

Chapter G2: Limited capability for work

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Chapter G2: Limited capability for work

Introduction

G2001 A claimant has LCW where their capability for work is limited by their physical or mental condition and it is not reasonable to require them to work¹.

1 WR Act 12, s 37(1)

G2002 A claimant has LCW where

1. it is determined that they have LCW on the basis of the WCA, whether for the purposes of UC or ESA¹ (see G2090 et seq) **or**
2. they are treated as having LCW² (see G2010 et seq).

See ADM Chapter G1 for guidance on the WCA process.

1 UC Regs, reg 39(1)(a) & Sch 6; ESA Regs 13, Part 4; 2 UC Regs, reg 39(1)(b) & (4) & Sch 8

G2003 A determination on whether a claimant

1. has or does not have LCW **or**
2. is to be treated as having or not having LCW

for the purposes of UC is conclusive for other UC decisions¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 40(2)

G2004 The question of whether a claimant has LCW is relevant in order to determine

1. what work-related requirements group the claimant falls into¹ **and**
2. which income and work allowance deduction is applicable².

Note 1: See ADM 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.

Note 2: From 3.4.17 where it is determined that a UC claimant has, or is treated as having, LCW, their award cannot include the LCW element¹. But see the Appendix to ADM Chapter F5 (The LCWRA element) for exceptions where the removal of the LCW element does not apply.

1 WR Act 12, s 13(2) & 21; 2 UC Regs, reg 22

G2005 – G2009

Treated as having limited capability for work

G2010 Certain claimants can be treated as having LCW and do not have to undergo the WCA¹. This is where the claimant is

1. receiving certain treatments – see G2012 **or**
2. in hospital – see G2015 et seq **or**
3. prevented from working by law – see G2050 – G2051 **or**
4. disabled and over the age for SPC – see G2080.

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

1 UC Regs, reg 39(1)(b) & (6); Sch 8, paras 1 - 3

G2011 Certain claimants can be treated as having LCW when they have been found not to have LCW following application of the WCA¹. This is where the claimant is

1. a substantial risk to themselves or to others – see G2052 et seq **or**
2. suffering from a life-threatening disease – see G2070 et seq.

1 UC Regs, reg 39(1)(b) & (7); Sch 8, paras 4 & 5

Receiving certain treatments

G2012 Claimants are treated as having LCW when they

1. receive
 - 1.1. regular weekly treatment by way of haemodialysis for chronic renal failure¹ **or**
 - 1.2. treatment by way of plasmapheresis² **or**
 - 1.3. regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function³ **or**
2. are recovering from any treatment as in 1. and the DM is satisfied the claimant should be treated as having LCW⁴.

1 UC Regs, Sch 8, para 1(a); 2 para 1(b); 3 para 1(c); 4 para 1(d)

G2013 See the Appendix to this Chapter for an explanation of the treatments in G2012.

G2014

Hospital patient

G2015 Claimants are treated as having LCW where they are

1. undergoing medical or other treatment as a patient in a hospital or similar institution **or**
2. recovering from treatment as in 1. and the DM is satisfied that the claimant should be treated as having LCW¹.

1 UC Regs, Sch 8, para 2(1)

G2016 Where a claimant attends a residential programme of rehabilitation for the treatment of drug or alcohol abuse, they are regarded as undergoing treatment as in G2015 ¹.

1 UC Regs, Sch 8, para 2(2)

G2017 A claimant is regarded as undergoing treatment as in G2015 **1.** only where they have been advised by a registered medical practitioner to stay for a period of 24 hours or longer following that treatment¹. This applies even if the claimant disregards that advice and returns home.

1 UC Regs, Sch 8, para 2(3)

Example

Sarah is admitted to hospital for surgery involving a general anaesthetic. She was told before the surgery that she should bring a night bag in case she has to stay overnight. Sarah's surgery goes well, and she is discharged the same day. As Sarah was not advised to stay overnight, she cannot be treated as having LCW. Sarah will need to be assessed for LCW in the normal way by completing a questionnaire and attending for medical examination if necessary.

