

# Chapter G3: Limited capability for work and work–related activity

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# Chapter G3: Limited capability for work and work–related activity

## Introduction

G3001 A claimant has LCWRA where their capability for work and work–related activity is limited by their physical or mental condition and it is not reasonable to require them to undertake work–related activity<sup>1</sup>.

*1 WR Act 12, s 37(2)*

G3002 A claimant has LCWRA where

1. it is determined that they have LCWRA on the basis of the WCA, whether for the purposes of UC or ESA<sup>1</sup> (see G3040 et seq) **or**
2. they are treated as having LCWRA<sup>2</sup> (see G3005 et seq).

See ADM Chapter G1 for guidance on the WCA.

*1 UC Regs, reg 40(1)(a); ESA Regs 13, Part 5; 2 UC Regs, reg 40(1)(b) & (5) & Sch 9*

G3003 The question of whether a claimant has LCWRA is relevant in order to determine

1. if the LCWRA element can be included in the UC award<sup>1</sup> **and**
2. what work–related requirements group the claimant falls into (if any)<sup>2</sup> **and**
3. which income and work allowance deduction is applicable<sup>3</sup> **and**
4. where the claimant is also eligible for receipt of the carer element, which element is payable.

See ADM Chapter F5 for guidance on work capability elements, Chapter J2 for guidance on work–related requirements groups, Chapter E2 (Awards and maximum amount of UC) for guidance on income and work allowance deductions, and Chapter F6 for guidance on the carer element.

*1 UC Regs, reg 27(1)(b) & (2); 2 WR Act 12, s 19; UC Regs, reg 22; UC Reg 29(4)*

G3004

## Treated as having LCWRA

G3005 Certain claimants can be treated as having LCWRA and do not have to undergo the WCA<sup>1</sup>. This is where the claimant

1. is terminally ill<sup>2</sup> (see G3007) **or**
2. is pregnant and there is a serious risk of damage to her health or that of her unborn child if she does any work or work–related activity<sup>3</sup> (see G3010) **or**
3. is

**3.1** receiving **or**

**3.2** likely to receive **or**

**3.3** recovering from

treatment for cancer by way of chemotherapy or radiotherapy<sup>4</sup> (see G3015)

**or**

**4.** has reached the qualifying age for SPC and is entitled to specified rates of DLA or PIP (see G3030)<sup>5</sup>.

*1 UC Regs, reg 40(1)(b) & (5); 2 Sch 9, para 1; 3 para 2; 4 para 3; 5 para 5*

**Note:** See ADM Chapter G1 for guidance on where a claimant is treated as having LCWRA for the purposes of ESA.

G3006 Certain claimants can be treated as having LCWRA when they have been found not to have LCWRA following application of the WCA<sup>1</sup>. This is where the claimant is suffering from a specific illness, disease or disablement where there would be a substantial risk of damage to anyone's physical or mental health if the claimant were found not to have LCWRA<sup>1</sup> (see G3020 et seq).

*1 UC Regs, reg 40(1)(b) & (6); Sch 9, para 4*

## Terminally ill

G3007 "Terminally ill" is defined as a claimant who is suffering from a progressive disease and death in consequence of that disease can be reasonably expected within six months<sup>1</sup>. This is known as "special rules".

*1 UC Regs, reg 2*

G3008 Claimants applying for the LCWRA element under special rules are terminally ill as diagnosed by a GP or other HCP. DMs should note that evidence of being terminally ill may have been supplied for the purposes of ESA, DLA or PIP.

G3009 A claimant entitled to UC who becomes terminally ill must make an application for supersession expressly on the ground of being terminally ill before the LCWRA element can be included in their award of UC<sup>1</sup>. See ADM Chapter A4 for guidance on supersession.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 23(2)*

## Pregnant women

G3010 "Sickness of pregnancy", which can also be described as "emesis", "hyperemesis", "hyperemesis gravidarum", or "morning sickness", comes within the definition of a disease. This condition usually occurs between the 29th and 34th weeks before the EWC but can also be accepted outside that period when it may include a complication in the pregnancy.

**Note:** “Pregnancy” itself does not come within the definition of a disease.

G3011 The claimant should provide evidence of LCWRA, for example

1. a complication in the pregnancy **or**
2. a medical condition not related to pregnancy.

G3012 – G3014

## Cancer treatment

G3015 A claimant can be treated as having LCWRA if<sup>1</sup>

1. they are
  - 1.1 receiving treatment for cancer by way of chemotherapy or radiotherapy **or**
  - 1.2 likely to receive treatment as in 1.1 within six months after the date of the LCWRA determination **or**
  - 1.3 recovering from treatment as in 1.1 **and**
2. the DM is satisfied that the claimant should be treated as having LCW and LCWRA.

