

UC AND ESA: INITIATING AND COMPLETING PERSONAL ACTION

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INTRODUCTION

- 1 This memo gives guidance on a recent decision by the UT¹ about the interpretation of the personal action descriptors for the purposes of determining whether a claimant has LCW². It may also apply to the interpretation of the equivalent LCWRA descriptor³.

1 CE/2966/14; [MP v SSWP \(ESA\) \[2015\] UKUT 458 \(AAC\)](#); 2 UC Regs, Sch 6 Act 13; ESA Regs 13, Sch 2 Act 13;

3 UC Regs, Sch 7 Act 11; ESA Regs 13, Sch 3 Act 11

BACKGROUND

- 2 The claimant suffered from a brain tumour, epilepsy and a back problem. He was awarded ESA from 9.2.12. Following the WCA, the DM determined that the claimant scored no points and did not have LCW, and the award of ESA was terminated from 8.5.13. The FtT awarded 6 points for standing and sitting, but dismissed the appeal. They rejected an argument that, as a result of problems with concentration and fatigue, the claimant had difficulties with initiating and completing personal actions, citing his ability to wash and brush his teeth as evidence that no Activity 13 descriptors were satisfied.
- 3 A further appeal to the UT was allowed on the grounds that the FtT's findings and reasons in relation to Activity 13 were inadequate and unclear, the appeal being remitted to the FtT for rehearing.

The UT Judge's decision

- 4 The UT Judge held that habitual actions such as washing and brushing teeth should not be considered when determining whether a claimant was able to initiate and complete personal actions, as their performance did not demonstrate the claimant's mental, cognitive and intellectual functions. Consideration of Activity 13 must relate to all the tasks of planning, organisation, problem solving, prioritising or switching between tasks. Evidence need not be found of a single action involving all these tasks. Evidence from one action may demonstrate inability in respect of one task, evidence from another action in respect of another task, and so on. Inferences may also be drawn from the nature of the claimant's condition or other factors.
- 5 The action considered need not be complicated, as long as all the tasks are taken into account. The UT Judge gave an example of the action of dressing. This may be routine if the person only puts on clothes got ready by someone else, but could equally demonstrate the tasks, e.g. choosing and getting ready appropriate clothes (planning and organising), deciding what to do if clothes need washing or ironing (problem solving and prioritising), and doing those before dressing if necessary (switching tasks).
- 6 The action must be effective. This may include where an action must be completed, before the person can move on to the next action. Actions are undertaken for a purpose and if that purpose cannot be achieved, the action is ineffective. Effectiveness needs to be considered in the context of the purpose of the test which is to decide whether it is reasonable to require the person to work.

ACTION TO TAKE

- 7 DMs should ensure that, where the claimant contends that Activity 13 applies, the evidence gathered relates to actions that demonstrate all the tasks of planning, organising, problem solving, prioritising and switching tasks. Preferable examples might be more complex personal actions such as preparing a meal or going to the shops, rather than more basic actions such as getting up, which may not demonstrate the tasks in every case. Actions undertaken out of habit and which do not demonstrate the tasks, such as washing and brushing teeth, are not to be considered as they do not demonstrate mental, cognitive and intellectual functions.
- 8 The DM can draw inferences from the claimant's mental health condition and how that is likely to affect their ability to perform personal actions. For example, although a claimant may state that they have a very limited and sedentary lifestyle and do not perform anything other than routine personal actions, their mental health might be

such that it would be unlikely to affect their ability to initiate and complete personal actions.

- 9 Alternatively, their mental health might be such that it would be likely to affect their ability to initiate and complete personal actions. For example, a claimant may be able to perform routine actions such as washing and dressing, but be unable to manage more complex actions such as managing finances.

Example 1

Emma is awarded ESA with fit notes showing depression and anxiety. The evidence from the questionnaire is that she has problems with concentration and lacks motivation to initiate and complete personal actions. At the face to face assessment, Emma states that she lives alone, and spends most of her time in the house watching TV. The HCP notes that Emma's health condition is managed by her GP with mild anti-depressants. She sees her GP every couple of months, and has not been referred for further treatment. Despite low mood, Emma is able to shop and cook meals for herself, and there is no evidence of self-neglect or malnutrition. The DM determines that no Activity 13 descriptors are satisfied.

Example 2

Luke is a UC claimant who suffers from depression and anxiety. He does not complete the questionnaire. At the face to face assessment, Luke is accompanied by his brother, who tells the HCP that their mother had taken Luke to the GP after the family became concerned. Luke is now on a high dose of anti-depressant, and has been referred to mental health services. Luke's flat is untidy and dirty, with a lot of unopened post. He rarely gets washed and dressed, and often has to be encouraged to buy food and make meals. It was only when Luke told his brother that he was about to be evicted due to rent arrears that the family became aware of problems with managing finances, including utilities arrears. The HCP notes that Luke looks tired, thin and unkempt. The DM accepts the HCP advice that for the majority of the time Luke has problems with starting and finishing personal actions due to lack of motivation.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

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

APPENDIX



18-16 - Update to
Standard - Initiating a

Update to Standard – 18/2016

Subject:	Initiating and Completing Personal Action
Effective from:	23/09/16
Audience:	All ESA Trained Healthcare Professionals
Guides affected:	WCA Handbook ESA Filework Guidelines Registered Nurse Revised WCA New Entrant Course Registered Medical Practitioner Revised WCA New Entrant Course Registered Physiotherapist Revised WCA New Entrant Course Registered Occupational Therapist Revised WCA New Entrant Course

This Update will be incorporated into the next version of the Standards on review of the procedures.

Introduction

This change arises as a result of an Upper Tribunal decision relating to the meaning of initiating and completing personal action as set out in Schedule 2 Activity 13 of the ESA regulations.

