

ADM Chapter U7: ESA award made pending appeal

Subpages

- Introduction U7001 - U7004
- Claimant treated as having LCW U7005 - U7029
- Claimant awarded component during appeal U7030 - U7049
- Date award begins U7050 - U7059
- Late appeals U7060 - U7079
- Prisoners U7080 - U7089
- Further ESA claims U7090 - U7094
- JSA awarded before appeal made U7095 - U7119
- Referral for WCA U7120
- Change of circumstances U7121 - U7139
- Change in claimant's health condition U7140 - U7143
- Appeal withdrawn, struck out or dismissed U7144 - U7154
- Appeal allowed U7155 - U7159
- Appeal reinstated U7160
- Appeal remitted U7161 - U7164
- Appeal to UT by the claimant or the Secretary of State U7165 - U7999

Introduction U7001 - U7004

Introduction

U7001 This Chapter gives guidance on

- 1.** when a claimant can be awarded ESA pending an appeal against a relevant decision which includes a determination that the claimant does not have LCW
- 2.** how to deal with changes of circumstances before the appeal is heard
- 3.** what action to take when the appeal has been determined.

U7002 - U7004

Claimant treated as having LCW U7005 - U7029

Claimant treated as having LCW

U7005 Where the conditions in U7006 - U7007 are satisfied, a claimant who makes and pursues an appeal to the FtT can be

1. treated as having LCW¹**and**
2. exempt from the requirement to claim before being awarded ESA²

where the appeal is lodged against a relevant decision (see U7010) made on a claim made or treated as made on or after 30.3.15.

Note 1: This does not apply where an ESA claimant is treated as not having LCW for failure to return the questionnaire or failure to attend or submit to a medical examination.

Note 2: DMs are reminded that even if the ESA claimant claims or is already entitled to UC, they can still be awarded ESA pending the outcome of the appeal subject to the 365 day time limit. See U7025.

1 ESA Regs 13, reg 26(2)(b); 2 UC, PIP, JSA & ESA (C&P) Regs, reg 7(1)

U7006 The conditions in U7005 are that¹

1. entitlement to ESA is disallowed or terminated in a relevant decision following a determination that the claimant does not have LCW after application of the WCA **and**
2. following mandatory reconsideration where appropriate (see U7020 - U7025, the claimant makes an appeal to the FtT against the disallowance **and**
3. the claimant provides or continues to provide medical evidence **and**
4. no claim for JSA is made.

Note 1: See ADM Chapters A3 and A6 for guidance on mandatory reconsideration and appeals.

Note 2: This does not apply where the claimant makes an appeal to the UT.

1 ESA Regs 13, reg 26(1), (2)(a) & (3); 2 UC, PIP, JSA & ESA (C&P) Regs, reg 7(1)

U7007 The claimant must also satisfy the other conditions of entitlement:

1. the basic conditions¹ - see ADM Chapter U1 **and**

2. the time limits² - see ADM Chapter V2.

1 WR Act 07, s 1(3); 2 s 1A

U7008 DMs should note that the award made pending determination of the appeal is a **new** award, and **not** a reinstatement of the previous award which is the subject of the appeal. Nor is there any provision enabling the appeal to be treated as a claim. See U7090 where a claim is made at the same time as the appeal.

U7009 DMs should also note that the condition of entitlement which must be satisfied in order to make the award is that the claimant has, or is treated as having, LCW¹. Making an appeal is **not** a condition of entitlement, nor does it enable the claimant to be treated as having LCW in its own right. Instead, it allows the claimant to be exempted from the rule about the effect of previous LCW determinations, which would otherwise mean that they could not be treated as having LCW².

Note: See ADM Chapter U2 (LCW & LCWRA) for detailed guidance on the rule.

1 WR Act 07, s 1(3)(a); 2 ESA Regs 13, reg 26(2)(b) & (3)

U7010 A relevant decision¹ is a decision made on a claim made or treated as made on or after 30.3.15 that embodies

1. the first determination by the DM that the claimant does not have LCW **or**
2. the first determination by the DM that the claimant does not have LCW since a previous determination that the claimant does have LCW.

