

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 8

Amendment 25 – June 2018

1. This letter provides details on Amendment 25; 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

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

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/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 25 affects chapters 42 & 44. The changes:
 - Chapter 42 - update the example at paragraph 42581 to clarify
 - Chapter 44 - moves paragraphs concerning 'deductions from ESA(Cont) for pension payments' (44651 to 44899) over to DMG chapter 51 and makes a minor amendment to Appendix 10 regarding linked PLCWs when applying the WRAC savings provisions.
4. 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).

Remove

Chapter 42

42140 – 42161 (1 page)
42170 – 42190 (1 page)
42259 – 42274 (1 page)
42579 – 42602 (1 page)

Chapter 44

Conts 44551 – Appendix 10 (2 pages)
44651 – 44899 (14 pages)
Appendix 10 para 8 – para 11 (1 page)

Insert

Chapter 42

42140 – 42161 (1 page)
42170 – 42190 (1 page)
42259 – 42274 (1 page)
42579 – 42602 (1 page)

Chapter 44

Conts 44551 – Appendix 10 (2 pages)
44651 – 44899 (1 page)
Appendix 10 para 8 – para 11 (1 page)

Evidence and information for limited capability for work

42140 Information or evidence is needed to determine whether a claimant has LCW¹.

1 ESA Regs, reg 21

42141 - 42144

Evidence

42145 Evidence of LCW should be provided for the day or days of LCW until the claimant has undergone the LCWA. Evidence may be¹

1. self-certification² (see DMG 42146) **or**
2. a statement from a doctor³ (see DMG 42148) **or**
3. if it is unreasonable to require such a statement, other evidence which is sufficient to show that the claimant is limited by their physical or mental condition and it is not reasonable to expect them to work because of some specific disease or bodily or mental disablement⁴.

1 ESA Regs reg 21(1)(a); 2 SS (Med Ev) Regs, reg 5; 3 reg 2(1); 4 reg 2(1A)

Self-certification

42146 Evidence of LCW for a spell of less than eight days, or for the first seven days of a longer spell, may be self-certification¹. Self-certification is only appropriate for the first seven days of a PLCW.

Note: Where PLCWs link (see DMG Chapter 41), a claimant can self-certify for the first seven days of each PLCW even if they are treated as a continuation of an earlier PLCW.

1 SS (Med Ev) Regs, reg 5(1)

42147 A self-certificate is¹

1. a declaration made in writing by the claimant, in a form approved by the Secretary of State **or**
2. a verbal declaration by the claimant in such cases where the DM allows (for example where the claim to ESA is made by telephone).

Note: It should include the information that they have been unfit for work from a date or for a period. It may also include a statement that the claimant expects to continue to be unfit for work.

1 SS (Med Ev) Regs, reg 5(2)

Doctor's statements

42148 A doctor's statement is a statement given in writing by a doctor. They are made on an approved form¹.

1 ESA Regs, reg 2(1) & Sch 1, Pt 2

42149 A doctor means a registered medical practitioner and includes a medical practitioner outside the UK who is asked for a medical opinion by the Secretary of State. Doctors must be registered or recognised as such in the country in which they pursue a medical practice¹.

1 ESA Regs, reg 2(1)

Other evidence

42150 Evidence other than on an approved form or from a registered medical practitioner can be accepted¹ if

1. it is unreasonable to require a doctor's statement **and**
2. the evidence shows that the claimant is unfit for work because of a disease or disablement.

1 SS (Med Ev) Regs, reg 2(1A)

42151 The DM decides what is reasonable in each case. For example, evidence from alternative therapists such as chiropractors, osteopaths, etc can be accepted if the claimant is usually treated by them as well as, or instead of, a GP.

42152 Depending on the circumstances¹ a declaration that a claimant is incapable of following a particular occupation and is receiving non-medical treatment such as Christian Science treatment (i.e. treatment through prayer) may be sufficient proof of LCW.

