that period.

Example

Sheila earns £60 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her pay period is a week. Her pension contribution is changed into a weekly figure ($£26 \times 12 \div 52 = £6$ pw) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£60 - £3 = £57$).

- 86041 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are
1. normally in the form of a pension, all or part of which may be taken as a lump sum

2. payable on death or retirement.

1 PS Act 93, s 1; SS Act 86, s 86(1)

86042 Personal pension schemes¹ are arrangements between employees, or S/E earners and pension providers such as insurance companies. They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 PS Act 93, s 1; SS Act 86, s 86(1)

86043 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

86044 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

86045 Examples of expenses for which deductions may be made under DMG 86044 are

1. equipment, tools and stationery
2. overalls and specialist clothing
3. telephone calls made entirely for work purposes
4. travelling costs between different work places and any accommodation costs involved.

86046 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325; 2 R(IS) 16/93

86047 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work, would not satisfy the test in DMG 86044. Child minding expenses¹, and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

1 R(FC) 1/90

86048 See DMG 86071 or 86076 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 86085 for more guidance on the general question of expenses.

86049

Earnings disregards

Application to claimant and partner

- 86110 Net earnings should be taken into account less any disregard. The amount of disregard will depend on
1. whether the earnings are from work in one of the occupations listed at DMG 86113
 2. whether the claimant is single
 3. who the earnings belong to.
- 86111 Disregards apply equally to the claimant and partner. The amount of the claimant's or partner's earnings to disregard is normally¹
1. £5 in the case of a claimant with no partner **or**
 2. £10 in the case of a claimant who has a partner **or**
 3. £20 where the claimant or partner satisfy the conditions in DMG 86113 - 86120.

1 SPC Regs, Sch VI, para 5

Lone parents

- 86112 £20 of earnings is disregarded if the claimant is a lone parent¹. This includes a lone grandparent who is responsible for a grandchild. For the purposes of this disregard
1. lone parent means a person who has no partner and who is responsible for, and a member of the same household as, a child **and**
 2. child means a person treated as a child or qualifying young person for child benefit purposes².

1 Sch VI, para 1; 2 SS CB Act 92, Pt IX

Note: For the definition of qualifying young person see DMG Chapter 20.

Special occupations

- 86113 £20 of earnings from employment
1. as a P/T fireman¹
 2. as an auxiliary coastguard in respect of coast rescue activities
 3. manning or launching a lifeboat if the employment is P/T
 4. as a member of any territorial or reserve force
- should be disregarded².

1 Fire (Scotland) Act 2005, 2 SPC Regs, Sch VI, para 2

86114 Where the claimant is engaged in one or more of the occupations at DMG 86113 1. - 4. and also has earnings from another occupation, the total amount disregarded from the earnings from all of the occupations taken together should not exceed £20.00 in any week¹.

1 SPC Regs, Sch VI, para 2A

86115 Where the claimant and partner are both employed in one or more of the occupations at DMG 86113, the disregard is restricted to a maximum of £20.00¹.

1 Sch VI, para 4A(1)(b)

Carers

86116 £20 of earnings should be disregarded where the

1. claimant **or**
2. partner **or**
3. both the claimant and partner

are carers¹.

1 Sch VI, para 3(1)

86117 The claimant or partner is a carer for the purposes of the £20 disregard if their SPC includes an additional amount in accordance with DMG 78100¹.

1 Sch VI, para 3(2)

Disabled people

86118 A disregard of £20 per week applies where a claimant or their partner

1. is in receipt of
 - 1.1 long term IB¹
 - 1.2 SDA²
 - 1.3 "AA"³
 - 1.4 DLA⁴
 - 1.5 mobility supplement⁵
 - 1.6 the disability or severe disability elements of WTC⁶
 - 1.7 ESA⁷ **or**
2. is registered blind by a LA⁸ **or**
3. has had an award of IS, ESA(IR) or JSA(IB) during the 8 weeks ending on the day they become entitled to SPC⁹ **and**
 - 3.1 had earnings taken into account in the award of IS, ESA(IR) or JSA(IB) to which the £20 earnings disregard applied **and**

- 3.2 the person whose earnings qualified for the disregard continues in employment after the termination of the IS, ESA(IR) or JSA(IB) award **and**
- 3.3 there is no break of more than 8 weeks in the person's entitlement to SPC or in their employment from the first day for which SPC is awarded **or**
- 4. immediately before reaching pensionable age¹⁰ had
 - 4.1 an award of SPC **and**
 - 4.2 had earnings to which a disregard of £20 applied because they were in receipt of either
 - 4.2.a Long Term Incapacity Benefit **or**
 - 4.2.b SDA **and**
 - 4.3 there is no break of more than 8 weeks in the person's entitlement to SPC since reaching pensionable age.

Note: A person should be treated as blind if they are registered as blind by a LA in England and Wales or certified blind and in consequence register as blind in a register maintained by or on behalf of a regional or island council in Scotland. The DM must be satisfied that the person is registered as blind. This is because they might be registered as partially sighted rather than blind. A person who is registered as partially sighted should not be treated as blind. Make enquiries of the LA concerned if there is any doubt.

1 SPC Regs, Sch VI, para 4(1)(a)(i); 2 para 4(1)(a)(ii); 3 para 4(1)(a)(iii); 4 para 4(1)(a)(iv); 5 para 4(1)(a)(v); 6 para 4(1)(a)(vi); 7 para 4(1)(a)(vii); 8 para 4 (1)(b); 9 para 4(2) & 4(4)(a); 10 para 4(3) & 4(4)(b)

86119

More than one disregard applies

86120 Where

- 1. a claimant with no partner satisfies the conditions for more than one of the disregards at DMG 86112 - 86118 **or**
- 2. in the case of a couple, both partners satisfy the conditions for one or more of the disregards mentioned at DMG 86113 - 86118

the maximum amount that may be disregarded from the earnings of the claimant or partner is restricted to £20.00 in total¹.

1 Sch VI, para 4A(1)

Example 1

Graham is a P/T firefighter. He also receives CA in respect of his elderly mother. His earnings as a P/T firefighter are £50.00. The DM restricts the amount disregarded from Graham's earnings to £20.00.

Example 2

Sandra works P/T from her home, earning £50.00 per week, and also receives CA in respect of caring for her elderly mother. Sandra lives with her husband who is in receipt of "AA". The DM restricts the amount disregarded from Sandra's earnings to £20.00.

Claimant and partner both have earnings and more than one disregard applies

86121 Where the claimant and partner

1. both have earnings **and**
2. both satisfy the conditions for the £20.00 earnings disregard **and**
3. the amount to be disregarded from the earnings of **one** of the couple is less than £20.00

the DM should restrict the amount disregarded from the earnings of the other member of the couple so that the total amount disregarded from the earnings of both members of the couple does not exceed £20.00¹.

1 SPC Regs, Sch VI, para 4A(2)

Example

Colin assists with the launching of a lifeboat on a P/T basis. In one week he earns £15.00. His partner Molly also works P/T in a local shop, earning £30.00 per week. Molly also receives CA for caring for her brother. The DM disregards all of Colin's earnings and £5.00 of Molly's earnings.

86122 The maximum amount which may be disregarded from the earnings of a claimant and partner cannot exceed £20.00 per week.