Note: A determination that the claimant is treated as having LCW pending determination of LCW² is not a determination that the claimant does have LCW.

1 ESA Regs 13, reg 26(5); UC, PIP, JSA & ESA (C&P) Regs, reg 7(2); 2 ESA Regs 13, reg 26(2)

U7011 In U7010 **2.**, the previous determination is one made by the

1. DM **or**
2. FtT **or**
3. UT **or**
4. Court of Appeal **or**
5. Court of Session **or**
6. Supreme Court¹.

U7012 Where the conditions in U7005 - U7007 are not satisfied, the claimant would need to

- 1.** make a repeat claim for ESA **and**
- 2.** satisfy the conditions of entitlement to ESA

in the normal way whether or not they make an appeal to the FtT. This includes considering whether the claimant needs to be referred for a further WCA, and if so, whether they can be treated as having LCW. The claimant cannot be awarded ESA solely on the basis that they have made and are pursuing an appeal.

U7013 Where the claimant

- 1.** is found not to have LCW on a repeat claim which was made before 30.3.15 following a previous determination that they did not have LCW **and**
- 2.** lodges an appeal to the FtT against the decision made on the repeat claim

they can be entitled to ESA as in U7005 - U7007, even though the appeal is against a second determination that the claimant does not have LCW. This is because the second determination is not a relevant determination as in U7010.

Example 1

Rory claimed ESA on 7.5.14, and is found not to have LCW following application of the WCA. Rory lodges an appeal with the FtT. In his appeal he asks for ESA to be paid, and he sends a fit note. The DM treats Rory as having LCW, and awards ESA pending the outcome of the appeal.

Rory's appeal is dismissed, and the DM treats him as not having LCW, terminating the award of ESA. Rory makes a further claim for ESA on 2.4.15, and the DM determines that Rory does not have LCW, using the evidence provided for the previous LCW determination as upheld by the FtT, as there is no evidence of a change since then. The decision to disallow the new claim is not revised following mandatory reconsideration, and Rory lodges a further appeal. He cannot be treated as having LCW and paid ESA solely on the grounds of the appeal. In order to become entitled to ESA again, Rory would need to claim ESA and provide evidence that he had a new or worse condition, or that he satisfied one of the other conditions for being treated as having LCW.

Example 2

Yasmin claimed ESA in June 2014, and her award is terminated following application of the WCA. She lodges an appeal and is awarded ESA. Her appeal is allowed by the FtT, which finds that Yasmin has LCW but does not have LCWRA. The FtT recommends that Yasmin is referred for a further WCA after 12 months. The DM revises the award made pending the outcome of the appeal, and Yasmin is placed in the

WRAG.

After a further WCA, Yasmin is again found not to have LCW, and again lodges an appeal. If she sends in fit notes, she can be treated as having LCW and paid ESA pending the outcome of the appeal, without being required to submit a claim.

Example 3

Alan's award of ESA is terminated following application of the WCA. Alan lodges an appeal and is awarded ESA. The appeal is dismissed, and the ESA award is terminated.

Alan makes a further claim for ESA after he was admitted to hospital for two days following routine surgery for a pre-existing condition. The DM treats Alan as having LCW on the basis that his condition is likely to have deteriorated, and refers for a WCA. The HCP advises that recovery from surgery should take about three months, but Alan should be capable of undertaking WRA. The DM accepts the advice, and places Alan in the WRAG.

Alan is referred for a further WCA, and the HCP advises that Alan has recovered from the surgery. In the HCP's opinion Alan does not score any points, and the DM finds that Alan does not have LCW. As Alan was previously treated as having LCW on the grounds that he was recovering from surgery and had been required to stay in hospital for more than 24 hours, the determination that he does not have LCW is embodied in a relevant decision. Alan lodges an appeal and is entitled to an award of ESA pending an appeal made after the decision is not revised following for mandatory reconsideration.

Alan's appeal is successful, and the FtT finds that he scores 15 points and should be placed in the WRAG. The FtT decision is implemented to award the WRAC from week 14 of the repeat claim. Alan's award of ESA made pending the outcome of the appeal is revised to include the WRAC from the first day of that award.