Background

The ability to complete personal actions was the subject of the appeal. The First-tier Tribunal cited ability to wash and brush teeth as evidence that no activity 13 descriptors applied. The Upper Tribunal Judge held that habitual actions such as washing and brushing teeth should

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not be considered in isolation when determining whether a claimant was able to initiate and complete personal actions, as their performance did not demonstrate the claimant's mental, cognitive and intellectual functions

Consideration of Activity 13 must relate to all the tasks of planning, organisation, problem solving, prioritising or switching between tasks. Evidence need not be found of a single action involving all these tasks. Evidence from one action may demonstrate inability in respect of one task, evidence from another action in respect of another task, and so on. Inferences may also be drawn from the nature of the claimant's condition or other factors

The personal action considered need not be complicated, as long as all the tasks are taken into account. The UT Judge gave an example of the action of dressing. This may be routine if the person only puts on clothes got ready by someone else, but could equally demonstrate the tasks, e.g. choosing and getting ready appropriate clothes (planning and organising), deciding what to do if clothes need washing or ironing (problem solving and prioritising), and doing those before dressing if necessary (switching tasks).

The action must be effective. This may include where an action must be completed, before the person can move on to the next action. Actions are undertaken for a purpose and if that purpose cannot be achieved, the action is ineffective. Effectiveness needs to be considered in the context of the purpose of the test which is to decide whether it is reasonable to require the person to work.

Action

Descriptor wording does not change.

Where a claimant indicates that there is impairment related to activity 13 (Personal Action), the healthcare professional must ensure that they gather sufficient and appropriately detailed evidence to demonstrate and justify their advice regarding all of the tasks of planning, organising, problem solving, prioritising and switching of tasks.

It may be preferable to utilise more complex personal actions that demonstrate all of the tasks required. These actions may include meal preparation or a visit to the shops. More basic actions, such as simply getting up, may not demonstrate the required tasks in every case.

Practitioners must make a judgement, based upon the evidence, as to which actions are simply undertaken through habit and do not demonstrate mental, cognitive and intellectual functions. Such a task may be brushing teeth. Habitual actions that do not demonstrate the required tasks should not be considered when justifying Activity 13.

The expected level of impairment as a result of the claimant's mental health condition, including the effects of any treatment, should be interpreted in terms of whether it is likely to affect personal action. Remember that both over and understating must be considered.

For example, although a claimant may state that they have a very limited and sedentary lifestyle and do not perform anything other than routine personal actions, their mental health might be such that it would be unlikely to affect their ability to initiate and complete personal actions.

Alternatively, their mental health might be such that it would be likely to affect their ability to initiate and complete personal actions. For example, a claimant may be able to perform routine actions such as washing and dressing, but be unable to manage more complex actions such as managing finances.

The key is an adequately explored history that allows justification to show that effective personal action involving the tasks of planning, organisation, problem solving, prioritising or switching between tasks is reasonable.

Further Cognitive testing - if someone doesn't have a condition that would cause cognitive impairment i.e. someone who lacks motivation, provided sufficient information is gathered to be sure that there is no cognitive deficit, then there is no requirement to carry out detailed cognitive testing. However the standard MSE should be completed and this includes an assessment of general memory, concentration and insight.

Scope

Example 1

Person A is awarded ESA with fit notes showing depression and anxiety. The evidence from the questionnaire is that they have problems with concentration and lack motivation to initiate and complete personal actions. At the face to face assessment, person A states that they live alone, and spend most of their time in the house watching TV. The HCP notes that person A's health condition is managed by their GP with mild anti-depressants. They see their GP every couple of months, and have not been referred for further treatment. Despite low mood, person A is able to shop and cook meals for themselves, and there is no evidence of self-neglect or malnutrition. The HCP advises that no Activity 13 descriptors are satisfied.

Example 2

Person B suffers from depression and anxiety. He does not complete the questionnaire. At the face to face assessment, person B is accompanied by their brother, who tells the HCP that person B's mother had taken him to the GP after the family became concerned. Person B is now on a high dose of anti-depressant, and has been referred to mental health services. Person B's flat is untidy and dirty, with a lot of unopened post. He rarely gets washed and dressed, and often has to be encouraged to buy food and make meals. It was only when person B told his brother that he was about to be evicted due to rent arrears that the family became aware of problems with managing finances, including utilities arrears. The HCP notes that person B looks tired, thin and unkempt. The HCP advises that for the majority of the time person B has problems with starting and finishing personal actions due to lack of motivation.

Summary

- Initiating and completing personal action means
 - Planning
 - Organisation
 - Problem Solving
 - Prioritising or switching tasks
- Evidence need not be found of a single action involving all these tasks. Evidence may be drawn from multiple tasks and a reasoned and justified conclusion reached in advice
- This activity reflects the ability to initiate and successfully complete tasks without need for external prompting.
- If tasks such as washing and brushing teeth are performed habitually with no evidence of planning, organisation, problem solving, prioritising or switching tasks then they should not be considered as demonstrating effective personal action. However exploration of these tasks could show these attributes if for instance the person plans what to wear, makes sure the clothes are clean, gets clothes ready.
- Consider reliably and repeatedly
- The personal action must be “effective” personal action
- General memory and concentration are important areas to consider in the mental state examination
- The Mental State Examination findings should be consistent with significant impairment of mental function if advising a descriptor in this functional category.

Appendix

There is no requirement to read or understand the full judgment to apply the update to standard. It is simply made available for completeness and reference.

1 *CE/2966/14; MP v SSWP (ESA) [2015] UKUT 458 (AAC)*; 2 *ESA Regs, Sch 2 Act 13*; 3 *Sch 3 Act 11*