1 R(S) 9/51

42153 An employer's certificate which only confirms absence from work is not sufficient evidence¹.

1 R(S) 13/51

42154 - 42159

Information

[\[See memo DMG 13/17\]](#)

42160 The DM can ask for any additional information to help determine whether a claimant has LCW¹.

1 ESA Regs, reg 21(1)(c)

42161 Any information relating to the claimant's ability to perform certain activities¹ may be requested in the form of a questionnaire² unless

1. there is already sufficient information to determine the question³ **or**

Limited capability for work assessment

Introduction

42170 The LCWA is the part of the WCA process that assesses LCW. It will normally be completed during the assessment phase of ESA¹ and determines entitlement to benefit beyond the assessment phase.

1 WR Act 07, s 8(1) & (2)

42171 Whether a claimant's capability for work is limited by their physical or mental condition and the limitation is such that it is not reasonable to require that claimant to work is determined on the basis of a LCWA¹.

1 ESA Regs, reg 19(1)

42172 Satisfying the LCWA depends on the ability to perform certain functions reliably and repeatedly¹.

1 ESA Regs, reg 19(2)

42173 When assessing the extent of the claimant's LCW, it is a condition that the claimant's inability to perform¹

1. physical descriptors² arises
 - 1.1 from a specific bodily (i.e. physical) disease or disablement **or**
 - 1.2 as a direct result of treatment by a registered medical practitioner for such a condition **and**
2. mental descriptors³ arises
 - 2.1 from a specific mental illness or disablement **or**
 - 2.2 as a direct result of treatment by a registered medical practitioner for such a condition.

The level of each activity is measured by points which must reach a set total for entitlement to benefit.

1 ESA Regs, reg 19(5); 2 Sch 2, Part 1; 3 Sch 2, Part 2

Example 1

Brian suffers from rheumatoid arthritis in his hands and knees, and claims ESA. In the questionnaire Brian states that due to cognitive and mental impairment he has difficulty with learning tasks, awareness of hazards and completing personal actions. At the medical examination, Brian explains that the high level of painkillers he takes for his arthritis makes him too tired to concentrate. The HCP advises that Brian is mentally disabled by the medication, but not sufficiently to satisfy any mental health descriptors. Brian scores 6 points for mobility problems.

Example 2

Rita is injured in an accident which leaves her with significant mobility problems and facial scarring. Rita also suffers from depression and social anxiety disorder as a result of the accident. Meeting people outside her immediate family brings on a panic attack, so she avoids this. She scores 6 points for mobility problems arising from her physical health condition, and 9 points for coping with social engagement arising from her mental health condition.

Example 3

Ailsa suffers from mechanical back pain. She states that she has difficulties with mobilising as well as getting about unless she has someone with her. The HCP advises that Ailsa's need for assistance with getting about is only due to her physical problems. The DM determines that Ailsa does not score any points for mental health descriptors.

42174 Certain claimants can be treated as having LCW without undergoing the LCWA (see DMG 42030 et seq).

42175 Claimants who are not treated as having LCW as per DMG 42174 and so have to undergo the LCWA can be treated as having LCW pending actual assessment, provided certain conditions are satisfied¹ (see DMG 42350 et seq).

1 ESA Regs, reg 30

42176 As part of the assessment, claimants who are not treated as having LCW may be required to complete a questionnaire (see DMG 42161) and if necessary attend a medical examination. If they fail without good cause to do either, they can be treated as not having LCW¹ (see DMG 42450 et seq).

1 ESA Regs, regs 22 & 23

42177 A claimant will have LCW if, by adding the points scored against each descriptor, a score of at least 15 points is reached¹ (see DMG 42218).