Example 4

Krystal's award of ESA is terminated after she is found not to have LCW. She is paid ESA pending the outcome of an appeal to the FtT. Her appeal is dismissed, and the award made pending the appeal is terminated.

Krystal makes a further claim for ESA, providing evidence that she has a new condition since the previous determination that she did not have LCW. The DM treats Krystal as having LCW and awards ESA, referring for a WCA. The DM accepts the HCP's advice that Krystal scores 6 points for the new condition. As this is less than 15 points, the DM determines that Krystal does not have LCW, and terminates the ESA award.

As the latest determination is not made following a determination that Krystal had LCW, she cannot be awarded ESA if she lodges an appeal.

Time for appealing where ESA awarded pending an appeal

U7020 Normally a claimant can only appeal to a FtT where the DM has first considered an application for revision of the original decision¹. Where the conditions are potentially met for an award of ESA pending a LCW appeal, mandatory reconsideration is not required² (but see U7021 if the claimant applies for revision). The claimant should be notified that

1. they have one month after the date they were sent notice of the decision being challenged in which to appeal³**or**

2. if a written statement of reasons for the decision was requested within that one month period, the time within which to appeal is 14 days after the later of

2.1 the end of that month **or**

2.2 the date on which the written statement of reasons was provided⁴.

Note: See Chapter A3 (Revision) for guidance on revision and Chapter A5 (Appeals) for guidance on appeals.

1 SS Act 98, s 12(3A); 2 [2020] EWHC 1999 (Admin); 3 TP (FtT) (SEC) Rules, rule 22(2)(d)(ii), Sch (1), para 5(a); 4 para 5(b)(i) & (ii)

Application for revision received

U7021 The mandatory reconsideration process is no longer mandatory where an ESA claimant would be eligible for payment pending appeal. However, a claimant may still make an application for revision of the decision which is being challenged. If an application for revision is received from the claimant within the application period, the DM should re-examine the facts of the case, the law used and any further evidence that may be available. The claimant should be notified of the decision. If the application is unsuccessful, the time for appealing to a FtT is one month after the date on which notice that the decision is not revised is sent to the claimant¹.

1 TP (FtT) (SEC) Rules, rule 22(2)(d)(ii), Sch (1), para 5(c)(iv)

U7022 If the claimant appeals against the decision in accordance with U7020, normal rules apply in respect of the power to revise and lapse the appeal¹. This applies in respect of a claimant's application for revision and where the Secretary of State acts on their own initiative.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 11(1)

Time limit for appealing where ESA not awarded pending an appeal

U7023 Where the claimant has no potential entitlement to a payment pending appeal, mandatory reconsideration is required. The claimant should be notified that they have one month after the date they were sent notice of the result of the mandatory reconsideration in which to appeal¹.

1 TP (FtT) (SEC) Rules, rule 22(2)(d)(i)

Dual claims

U7024 An ESA claimant may also be entitled to UC. The claimant should receive separate notifications of each WCA outcome for both benefits. It is important to note that the guidance at U7020 only applies to the ESA WCA notification. This means that the claimant must apply for mandatory reconsideration of the UC decision in the normal way, but not the ESA decision if the claimant would be eligible for a payment pending an appeal.

Note: Where the decision is revised or changed on appeal for one benefit, the decision for the other benefit may be reconsidered and revised. Any appeal will lapse only if the decision is to the claimant's advantage.

U7025 Where a claimant is entitled to UC and ESA, ESA including any award made pending an appeal is taken into account as unearned income for the purposes of UC¹.

1 WR Act 12, s 8(3)(b); UC Regs, reg 66(1)(b)(ii)

Example 1

Chidi has been entitled to ESA since 23.8.19. It is his first claim for ESA. He is referred for the WCA, but this is delayed after a number of appointments were cancelled. Chidi's award of ESA ended on 22.8.20 due to the 365 day time limit, although he remained entitled to NI Credits as he continued to provide medical evidence.