G2018 – G2019

Medical or other treatment

G2020 To be treated as receiving patient treatment a person must be receiving

1. medical treatment, for example
 - 1.1 surgical treatments
 - 1.2 administration of drugs and injections **or**
2. other treatment which includes nursing services by professionally trained staff in the form of
 - 2.1 observations
 - 2.2 therapies
 - 2.3 support appropriate to the person's needs
 - 2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

- G2021 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is a patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

- G2022 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

Hospital or similar institution

Hospital

- G2023 A hospital¹ is

1. an institution for
 - 1.1 the reception and treatment of people suffering from illness
 - 1.2 the reception and treatment of people during convalescence
 - 1.3 people needing medical rehabilitation
2. a maternity home that provides obstetric services
3. in Scotland, any institution for dental treatment maintained in connection with a dental school
4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

- G2024 Illness includes¹

1. mental disorder **or**
2. any injury or disability needing
 - 2.1 medical treatment **or**
 - 2.2 dental treatment **or**
 - 2.3 nursing.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

- G2025 Mental disorder means

1. in England and Wales¹
 - 1.1 mental illness **or**

- 1.2 arrested or incomplete development of the mind **or**
- 1.3 psychopathic disorder **or**
- 1.4 any other disorder or disability of the mind
- 2. in Scotland², any form of
 - 2.1 mental illness **or**
 - 2.2 personality disorder **or**
 - 2.3 learning disability.

1 MH Act 83, s 1(2); 2 Mental Health (Care and Treatment)(Scotland) Act 2003, s 328(1)

Similar institution

G2026 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account

- 1. the purpose of the institution **and**
- 2. the type of treatment provided **and**
- 3. the level of care offered.

G2027 To help determine if the establishment is a similar institution to a hospital, DMs must determine whether the claimant receives on the premises medical or other treatment¹

- 1. provided by doctors, qualified nurses or other health care professionals employed by the home **or**
- 2. under the direct supervision of a qualified doctor, nurse or nurses at the home.

1 SSWP v Slavin [2011] EWCA Civ 1515

G2028 A hospital or similar institution also includes those

- 1. maintained by or on behalf of the¹
 - 1.1 DH
 - 1.2 Welsh Assembly
 - 1.3 Scottish Government Health and Social Care Directorate **or**
- 2. maintained or administered by the Defence Council, for example an army, navy or air force hospital.

Note: These include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland.

1 NHS Act 77, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

- G2029 An institution caring for former psychiatric patients which provides a degree of medical treatment or rehabilitation may be a similar institution to a hospital.
- G2030 A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the care home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

G2031 – G2038

Future admission to hospital

- G2039 Where
1. on consideration of all the evidence after application of the WCA, the DM is of the opinion that the claimant would not have, or would not be treated as having, LCW **and**
 2. the HCP advises that the claimant is about to go into hospital for treatment requiring an overnight stay within 21 days of the medical examination

the DM should defer making a determination as to whether the claimant has LCW until it is confirmed that the claimant has become a hospital patient.

Planned admission postponed

- G2040 If
1. the claimant is not admitted to hospital as planned **and**
 2. a new date for admission is provided

the DM should continue to defer making a determination on LCW as in G2039.

Planned admission cancelled

- G2041 Where a planned admission to hospital is cancelled and no new date is proposed, the DM should determine whether the claimant has LCW as normal.

G2042 – G2049

Prevented from working by law

- G2050 A claimant is treated as having LCW where the claimant is known or reasonably suspected to be infected or contaminated by, or to have been in contact with a case, of a relevant infection or contamination and
1. is excluded or abstains from work in accordance with a request or notice in writing in accordance with legislation **or**

2. is otherwise prevented from working in accordance with legislation (see G2051)¹.

1 UC Regs, Sch 8, para 3

Meaning of relevant infection or contamination

G2051 The following definitions apply

1. in Scotland, the term “contamination” is the same as defined in legislation¹.
2. in England and Wales, the term “infection or contamination” shall be read in accordance with legislation².
3. in Scotland, the term “infectious disease” is the same as defined in legislation³.
4. in England and Wales, the term “relevant infection or contamination” means
 - 4.1 any incidence or spread of infection or contamination, in respect of which certain legislation applies⁴, for the purpose of preventing, protecting against, controlling or providing a public health response
 - 4.2 any disease, food poisoning, infection, infectious disease or notifiable disease to which certain legislation applies⁵.
5. in Scotland, the term “relevant infection or contamination” means
 - 5.1 any infectious disease or exposure to an organism causing that disease, **or**
 - 5.2 contamination or exposure to a contaminant to which certain legislation applies⁶.

1 Public Health etc (Scotland) Act 2008, s 1(5);

2 Health and Social Care Act 2008, s 45A(3); 3 Public Health etc (Scotland) Act 2008, s 1(5);

4 Public Health (Control of Disease) Act 1984, Part 2A; 5 Public Health (Aircraft) Regulations 1979, reg 9 & Public Health (Ships) Regulations 1979, reg 10; 6 Public Health etc (Scotland) Act 2008, s 56 to 58

Substantial risk

G2052 A claimant is treated as having LCW¹ if

1. they are suffering from some specific disease or bodily or mental disablement **and**
2. as a result, there would be a substantial risk (see G2054) to the mental or physical health of the claimant or anyone else if they were found not to have LCW.