1 ESA Regs, reg 19(3)

42178 - 42189

Application of the assessment

[\[See memo DMG 13/17\]](#)

42190 The questionnaire is not required if the claimant

1. satisfies certain conditions (see DMG 42032) **or**
2. is a hospital patient (see DMG 42070) **or**
3. receives certain regular treatment¹ (see DMG 42090) **or**
4. the DM is satisfied that there is sufficient information to decide whether a claimant has LCW without it².

42259 The underlying purpose of ESA is to assess a person's functionality i.e. what they can do in the modern workplace, and enable them to engage in the labour market where appropriate. People who can use aids such as a manual wheelchair to mobilise, if working in a fully accessible area, are not limited in their capability for some types of work if they are unable to walk. Manual wheelchairs are widely available. It is therefore reasonable to assess a person as if using a manual wheelchair for the required distances where appropriate.

Example 1

Vincent has mobility problems after an accident at work affecting his right foot. He also suffers from asthma, diabetes and depression. He claimed ESA after being medically retired from his job as a van driver. At the face-to-face assessment, Vincent told the HCP that the pain in his ankle stopped him from walking more than short distances using crutches. He went round the supermarket slowly leaning on a shopping trolley, or using an electric wheelchair trolley. When on holiday recently he had been given a wheelchair to get around the airport which his wife had pushed, and he spent his holiday at the hotel or on coach trips. He had not asked to be assessed for a wheelchair as he had nowhere to keep it; he lived in a first floor flat over a shop.

The HCP advises that Vincent has no upper body problem, and the asthma and diabetes are controlled by medication. He should not have any difficulty using a manual wheelchair independently for more than 200 metres. Although Vincent claimed he had problems with standing and sitting, he was able to sit for more than an hour without significant discomfort. His depression is treated with mild anti-depressants, and did not affect his functions to the extent that any mental or cognitive descriptor applied. The DM determines that it was reasonable to assess Vincent's mobility as if he had a manual wheelchair, and there was no reason why he could not obtain one through the NHS wheelchair service if he needed one to use at work, where it could be stored. Vincent is found not to have LCW, and his ESA award is terminated.

Example 2

Sasje suffered from injuries to her head and legs in a road traffic accident. She claimed ESA after being discharged from hospital. At the face-to-face assessment, her mother told the HCP that Sasje is still unable to walk more than a few steps. She pushes Sasje about in a manual wheelchair supplied by the NHS wheelchair service. Sasje was not given a self-propelled wheelchair, as the wheelchair assessment had identified that she had poor road safety and spatial awareness, possibly as a result of the head injury.

The DM accepts the HCP's recommendation that Sasje is unable to mobilise 50 metres without help, and also requires supervision when in the wheelchair to ensure she does not put herself or others in danger. The DM determines that Sasje satisfies Sch 2 Activity 1(a)(i) (15 points) and 12(c) (6 points), as well as Sch 3 Activity 1(a). She is placed in the support group.

42260 - 42269

Determination of the limited capability for work assessment

[\[See memo DMG 13/17\]](#)

- 42270 The DM determines whether the assessment is satisfied from
1. the questionnaire if one is available (see DMG 42161) **and**
 2. a statement from the GP¹ if one is available **and**
 3. the medical report of the claimant's ability to perform the specified functions **and**
 4. the personalised summary statement **and**
 5. any other relevant evidence.
- 1 SS (Med Ev) Regs, reg 2(1)*
- 42271 The normal principles apply to considering the evidence (see DMG Chapter 01).
- 42272 The LCWA does not have to be satisfied in respect of each day¹. A claimant should satisfy the test throughout a period. A claimant whose condition varies from day to day and who would easily satisfy the LCWA on three days a week and would nearly satisfy it on the other four days might have LCW for the whole week.
- 1 R(IB) 2/99*
- 42273 A claimant may have long periods of illness separated by periods of remission lasting some weeks, during which he or she suffers no significant disablement; such a claimant might have LCW during the periods of illness but not have LCW during the periods of remission. This is so even if the periods of illness are longer than the periods of remission¹.
- 1 R(IB) 2/99*
- 42274 The test of whether a claimant cannot perform an activity is not whether or not they are physically incapable of performing it. Matters such as pain, discomfort and repeatability are taken into account. A claimant is not capable of carrying out an activity if they can only do so with severe pain or, if having done it once, they are unable to repeat it for hours or days. The extent of a claimant's ability to repeat the activity in a single stretch and of the intervals at which the claimant would be able to repeat the performance should be identified. A decision can then be made on whether the claimant can perform the relevant descriptor with reasonable regularity.