Following assessment the DM determines on 23.9.20 that Chidi does not have LCW, and terminates the award of NI Credits. As Chidi would not be entitled to any further award of ESA, he will need to apply for mandatory reconsideration if he wishes to dispute the ESA decision.

Example 2

Jason's entitlement to ESA ended on 4.12.19 after the DM determined that he did not have LCW following application of the WCA. Jason made a further claim to ESA from 26.2.20 after declaring a new health condition, and he is referred for the WCA again. The DM determines that Jason does not have LCW despite the new health condition. As this is the second determination that Jason does not have LCW, he would not be entitled to an award of ESA pending the outcome of any appeal, he will need to apply for mandatory reconsideration if he wishes to dispute the ESA decision.

Example 3

Tahani has been entitled to ESA and UC since 11.2.20. It is her first claim for ESA. She is referred for the WCA, and following assessment the UC DM determines on 23.9.20 that Tahani does not have LCW. The

ESA DM uses the same evidence to determine that Tahani does not have LCW for the purposes of ESA, and terminates her award of ESA from and including 6.10.20, the date of the ESA decision.

If Tahani wishes to dispute the UC and ESA decisions, she must apply for mandatory reconsideration of the UC decision in the normal way. She can lodge an appeal against the ESA decision without applying for mandatory reconsideration, as she is eligible for payment of ESA pending the outcome of the appeal.

Tahani's award of ESA pending the appeal begins on 6.10.20, and ends on 10.2.21 due to time limiting.

U7026 – U7029

Claimant awarded component during appeal U7030 - U7049

[Payment of component](#) U7040 - U7049

U7030 The guidance on treating a claimant as having LCW also applies where a claimant is entitled to ESA pending an appeal. Examples of when that guidance applies are that a claimant is

- 1.** a hospital patient **or**
- 2.** receiving other treatment¹.

Therefore a component can be awarded in the normal way where a claimant is entitled to ESA pending an appeal.

Note: See ADM Chapter U2 (LCW & LCWRA) for guidance on treating a claimant as having LCW.

1 ESA Regs 13, reg 16, 21, 22 & 25

U7031 Where

- 1.** the DM determines that

1.1 the claimant

1.1.a can no longer be treated as having LCW as in U7030 **and**

1.1.b. does not have LCW following application of the WCA **and**

- 2.** the appeal has not been heard

the claimant can still be treated as having LCW pending the appeal¹ (see U7005 - U7007). The decision awarding the component should be superseded to remove it².

1 ESA Regs 13, reg 26(3) & 87(4); 2 SS Act 98, s 10(5); UC, PIP, JSA & ESA (D&A) Regs, reg 26(1)

Example

Dave is entitled to ESA pending an appeal against a decision terminating his award of ESA following application of the WCA. He notifies that he was admitted to hospital for 2 days for minor surgery. Dave is referred for a further WCA, and the HCP advises that Dave should have recovered from the surgery within 3 weeks. The DM treats Dave as having LCW, and determines that he does not have LCWRA. The

pending appeal award is superseded to include the WRAC.

Dave is referred for a further WCA, and the HCP advises that he is fully recovered from his operation. In the HCP's opinion, Dave does not satisfy any of the LCW descriptors. The DM supersedes the award to remove the component from the date of the decision. Any further action depends on the outcome of the appeal.

U7032 The guidance at U7031 also applies where the claimant was awarded a component following a change in their health condition as in U7121 et seq.

U7033 Where U7030 or U7031 applies, U7144 et seq should be followed once the outcome of the appeal is known.

U7034 - U7039

Payment of component

U7040 Where a claimant is

- 1.** entitled to an ESA award pending an appeal **and**
- 2.** becomes entitled to a component as in U7030 or U7031

the guidance on when the component is payable applies, regardless of when the change in the claimant's health condition occurred¹. See ADM Chapter V1 (ESA amounts) for further guidance.