But see G2053 for where this does not apply.

1 UC Regs, Sch 8, para 4(1)

G2053 The claimant cannot be treated as having LCW if the risk could be significantly reduced by

1. reasonable adjustments being made to the claimant’s workplace **or**

2. the claimant taking medication prescribed by their GP to manage their condition¹.

1 UC Regs, Sch 8, para 4(2)

Example 1

Khaled suffers from back pain, and claims UC. His previous employment was office work. Khaled argues that he satisfies the substantial risk rules, as he cannot sit at a desk for lengthy periods without exacerbating his condition. The DM determines that the risk to his health could be alleviated by reasonable adjustments to his workstation, such as a desk which can rise and fall to allow working in standing and sitting positions, and taking breaks away from his workstation. The DM determines that Khaled cannot be treated as having LCW.

Example 2

Lucy is at risk of potentially fatal anaphylactic shock if she comes into contact with products containing latex, which is a risk at work and in the journey to and from work. There is no suggestion that she satisfies any of the descriptors. The DM determines that the risk could be substantially reduced if Lucy carried an adrenaline auto-injector which has been prescribed for her, and a medical alert bracelet.

Meaning of substantial risk

- G2054 '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.
- G2055 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.
- G2056 A claimant's anxiety or concern about their ability to cope with the demands of work or a return to work alone does not constitute a substantial risk.
- G2057 Substantial risk must be determined, not only in the context of work undertaken or in the workplace itself, but also the journey to and from work¹.

1 Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42; R(IB) 2/09

Risk at work

- G2058 The judgment states that the DM must consider whether a substantial risk arises in the light of the work which the person might be expected to perform in the workplace he might find himself in. In making this assessment, the DM need only identify a broad range of duties that the person could be capable of, taking into account any training given, the person's aptitude and their disease or disablement.

Example 1

Peter is 27 years old and suffers from alcohol dependency syndrome. He has never worked and says that his condition prevents him from undertaking any kind of work. The DM identifies that Peter could undertake straightforward and unstructured, unskilled work without substantial risk to himself or any person. The DM need not identify a particular type of work that Peter could be capable of.

Example 2

Phillip is 22 years old and has recently been diagnosed as suffering from epilepsy. Since the age of 18 he has worked as a roofer and scaffolding erector. Phillip says that if he were to return to this work, his health would be at substantial risk as he was often expected to work at great height. The DM determines that Phillip could now undertake closely supervised, indoor or outdoor work, at ground level without risk to himself or any person. The DM need not identify a particular type of work that Phillip could be capable of.

G2059 – G2069

Life threatening disease

G2070 A claimant is treated as having LCW¹ if they are suffering from a life threatening disease for which

1. there is medical evidence (see G2072) that the disease is uncontrollable, or uncontrolled by a recognised therapeutic procedure **and**
2. in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.

1 UC Regs, Sch 8, para 5

G2071 There should be evidence that the disease is either uncontrolled or uncontrollable. The DM should establish that there is a reasonable cause for it not being controlled by medication or other recognised therapeutic procedure.

Medical evidence

G2072 Medical evidence includes evidence

1. from a HCP approved by the Secretary of State **or**
2. from any HCP, hospital or similar institution **or**
3. that constitutes the most reliable evidence available in the circumstances.

G2073 – G2079

Disabled and over State Pension Credit age

- G2080 A claimant is treated as having LCW where they
1. have reached the qualifying age for SPC **and**
 2. are entitled to
 - 2.1 DLA **or**
 - 2.2 PIP¹.

See DMG Chapter 77 for guidance on the qualifying age for SPC.

1 UC Regs, Sch 8, para 6

G2081 – G2089

Assessed as having limited capability for work

Introduction

- G2090 Where the claimant is not treated as having LCW as in G2010 et seq, the question of whether
1. a claimant's capability for work is limited by their physical or mental condition **and**
 2. the limitation is such that it is not reasonable to require that claimant to work
- is determined on the basis of a WCA¹.

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

1 UC Regs, reg 39(1)(a)

- G2091 The WCA assesses the claimant's ability to perform specified activities. The performance of those activities is measured by descriptors, which score points according to the level of the descriptor¹. If the required number of points is not reached the claimant does not have LCW. The test is the ability to perform any work, not a specific occupation.

1 UC Regs, reg 39(2) & Sch 6

- G2092 The activities are in two parts. Part 1 is a physical assessment. Part 2 is an assessment of mental, cognitive and intellectual functions. The extent to which a claimant can or cannot carry out an activity is determined by one of a range of descriptors applied to the claimant for that activity. Each descriptor within the range attracts a score from 0-15.

- G2093 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.