Example

Karen has been entitled to ESA since 5.10.11 pending an appeal against the decision terminating her award of ESA following application of the WCA. On 15.3.12 medical evidence expires, and Karen states that she is unable to supply further doctor's statements. The DM suspends payment of ESA. Karen does not make a claim for another benefit.

On 26.6.12 Karen's appeal is dismissed. The DM treats Karen as not having LCW from 4.7.12, and also determines that for the period 16.3.12 – 3.7.12, on the balance of probabilities she scores 0 points for the purposes of the WCA. The award of ESA is terminated from 16.3.12.

42579

Detention in legal custody

42580 A claimant is to be treated as not having LCW if disqualified for receiving ESA(Cont) during a period of imprisonment or detention in legal custody if that disqualification is for more than six weeks¹. Payment of ESA(Cont) is suspended from the first day of imprisonment or detention in legal custody. If a decision is subsequently made to disqualify the claimant for receiving ESA(Cont), that decision will apply from the first day of imprisonment or detention in legal custody. Therefore, unless it is for a period of six weeks or less, the claimant will be treated as not having LCW from the first day of imprisonment or detention in legal custody.

Note: See DMG Chapter 53 for guidance on disqualification for imprisonment or detention in legal custody for ESA(Cont).

1 ESA Regs, reg 159(1)

Example

Kenneth is detained in legal custody on 1.2.10 and payment of his ESA(Cont) is suspended. On 1.4.10 the DM decides that Kenneth should be disqualified for receiving ESA(Cont) from 1.2.10 because he has been sentenced to a period of imprisonment for a period exceeding six weeks. There is also a determination that Kenneth is treated as not having LCW from 1.2.10.

42581 If the claimant is entitled to ESA(IR) as a prisoner during a period of imprisonment or detention in legal custody where they are awaiting trial or sentencing¹, they are treated as not having LCW from the day after they cease to be so entitled².

Note: See DMG Chapter 54 for guidance on entitlement to ESA(IR) during a period of imprisonment or detention in legal custody.

1 ESA Regs, Sch 5, para 3; 2 reg 159(2)

Example

Jackie is entitled to ESA(IR) while she is on remand awaiting sentencing, with her applicable amount being the amount of her housing costs. On 11.4.18 she is sentenced to a term of imprisonment. The DM supersedes the award of ESA(IR) and decides that Jackie's entitlement ends on 11.4.18 because her applicable amount is nil. There is also a determination that Jackie is treated as not having LCW from 12.4.18.

- 42582 If the claimant is entitled to ESA(Cont) and ESA(IR) the DM should consider both DMG 42580 and DMG 42581.

Example

Christian is entitled to ESA(Cont) and ESA(IR) which includes an amount for housing costs. On 12.4.10 he is detained in legal custody. The DM suspends payment of ESA(Cont). The DM also supersedes the award of ESA(IR) and decides that Christian's applicable amount for ESA(IR) is the amount of his housing costs. On 6.9.10 Christian is sentenced to a term of imprisonment. The DM decides that Christian should be disqualified for receiving ESA(Cont) from 12.4.10 because he has been sentenced to a period of imprisonment for a period exceeding six weeks. There is also a determination that Christian is treated as not having LCW for ESA(Cont) purposes from 12.4.10. In addition, the DM supersedes the award of ESA(IR) and decides that Christian has no entitlement to it from 6.9.10 because his applicable amount is nil. There is also a determination that Christian is treated as not having LCW for ESA(IR) purposes from 7.9.10.