¹ ESA Regs 13, reg 5, 6 & 7(1); UC, PIP, JSA & ESA (D&A) Regs, reg 15(4), 26(1) & 35(7) or (8)

Example 1

Jane has been entitled to ESA since 8.5.14 pending an appeal against a decision terminating ESA from 8.5.14. Her previous award, which did not include a component, was for more than 13 weeks. She is admitted to hospital after suffering a stroke on 17.9.14. Following application of the WCA, the DM determines that Jane has LCW and LCWRA. The pending appeal award is revised to award the support component from 8.5.14, the date the pending appeal award began.

Example 2

Jason's award of ESA was terminated from 15.11.13 after he failed to attend a medical examination. He makes a further ESA claim from 15.11.13, and is referred for a WCA. On 10.3.14 the DM determines that Jason does not have LCW, and disallows the claim from 15.11.13. Jason appeals, and is awarded ESA from 10.3.14.

Jason's health deteriorates, and he is referred for a further WCA. The DM determines that Jason has LCW, but does not have LCWRA. The pending appeal award is superseded to award the WRAC from

9.6.14.

U7041 - U7049

Date award begins U7050 - U7059

U7050 As there is no requirement to make a claim for the award to be made following an appeal as in U7005 - U7007¹, the claimant does not specify the period for which they wish to claim ESA. The DM should normally begin the award on the day

1. after the last day of entitlement of the award which is the subject of the appeal **or**
2. the medical evidence begins if later.

Note 1: See U7052 if the appeal follows a claim on which no award was made.

Note 2: See U7095 et seq where another benefit is claimed while the appeal is awaiting hearing.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 7

U7051 The guidance in U7050 also applies where the appeal is admitted outside the one month time limit for appealing.

Note: See ADM Chapter A6 for guidance on appeal time limits.

U7052 Where

1. a claim is disallowed on which no award has been made after application of the WCA **and**
2. the claimant makes an appeal and is awarded ESA as in U7005 - U7007

the guidance in U7050 does not apply. Instead, the award begins on the day following the last day of the disallowance.

Example

Colin's award of ESA is terminated from 15.8.14 after he fails without good cause to attend a medical examination. He submits a further claim from 15.8.14, but cannot be treated as having LCW (see ADM Chapter U2). After application of the WCA, the DM determines that Colin does not have LCW for the whole period covered by the claim, and on 9.10.14 disallows the claim from 15.8.14. Colin makes an appeal against the decision on the claim, and sends in doctor's statements. He can be treated as having LCW and awarded ESA from 10.10.14.

U7053 - U7059

Late appeals U7060 - U7079

U7060 Where

- 1.** a late appeal is admitted, either by the DM or the FtT **and**
- 2.** the conditions for making an award pending the outcome of the appeal are satisfied (see U7005 - U7007)

the DM should award ESA as in U7050. If the claimant had claimed and been awarded JSA before the late appeal was admitted, the DM should consider the guidance at U7095 et seq.

Example

Rosie's award of ESA is terminated from 23.6.14 following application of the WCA. Rosie claims and is awarded JSA from 2.7.14. She then lodges an appeal on 5.8.14 against the decision terminating ESA, which is admitted by the FtT. She also sends a doctor's statement for three months from 23.6.14. Rosie's JSA award ends on 7.8.14, and the DM awards Rosie ESA for the period 23.6.14 – 1.7.14, and from 8.8.14. If Rosie's appeal is successful, the DM should offset the JSA paid against any ESA arrears due.

U7061 - U7079

Prisoners U7080 - U7089

U7080 Where a claimant is

1. entitled to ESA pending an appeal **and**
2. imprisoned or detained in legal custody

the normal rules as to how this affects entitlement to and payment of ESA apply¹.

Note: See ADM Chapter U6 (Disqualification) for guidance on prisoners.

1 ESA Regs 13, reg 95 – 97

U7081 Where

1. ESA entitlement ends as a result of a period of imprisonment **and**
2. the claimant's appeal is allowed

the DM should follow U7155 but only for the period of entitlement.

Example

Jackie is entitled to ESA pending an appeal against a decision terminating ESA following application of the WCA. Jackie is sentenced to 18 months in prison, and after 6 weeks the DM treats her as not having LCW from the first day of imprisonment, as the period of disqualification exceeded 6 weeks.