*1 UC Regs, Sch 9, para 3*

G3016 The claimant is asked in the questionnaire (form UC50) to ensure that their HCP completes page 20 of the form, giving details of the diagnosis, treatment including how long it is likely to last, and the expected recovery period, as well as an opinion on the effects on the claimant’s ability to work. The claimant is asked to complete the form as normal if other health conditions are present.

**Note:** See ADM Chapter G1 (WCA) for guidance on when the claimant does not return the questionnaire.

G3017 The DM should take into account the debilitating effects of the treatment in G3015

1. when considering whether the claimant should be treated as having LCWRA. The presumption is that claimants who fall within G3015 1. will be treated as having LCWRA, where the cancer treatment has work limiting side effects, and those effects are likely to limit all forms of work.

### Example 1

Martin is diagnosed with cancer of the oesophagus, and has a course of chemotherapy to reduce the size of the tumour. Once the treatment starts, Martin becomes too ill to work, and claims and is awarded UC. He is referred for the WCA. In the UC50, Martin’s oncologist states that the chemotherapy will continue for 3 months, after which it is hoped to remove the tumour surgically. He will probably require a course of radiotherapy after that. The treatment so far has left Martin

feeling very tired, nauseous and weak, as well as giving him difficulties with speaking, eating and drinking. The HCP recommends that Martin is treated as having LCWRA for 9 months, before referring for a further WCA to see if Martin's condition has improved. The DM accepts the advice, and determines that Martin has LCWRA.

### **Example 2**

Jay has exploratory surgery as a day patient to remove a lump in his groin. He is diagnosed with non-Hodgkin's lymphoma. He starts a course of chemotherapy, and is awarded UC after the second treatment leaves him unable to work.

Jay is referred for the WCA. In the UC50, his oncologist says that Jay will have up to 8 chemotherapy treatments by injection every three weeks. Jay is often too weak to get out of bed as a result of the treatment. He has loss of sensation in his hands and feet, and is prone to falling. He has twice been admitted to hospital for treatment for dehydration due to vomiting and diarrhoea. If the side effects continue, the chemotherapy treatment may stop and be replaced by radiotherapy over a longer period. He is likely to take at least six months to recover from the chemotherapy.

Medical advice is that Jay should be treated as having LCWRA, with a review after a year. The DM accepts the advice.

### **Example 3**

Heather is diagnosed with primary breast cancer following a mammogram. She is admitted to hospital for surgery to remove the tumour, and is required to stay in hospital for 24 hours or longer. She claims and is awarded UC. Heather is referred for the WCA. On the UC50, Heather's oncologist states that Heather will start a course of radiotherapy in about 4 weeks. The radiotherapy will be likely to make her very tired for several months as the treatment progresses, and after it has ended. The HCP recommends that Heather should be treated as having LCW and LCWRA for 6 months, with a further review to check on progress. The DM determines that Heather is treated as having LCWRA.

### **Example 4**

Rachel has difficulties with mobility, standing and sitting and reaching as a result of generalised arthritis. A small spot on her nose is diagnosed as a melanoma or skin cancer. The melanoma is surgically removed under local anaesthetic. She claims and is awarded UC.

Rachel is referred for the WCA. Her GP completes the statement in the UC50 to say that Rachel had facial pain, bruising and swelling for two weeks after the surgery. She will be referred for a single session of radiotherapy, but this is unlikely to affect

her ability to work. Rachel completes the rest of the questionnaire to give details about how her arthritis affects her ability to work.

Rachel is required to attend for medical examination. The HCP is of the opinion that Rachel does not satisfy any of the LCW or LCWRA descriptors, and should not be treated as having LCW or LCWRA, because although she is due to have radiotherapy treatment, this is not likely to have any debilitating effects. The DM accepts the advice, and determines that Rachel does not have, and is not treated as having, LCW or LCWRA.

G3018 – G3019

## Substantial risk

G3020 [\[See memo ADM 7/16\]](#)[\[See memo ADM 2/18\]](#) The claimant is treated as having LCWRA if they are suffering from a specific illness, disease or bodily or mental disablement, by reason of which there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have LCWRA<sup>1</sup> – see G3021.

*1 UC Regs, reg 40(5) & Sch 9, para 4*

## Meaning of substantial risk

G3021 ‘Substantial’ is not defined and should be given its ordinary meaning. What amounts to ‘substantial’ is a question which must be determined using all the available evidence and taking account of all the circumstances.

G3022 The substantial risk can be to the claimant or to any other person. For example, the claimant’s mental health may be such that they may self-harm or self-neglect or may be violent to others.

G3023 A claimant’s anxiety or concern about their ability to cope with the demands of work-related activity does not constitute a substantial risk.