42583 - 42599

Claimants who are treated as not entitled to ESA by reason of working to be treated as not having limited capability for work

- 42600 For guidance on the effect of working on a claim or an award of ESA see DMG Chapter 41.
- 42601 Claimants who are treated as not entitled to ESA by reason of working are treated as not having LCW¹ unless the claimant remains entitled to ESA(Cont) but is not entitled to ESA(IR)².

1 ESA Regs, reg 44(1); 2 reg 44(2)

- 42602 DMG 42601 applies even if it is determined that the claimant has or is to be treated as having LCW because they
1. satisfy certain conditions¹ (see DMG 42031) **or**
 2. are a hospital patient² (see DMG 42070) **or**

| | |
|--|--------------|
| Work or training beneficiaries | 44551 |
| New deal options, employment zone and prescribed government schemes | 44557 |
| Not entitled on revision, supersession or appeal..... | 44560 |
| Participation in new deal and employment zone schemes..... | 44561 |
| JSA(Cont)..... | 44563 |
| Change of claimant | 44564 |
| Capital exceeds £16,000/income exceeds applicable amount | 44570 |
| Lone parents and carers | 44572 |
| Treated as in receipt of and entitled to ESA(IR) on another person's claim | |
| Claimant previously a member of a couple or polygamous marriage | 44574 |
| Claimant becomes a member of a couple or polygamous marriage | 44575 |
| Change of claimant | 44576 |
| Change of family | 44577 |
| Previous entitlement to other income-based benefits | 44578 |
| Non-dependant deductions | |
| Introduction..... | 44586 |
| Definition of a non-dependant | 44587 |
| Meaning of normally resides | 44588 |
| Sharing the accommodation | 44590 |
| People who are not non-dependants..... | 44596 |
| Amount of deduction | 44597 |
| Non-dependants who have partners | 44598 |
| Calculation of income | 44600 |
| Non-dependant of more than one joint occupier | 44601 |
| Non-dependant deduction not appropriate | 44606 |
| Participation in new deal for young people | 44607 |
| Calculation of a non-dependant's gross weekly income | 44611 |
| Questions that cannot be decided immediately..... | 44621 |

Entitlement to the components

ESA(IR) and ESA(Cont)

| | |
|--|-------|
| General..... | 44631 |
| The support component | 44634 |
| Entitlement to the support component before the end of the | |
| assessment phase | 44636 |
| Case 1 | 44637 |
| Case 2 | 44638 |
| Case 3 | 44640 |
| Case 4 | 44642 |
| Treated as having LCWRA | 44644 |
| IB reassessment: termination of transitional addition..... | 44645 |
| Backdating of entitlement to the support component | 44647 |
| The date to which entitlement to the support component is backdated .. | 44650 |

ESA(Cont) and pension payments

Deductions from ESA(Cont) for pension payments

| | |
|---|-------|
| The guidance on this subject has been moved to Chapter 51 | 44651 |
|---|-------|

Statutory Payments

Statutory Payments

| | |
|--|-------------------|
| Statutory Sick Pay | 44900 |
| Statutory Maternity Pay and ESA(Cont) | 44902 |
| Statutory Adoption Pay and ESA(Cont)..... | 44904 |
| Statutory Paternity Pay and ESA(Cont)..... | 44906 |
| Shared Parental Pay and ESA(Cont) | 44909 |
| ESA(IR) Applicable amounts: personal allowances | Appendix 1 |
| The remunerative work rule for non-dependant housing cost | |
| deductions..... | Appendix 2 |
| Housing costs - loans that are not eligible from 2.10.95 but are | |
| saved by a saving provision..... | Appendix 3 |
| Housing costs - changes in the standard interest rate | Appendix 4 |
| Housing costs - amount of non-dependant deductions..... | Appendix 5 |

| | |
|---|--------------------|
| Types of mortgage and loan arrangements | Appendix 6 |
| Housing costs - unsafe structural defects | Appendix 7 |
| Housing costs - loans for repairs and improvements - previous rules and guidance | Appendix 8 |
| Housing costs - leasehold major works..... | Appendix 9 |
| Removal of WRAC: savings..... | Appendix 10 |