Jackie is released after 6 months. Her appeal still hasn't been heard, and therefore she is not required to make a claim in order to become entitled to ESA. Jackie is awarded ESA from the date of release from prison after sending in evidence of LCW from that date.

Jackie's appeal is successful, and the DM awards her arrears of the WRAC, other than for the period when Jackie was not entitled while she was in prison.

U7082 - U7089

Further ESA claims U7090 - U7094

U7090 Where a person

- 1.** makes an appeal against a disallowance and becomes entitled to ESA as in U7005 - U7007 **and**
- 2.** makes a claim for ESA

the claim cannot be decided. This is because the claim is for a benefit which has already been awarded. See ADM Chapter A1 (Principles of decision making and evidence) for further guidance.

Note: Where the claim or accompanying evidence shows a deterioration or new condition, see U7121.

U7091 - U7094

JSA awarded before appeal made U7095 - U7119

U7095 Where the claimant

1. is awarded JSA after the ESA award is terminated **and**
2. makes an appeal against the ESA disallowance

the claimant can only be awarded ESA as in U7005 - U7007 from the date that JSA ends if they relinquish the award of JSA, or that award otherwise ends. This is because a person cannot be entitled to ESA if they are entitled to JSA¹.

Note: See ADM Chapter A4 (Supersession) for guidance on relinquishment, and Chapter U1 for guidance on ESA conditions of entitlement.

1 WR Act 07, s 1(3)

U7096 Where U7095 applies, the ESA award begins on the day

1. after the award of JSA ends **or**
2. from which medical evidence is provided where this is later

but excludes any period for which they were entitled to JSA.

Example

David's award of ESA is terminated from 8.5.14 after he fails the WCA. He claims JSA on 17.5.14 after receiving the ESA decision, and is awarded JSA from 8.5.14. On 7.7.14, he decides to make an appeal against the ESA disallowance, and submits medical evidence from the date his entitlement to ESA ended. The FtT admits the appeal. David's entitlement to JSA ends on 21.7.14. David is treated as having LCW from 22.7.14 and is awarded ESA from that date.

U7097 DMs are reminded that the prescribed time for claiming JSA can be extended for up to a month¹ where certain conditions apply². See ADM Chapter A2 for further guidance.

1 UC, PIP, JSA & ESA (C&P) Regs, reg 29(4); 2 reg 29(5)(d)

U7098 – U7119

Referral for WCA U7120

U7120 The DM should not make a determination about LCW until the appeal is determined by the FtT¹. This means that the claimant should not be referred for the WCA. But see U7121 et seq where there is a change of circumstances before the appeal is heard.

1 ESA Regs 13, reg 87(2)

Change of circumstances U7121 - U7139

U7121 Where

- 1.** the claimant suffers from some specific disease or bodily or mental disablement from which they were not suffering when entitlement began **or**
- 2.** a disease or bodily or mental disablement from which the claimant was suffering at that date has significantly worsened

they should be referred for the WCA as normal even though the appeal has not been heard¹.

1 ESA Regs 13, reg 87(3)

U7122 Where, following application of the WCA, the DM determines that the claimant has LCW and awards a component, the guidance about ending the assessment phase in ADM Chapter V6 applies. See U7144 et seq for the further action to take after the appeal is heard.

U7123 Where the claimant can be treated as having LCW¹ other than in U7005 - U7007, for example where they are admitted to hospital, the DM should make the appropriate determination. This means that the claimant is no longer required to submit medical evidence. See ADM Chapter U2 for guidance on treating the claimant as having LCW.

1 ESA Regs 13, regs 16, 21, 22 or 25

U7124 Where the DM makes a determination that the claimant

- 1.** does not have LCW following application of the WCA as in U7121 **or**
- 2.** is treated as not having LCW because they have failed without good cause to return the questionnaire or attend for medical examination¹**or**
- 3.** is no longer treated as having LCW as in U7123

the determination is treated as not made until the appeal is heard². This enables the claimant to continue to be treated as having LCW as in U7005 - U7007³. The claimant must continue sending in medical certificates for entitlement to continue⁴.