G3024 – G3029

## Claimant disabled and over State Pension Credit age

G3030 A claimant is treated as having LCWRA where<sup>1</sup> they

1. have reached the qualifying age for SPC<sup>2</sup> (see DMG Chapter 77) **and**
2. are entitled to the
  - 2.1 highest rate care component of DLA<sup>3</sup> **or**
  - 2.2 enhanced rate daily living component of PIP<sup>4</sup>.

G3031 – G3039

## **Assessed as having limited capability for work and work–related activity**

### **Introduction**

G3040 Where the claimant is not treated as having LCWRA as in G3010 et seq, the question of whether

1. a claimant’s capability for work–related activity is limited by their physical or mental condition **and**
2. the limitation is such that it is not reasonable to require that claimant to undertake work–related activity

is determined on the basis of a WCA<sup>1</sup>.

**Note:** See ADM Chapter G1 for detailed guidance on the WCA process.

*1 UC Regs, reg 40(1)(a) & (2)*

G3041 The WCA assesses the claimant’s ability to perform specified activities. The performance of those activities is measured by descriptors<sup>1</sup>.

*1 UC Regs, reg 40(2) & Sch 7*

G3042 The extent to which a claimant can or cannot carry out an activity is determined by which descriptor applies to that claimant.

G3043 As part of the WCA, claimants may be required to complete a questionnaire, and if necessary to attend a medical examination. If they fail without a good reason to do either, they can be treated as not having LCWRA<sup>1</sup>. See ADM Chapter G1 for detailed guidance.

*1 UC Regs, reg 43(3) & 44(2)*

G3044 [\[See memo ADM 18-16\]](#) A claimant has LCWRA if, on application of the WCA

1. at least one of the descriptors applies<sup>1</sup> **and**
2. the descriptor applies for the majority of the time or occasions when the claimant undertakes or tries to undertake the activity<sup>2</sup>.

*1 UC Regs, reg 40(2)(a); 2 reg 40(4)*

G3045 – G3049

## **Determining limited capability for work and work-related activity**

G3050 Where the WCA applies, the DM must determine in relation to each activity which of the descriptors apply to the claimant due to a specific bodily or mental disease, illness or disablement<sup>1</sup>.

**Note:** See ADM Chapter G1 for detailed guidance on the WCA process.

*1 UC Regs, reg 40(2)(a) & Sch 7*

G3051 When assessing the extent of the claimant's LCWRA, it is a condition that the claimant's inability to perform<sup>1</sup>

1. physical descriptors<sup>2</sup> 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 descriptors<sup>3</sup> 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.

*1 UC Regs, reg 40(3); 2 Sch 7, descriptors 1–8, 15(a) or (b), 16(a) or (b);*

*3 Sch 7, descriptors 9–14, 15(c) or (d), 16(c) or (d)*

### **Example**

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.

G3052 The DM determines whether the assessment is satisfied from

1. the questionnaire (form UC50) if one is available (see ADM Chapter G1) **and**
2. a statement from the GP<sup>1</sup> if one is available **and**
3. the medical report of the claimant's ability to perform the specified functions (UC85) **and**
4. the personalised summary statement **and**
5. any other relevant evidence.

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

G3053 The normal principles apply to considering the evidence (see ADM Chapter A1).

G3054 The WCA does not have to be satisfied in respect of each day<sup>1</sup>. A claimant should satisfy the test throughout a period. A claimant whose condition varies from day to



day and who would easily satisfy the WCA on three days a week and would nearly satisfy it on the other four days might have LCWRA for the whole week.

*1 R(IB) 2/99*

G3055 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 LCWRA during the periods of illness but not have LCWRA during the periods of remission. This is so even if the periods of illness are longer than the periods of remission<sup>1</sup>.

*1 R(IB) 2/99*

G3056 The test of whether a claimant cannot perform an activity is not purely based on whether 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.

G3057 There is no specific requirement that a claimant must be able to perform the activity in question with "reasonable regularity". Even so regard should be had to some such concept. The real issue is whether, taking an overall view of the claimant's limited capability to perform the activity in question, they should reasonably be considered to be incapable of performing it. The fact that they might occasionally manage to accomplish it, would be of no consequence if, for most of the time, and in most circumstances, they could not do so<sup>1</sup>.

*1 R(IB) 2/99*

G3058 Where relevant descriptors are expressed in terms that the claimant "cannot" perform the activity, the DM should not stray too far from an arithmetical approach that considers what the claimant's abilities are most of the time<sup>1</sup>.

*1 R(IB) 2/99*

G3059 The DM should decide which descriptor applies to each activity. Provided the determination is sufficiently supported by evidence, for each activity the DM can select the descriptor from the medical report (UC85), the evidence provided by the claimant (including the UC50 questionnaire), or a different descriptor.

G3060 – G3999

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