Relevant DWP Address

DD/MM/YYYY

Dear Sir or Madam:

**RE: URGENT MANDATORY RECONSIDERATION REQUEST**

 **Claimant: NAME**

 **Address: ADDRESS**

 **NINO: NINO**

1. We write on behalf of NAME (hereafter “**A**”). We attach her written authorisation.
2. We apply for a revision (“mandatory reconsideration”) of the decision made on DD/MM/YYYY to the effect that A is not entitled to a sure start maternity grant.
3. Below we set out the relevant facts and the grounds on which revision is sought. We also explain why the matter is urgent. **A reply is required within 7 days of the date on this letter.**

**Relevant Facts**

1. A is a national of COUNTRY.
2. A arrived in the UK on DD/MM/YYYY. A arrived with her children:
	1. NAME CHILD 1, DOB: DD/MM/YYYY.
	2. NAME CHILD 2, DOB: DD/MM/YYYYY.
	3. Etc/
3. A was recognised as a refugee by he Secretary of State for the Home Department on DD/MM/YYYY.
4. A gave birth to NAME CHILD BORN IN UK on DD/MM/YYYY.
5. A is in receipt of NAME QUALIFYING BENEFIT.
6. A made a claim for a sure start maternity grant on DD/MM/YYYY.
7. That claim was refused on DD/MM/YYYY. The reason given for refusal was that A had another child aged under 16 within her family.

**Grounds for revision**

1. The rules relating to the SSMG are set out in the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 (the “2005 Regulations”).
2. In summary:
	1. Regulation 4A makes provision in respect of persons to be treated as responsible for children.
	2. Regulation 5 sets out four conditions of entitlement for an SSMG:
		1. the claimant or the claimant’s partner must be in receipt of a qualifying benefit (Regulation 5(2));
		2. the claimant (or in some cases the claimant’s partner or a member of the claimant’s family) must either be pregnant, or have given birth to a child, or have become responsible for a child aged less than 12 months in certain specified circumstances (Regulation 5(3));
		3. except in the case of a still-birth, the claimant or the claimant’s partner must have received advice from a health professional (Regulation 5(4)); and
		4. the claim must have been made within the prescribed time limit.
	3. Regulation 5A was introduced by the Social Fund Maternity Grant Amendment Regulations 2011 (the “2011 Regulations”) which came into force on 24 January.
	4. A new version of Regulation 5A was substituted by the Social Fund Maternity Grant Amendment Regulations 2012 and this was further amended with effect from 6th April 2018 by the 2018 Regulations.
	5. Regulation 5A, so far as is relevant, provides as follows:

“**Entitlement where another member of the claimant’s family is under the age of 16**

**5A.** — (1) In this regulation—

(a) “C” means the child or still-born child in respect of whom a Sure Start Maternity Grant is claimed; and

(b) “existing member of the family” has the meaning given in paragraph (2) or, as the case may be, (3).

(2) Where a parent of C (“P”) is under the age of 20 and a member of the claimant’s family, “existing member of the family” means any member of the claimant’s family who is also a child of P, apart from C or any other child born as a result of the same pregnancy as C.

(3) In any other case, “existing member of the family” means any member of the claimant’s family apart from—

(a) C;

(b) any other child born as a result of the same pregnancy as C;

(c) any child whose parent is under the age of 20 and a member of the claimant’s family.

(d) any child-

(i)who was not, at the time of the child’s birth, a child of the claimant (or, where the claimant has a partner at the date of claim, the claimant’s partner); and

(ii) whose age, at the time that the claimant (or, where the claimant has a partner at the date of claim, the claimant’s partner) first became responsible for the child, exceeded 12 months).

(4) Subject to the following provisions of this regulation, a Sure Start Maternity Grant shall not be awarded if, at the date of claim, any existing member of the family is under the age of 16.

(5) Where C is one of two or more children —

(a) born or still-born as a result of the same pregnancy, or

(b) (if the claim is made before the confinement in a case where regulation 5(3)(a) applies) who are expected to be born as a result of the same pregnancy,

(c) the number of Sure Start Maternity Grants to be awarded is to be determined in accordance with paragraphs (6) and (7).

(6) Where at the date of claim no existing member of the family is under the age of 16 a Sure Start Maternity Grant is to be awarded in respect of each of the children mentioned in paragraph (5).

(7) Where at the date of claim any existing member of the family is under the age of 16 then—

(a) where each of those existing members of the family under the age of 16 was born as a result of separate pregnancies, a Sure Start Maternity Grant is to be awarded for all but one of the children mentioned in paragraph (5); and

(b) where two or more of those existing members of the family under the age of 16 were born as a result of a single pregnancy, the number of Sure Start Maternity Grants to be awarded in respect of the children mentioned in paragraph (5) is the number of children mentioned in paragraph (5) minus the maximum number of existing members of the family born as a result of a single pregnancy.”

* 1. The effect of that regulation is, save for the limited exceptions it gives, to disentitle a person who already has another child aged under 16 in their household when they attempt to claim a sure start maternity grant for a new baby.
1. In *SK and LL v SSWP* [2020] UKUT 145 (AAC) (copy attached) the Upper Tribunal considered a challenge to regulation 5A brought by a refugee (SK) who came to the UK with a child and then went on to have a further child in the UK for whom she claimed a sure start maternity grant.
2. Like C in the present case, SK was refused the sure start maternity grant because she already had a child aged under 16- who, like C’s other child/children was born before she came to the UK as a refugee.
3. The Upper Tribunal held that regulation 5A unlawfully discriminated against refugees having a first child in the UK who had pre-flight children. The reason was that this group should not be treated the same as a person in the UK having a second child- the latter would have been able to keep baby items but the former would not.
4. The Upper Tribunal accordingly awarded SK the sure start maternity grant.
5. The ruling is as follows:

“151. Regulation 5A of the 2005 Regulations does not unlawfully discriminate against refugees with pre-flight children under EU law but it does unlawfully discriminate against them contrary to Article 14 read with Article 8 and A1P1 of the Convention.”

1. The case was disposed as follows:

“155. In each of these cases it is appropriate to re-make the decision as the First-tier Tribunal should have made it. Applying section 6(1) of the Human Rights Act 1998 I disapply the offending provision in the 2005 Regulations (as amended).

156. There is no dispute that the Appellants satisfied the other conditions to entitlement for SSMG under the 2005 Regulations, so the decision I make is that at the relevant time the Appellants were each entitled to a SSMG.”

1. In the present case, the relevant facts are not materially different. Accordingly, the Decision Maker is bound by *SK and LL* and must award a sure start maternity grant.

***Urgency***

1. The purpose of the sure start maternity grant is to provide funds for crucial baby items at the point when they are needed.
2. A has already waited X time to obtain the grant.
3. The law on the matter is clear.
4. Accordingly we require a decision on this revision within 7 days of the date of this letter.

Yours faithfully:

ADVISER NAME

ADVISER ORGANISATION