Note: Where the appeal is allowed, the DM takes action as in U7155 et seq. No further action is taken on the previous WCA referral, subject to the normal WCA review process (see ADM Chapter U2).

1 ESA Regs 13, reg 18 or 19; 2 reg 87(4); 3 reg 26; 4 reg 26(2)(a)

U7125 Where the claimant starts work which is not exempt work, they should be treated as not having

LCW in the normal way even though the appeal has not been heard. If the appeal succeeds, see U7155 et seq for guidance on the action to take.

Note: See ADM Chapter V3 for guidance on the effect of work on ESA entitlement.

U7126 - U7139

Change in claimant's health condition U7140 - U7143

[Appeal dismissed](#) U7141

[Appeal allowed](#) U7142 - U7143

U7140 Where U7121 - U7124 applies and the WCA is not completed by the time the appeal is heard, the action to take depends on the outcome of the appeal.

Appeal dismissed

U7141 The guidance at U7144 - U7146 should **not** be followed. The claimant can continue to be treated as having LCW pending application of the WCA¹. See ADM Chapter U2 for further guidance.

1 ESA Regs 13, reg 26(2)

Appeal allowed

U7142 If the appeal is allowed and the FtT determines that the claimant does not have LCWRA, the guidance at U7155 should be followed as normal, and arrears of the WRAC awarded as appropriate. However, the WCA should still be carried out to establish whether the change in the claimant's health condition means that they now have LCWRA.

U7143 If the appeal is allowed and the FtT determines that the claimant has or should be treated as having LCWRA, the guidance at U7155 should be followed as normal, and arrears of the support component awarded as appropriate. The WCA referral should be cancelled subject to the normal review process.

Note: See ADM Chapter U2 (LCW & LCWRA) for further guidance on the WCA process.

Appeal withdrawn, struck out or dismissed U7144 - U7154

U7144 Where

1. the claimant is entitled to ESA after making an appeal **and**
2. they are treated as having LCW while providing medical statements **and**
3. either
 - 3.1 there is no change of circumstances (see U7121) **or**
 - 3.2 following a change of circumstances, the claimant is treated as having LCW where they have been found not to have LCW after application of the WCA (see U7124) **and**
4. the appeal is withdrawn, struck out or dismissed

the claimant is treated as not having LCW as in U7145¹.

Note 1: This does not apply where the claimant is found to have LCW as in U7122 or is treated as having LCW as in U7123 (see U7149).

Note 2: See U7160 for guidance if an appeal is reinstated.

Note 3: See U7161 for guidance if an appeal is remitted.

1 ESA Regs 13, reg 26; reg 87(5)

U7145 Where U7144 applies, the claimant is treated as not having LCW from the first day of the benefit week following the date on which the DM receives the FtT notification that the appeal is withdrawn, struck out or dismissed¹.

1 ESA Regs 13, reg 87(6)

U7146 The decision awarding ESA is superseded on the grounds of a relevant change of circumstances¹, and is effective from the date of change². The change is that the claimant is treated as not having LCW.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(1); 2 Sch 1, para 1 & 4

Example

Heather's entitlement to ESA ends when she fails the WCA. She appeals, and ESA is awarded from the date of disallowance. Her appeal is dismissed. The FtT decision notice is received in the office administering her award of ESA on 9.7.14. Heather's benefit week ends on Monday. The DM treats her as not having LCW from 15.7.14, the first day of the next benefit week. The decision awarding ESA is

superseded and terminated from 15.7.14.

U7147 DMs should note that where the claimant makes an appeal against the decision made as in U7144 et seq, a further claim is required in order to consider entitlement to ESA. The claimant cannot be treated as having LCW as in U7005 - U7007 even if they make an appeal.

U7148 The condition about not being treated as having LCW after a determination that the claimant does not have LCW only applies to a determination made

1. following application of the WCA **or**

2. where the claimant is treated as not having LCW for a failure to return the questionnaire or attend for medical examination.

It does not apply to a determination that the claimant is treated as not having LCW as in U7144 et seq.

Note: See ADM Chapter U2 (LCW and LCWRA) for guidance on where a claimant is treated as not having LCW..