1 UC Regs, reg 39(4); 2 Sch 6, Part 1; 3 Sch 6, Part 2

Example 1

Brian suffers from rheumatoid arthritis in his hands and knees, and claims UC. 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.

G2094 A claimant has LCW if, on application of the WCA, they score a total of at least 15 points¹.

1 UC Regs, reg 39(3)

G2095 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 LCW¹. See ADM Chapter G1 (WCA) for detailed guidance.

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

G2096 – G2099

Determining limited capability for work

G2100 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 disablement¹.

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

1 UC Regs, reg 39(3)

G2101 Where a claimant meets a descriptor, points will be awarded corresponding to that descriptor¹.

1 UC Regs, reg 39(3)

G2102 Where more than one descriptor specified for an activity applies to a claimant, only the descriptor with the highest score in respect of each activity which applies can be counted¹.

1 UC Regs, reg 39(5)

G2103 The total number of points scored on the WCA is the aggregate of the number scored in relation to each descriptor¹.

1 UC Regs, reg 39(3)

G2104 Other than as in G2102, there is no scoring limitation based on the claimant's specific disease or bodily disablement. So, for example, a claimant who has a sensory impairment can score points both for the activity of understanding communication and that of navigation¹.

1 R(IB) 3/98

G2105 The DM determines whether the assessment is satisfied from

1. the questionnaire (UC50) if one is available (see ADM Chapter G1) **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 (UC85) **and**
4. the personalised summary statement **and**
5. any other relevant evidence.

Note: See Chapter G1 (Work capability assessment) for guidance on the role of medical services in information gathering.

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

G2106 The normal principles apply to considering the evidence – see ADM Chapter A1 (Principles of decision making and evidence).

G2107 The WCA 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 WCA 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

G2108 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

G2109 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.

G2110 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 so¹.

1 R(IB) 2/99

G2111 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 time¹.

1 R(IB) 2/99

G2112 Descriptors which state that "none of the above apply" to their ability to carry out the activity or where they do not apply mean that the claimant has no problem performing the activity or has less of a problem than would satisfy any of the other descriptors for that activity.

Example

Activity 1 descriptor (e) is "none of the above applies". Descriptor (b) is "cannot, unaided by another person, mount or descend 2 steps even with the support of a handrail". "None of the above apply" means the claimant has no problem going up

and down steps, or less of a problem than would satisfy the penultimate descriptor 1(d), and would score no points for that activity.

- G2113 Where a descriptor refers to a claimant being able to use a tool or implement, the use referred to is the use to which the tool or implement is normally put. For example, Activity 5 relates to hand function and is intended to reflect the ability to manipulate objects in order to carry out work-related tasks.

Example

Ability to use a pen or pencil is intended to reflect the physical use of the object, not a claimant's level of literacy. The same concept applies to the use of a computer keyboard or mouse.

- G2114 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, the evidence provided by the claimant (including the questionnaire), or a different descriptor.
- G2115 The DM must record the final scores for each descriptor and the reasons for the determination. Guidance on burden of proof is in ADM Chapter A1 (Principles of decision making and evidence).

G2116 – G2999

Appendix

Regular treatment categories (see G2012)

Explanation of treatments

Plasmapheresis

Plasmapheresis is a process by which harmful substances can be removed from the bloodstream. Blood is taken from the person's vein, and the fluid part (plasma) containing the harmful substance is separated from the blood cells and removed. The blood cells are then mixed with an appropriate substitute fluid and returned to the person.

Renal dialysis

Renal dialysis is used in the treatment of kidney (renal) failure. It is the process whereby waste products, which would usually be excreted in the main by the kidneys, are artificially removed from the body. There are two forms of dialysis: haemodialysis and peritoneal dialysis.

In haemodialysis, blood is circulated from the person's arm into a machine which removes the waste substances; the cleansed blood is then returned to the person. Haemodialysis is usually carried out two or three times a week.

In peritoneal dialysis the process involves introducing fluid into the abdomen through a permanently-positioned tube (an indwelling catheter). Harmful waste products are removed from the blood into this fluid through the inner lining of the abdomen (the peritoneum). After some hours, the fluid is drained from the abdomen and replaced with a fresh volume, and the cycle is repeated on a continuous basis.

Total parenteral nutrition

Total parenteral nutrition is a recent development in the treatment of serious intestinal conditions such as Crohn's disease. It is a way of ensuring adequate nutrition when normal absorption of food and fluid from the gut is impossible as a result of severe disease.

A fine tube (catheter) is inserted into a major vein in the neck, and is held in permanent position; its end is capped when not in use. A special feeding solution, three to five litres in all, is pumped through the catheter using a special pump mounted on a stand. The process takes eight to fourteen hours, and is usually carried out overnight.

For most people, the need for total parenteral nutrition will be life-long.

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