ESA(Cont) and pension payments

Deductions from ESA(Cont) for pension payments

44651 The guidance on this subject has been moved to Chapter 51

44652 - 44899

Claimants previously found to have LCW before 3.4.17

8 Where a claimant

1. is awarded ESA on or after 3.4.17 and has, or is treated as having, LCW **and**
2. a previous award of ESA ended within 12 weeks of the current PLCW **and**
3. the combined PLCW began before 3.4.17

the removal of the WRAC does not apply¹.

Note: PLCWs for awards of ESA paid pending the outcome of an appeal which is disallowed are disregarded when considering whether PLCWs link. See DMG 44636 and DMG Chapter 42 for further details.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 3; ESA Regs, reg 145

Example 1

Edmund has been entitled to ESA since November 2016 at the assessment phase rate. His award is terminated on 30.3.17 after he is found not to have LCW. He makes a further claim for ESA on 5.6.17 after developing a new health condition. After the WCA, Edmund is found to have LCW, but not LCWRA. As the PLCWs link, Edmund's award includes the WRAC from 5.6.17.

Example 2

Anne's award of ESA is terminated on 30.3.17 when she starts work. Anne finds the work too difficult because of her health condition, and she makes a further claim for ESA on 5.6.17. Following the WCA, Anne is found to have LCW but not LCWRA. As the PLCWs link, Anne's award of ESA includes the WRAC.

IB Reassessment cases

9 Where

1. the claimant is entitled to IB, SDA or IS on the grounds of disability **and**
2. the conversion process begins (whether before or after 3.4.17) **and**
3. the claimant is found to have, or is treated as having, LCW or LCWRA (whether for old style or new style ESA)

the removal of the WRAC does not apply¹.

Note: See DMG Chapter 45 for detailed guidance on IB Reassessment and the conversion process.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 4; ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 4

Example 1

Richard is entitled to IB, and on 15.3.17 is notified that the conversion process has begun. Following the WCA, Richard is found to have LCW and LCWRA, and his

award is converted to ESA(Cont) including the support component. Later, Richard's health condition improves, and after a repeat WCA, on 26.10.17 he is found to have LCW but not LCWRA. Richard's award is superseded to remove the support component and include the WRAC.

Example 2

Bridget is entitled to SDA and IS, and on 6.4.17 she is notified that the conversion process has begun. Following the WCA, on the DM determines Bridget has LCW, and her award is converted to an award of ESA with the WRAC from 12.7.17.

Claim made within the prescribed time for claiming before 3.4.17

10 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the claim is made within the prescribed time for claiming from a date before 3.4.17

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 5; SS (C&P) Regs, reg 19(1) & Sch 4, para 16

Example

Eoin claims ESA on 10.4.17, and provides a fit note to say he is not fit for work from 11.1.17. He is awarded ESA from 18.1.17. Following application of the WCA, the DM determines that Eoin has LCW, and supersedes the awarding decision to add the WRAC from 26.4.17.

Assessment phase begins before 3.4.17

11 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the assessment phase begins before 3.4.17 under specified legislation¹

the removal of the WRAC does not apply².

1 ESA Regs, reg 5; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 6

Example

George is entitled to JSA, and begins a JSA EPS on 21.1.17. His condition does not improve as expected, and on 6.4.17 he claims ESA. George is found to have LCW but not LCWRA. The period of JSA EPS is treated as a period of ESA entitlement, and George's assessment phase begins on 21.1.17. His award of ESA from 6.4.17 includes the WRAC from 22.4.17.