U7149 Where

1. the claimant is

1.1 found to have LCW following application of the WCA (see U7122) **or**

1.2. treated as having LCW (see U7123) **and**

2. the appeal is withdrawn, struck out or dismissed (see U7144)

the claimant is not treated as not having LCW as in U7144 et seq. Entitlement to ESA is not affected by the outcome of the FtT appeal.

U7150 - U7154

Appeal allowed U7155 - U7159

U7155 Where the appeal is successful, the FtT's findings of fact and determination are conclusive for the purposes of whether the claimant has LCW or LCWRA in their current entitlement to ESA¹. But see U7156 where there is a change of circumstances before the appeal is determined.

1 ESA Regs 13, reg 87(7)

Example

Jack was entitled to ESA from 13.5.14 after making an appeal against a decision which embodied a determination that he did not have LCW. His appeal is allowed, and the FtT finds that he should be placed in the WRAG. As the previous entitlement to ESA ended after more than 13 weeks, arrears of the WRAC are paid up to 12.5.14 as appropriate. The DM makes determinations that Jack has LCW but does not have LCWRA in relation to his current entitlement, and revises the decision awarding ESA from 13.5.14 to pay the WRAC from that date.

U7156 The FtT's findings or determinations do not apply where

1. there was a change of circumstances after entitlement to ESA began as in U7121 **and**
2. the DM is satisfied that as a result it is no longer appropriate to rely on the FtT's findings or determinations¹.

1 ESA Regs 13, reg 87(8)

Example

Pearl's entitlement to ESA is ended after ten weeks following application of the WCA, and she makes an appeal. She is awarded ESA after submitting medical certificates. Later she becomes pregnant with complications, and the DM treats her as having LCW and LCWRA. Pearl is placed in the support group from the 4th week of her current entitlement. The appeal is allowed, the FtT placing her in the WRAG. The DM determines that the FtT's findings should not be followed and takes no further action on the award made pending the appeal.

U7157 - U7159

Appeal reinstated U7160

U7160 Where an appeal which has been struck out is subsequently reinstated, the DM should consider whether a further pending appeal award can be made, in the same way as for a late appeal. See ADM Chapter A6 for guidance on reinstatement of appeals.

Appeal remitted U7161 - U7164

U7161 Where an appeal is dismissed but is subsequently remitted by the FtT or the UT for rehearing, the DM should consider whether a further pending appeal award can be made, in the same way as for a late appeal (see U7166).

Note: See ADM Chapter A6 (Appeals) for guidance on remitted appeals.

Example 1

Roger's award of ESA is terminated when his appeal against termination of the ESA following application of the WCA is dismissed by the FtT. Roger is awarded JSA. The UT Judge sets aside the FtT decision, and remits the appeal for rehearing. Roger can be awarded ESA if he gives up his JSA award and provides doctor's statements.

Example 2

Mick's award of ESA is terminated from 1.10.14 following application of the WCA. He is awarded ESA pending an appeal against the termination. The FtT dismisses the appeal on 19.5.15, and the ESA award is terminated from 27.5.15. Mick immediately makes a further claim for ESA, and is treated as having LCW pending application of the WCA, as it is more than 6 months since the previous LCW determination was made.

On 24.7.15 the FtT decision is set aside by the FtT, and the appeal is listed for rehearing. As Mick is already entitled to ESA, there is no need to make a further award pending the outcome of the appeal. The DM is not prevented from carrying out the WCA as normal.

U7162 - U7164

Appeal to UT by the claimant or the Secretary of State U7165 - U7999

U7165 If the FtT dismisses the appeal, and the claimant applies for permission to appeal to the UT, the DM should make a determination about LCW and end the award as in U7144 et seq.

U7166 Where the UT allows the appeal and remits it to a FtT, the DM may need to revise¹ the decision in order to reinstate the award, as it may be possible to treat the claimant as having LCW as in U7005 - U7007. However, this depends on any benefit awarded or other changes which may have occurred since the appeal to the FtT was initially heard.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 5(1)(a)

U7167 - U7999

The content of the examples in this document (including use of imagery) is for illustrative purposes only