

Work Capability Assessment

Government response to an informal
consultation on accounting for the effects of
cancer treatments

September 2012

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Introduction

DWP strongly supports the principle of the Work Capability Assessment (WCA) and is committed to continuously improving the assessment process to ensure it is as fair and as accurate as possible.

A Department-led review of the WCA reported in March 2010 and recommendations were implemented in March 2011. These extended the provisions for people suffering from cancer so that those cancer patients who are receiving, are likely to receive within six months or are recovering from, non-oral chemotherapy may be treated as having limited capability for work-related activity (LCWRA).

This was based on a view that invasive chemotherapy is more debilitating in most circumstances than oral chemotherapy. The provisions also allowed for claimants receiving radiotherapy to be treated as having limited capability for work for the period of their treatment and they may be placed directly in the Work Related Activity Group (WRAG).

We have a statutory commitment to independently review the WCA annually for the first five years of its operation.

Professor Malcolm Harrington has to date carried out two independent reviews of the WCA and is currently undertaking a third. As part of his second Independent Review of the WCA Professor Harrington asked Macmillan Cancer Support (Macmillan) to look in detail at how the WCA assesses people with cancer in order to provide him with evidence for further recommendations for improvement.

Based on the evidence received from Macmillan, and recognising the changes that have occurred in cancer treatments since the introduction of the Department-led review, the Department has accepted that further change is needed to the way the WCA process works for cancer sufferers.

The evidence demonstrated that:

- it is no longer reasonable to differentiate between non-oral and oral chemotherapy; and
- as radiotherapy can have equally debilitating effects, it should not be treated differently.

As a result the Government developed proposals to expand existing provisions, building an element of discretion into decisions to ensure they are based on the impact of an individual's condition and treatment on their capability for work.

The Department decided to conduct an informal consultation following development of these proposals. The consultation was announced on 24 November 2011 as part of the Government's Response to Professor Harrington's second review. The consultation aimed to seek a wider range of views and evidence before introducing any regulatory changes.

The current process for people undergoing cancer treatment

Under the current WCA process only those cancer patients who are receiving, are likely to receive within 6 months or are recovering from, non-oral chemotherapy are treated as having limited capability for work-related activity. This includes chemotherapy received:

- intravenously – treatment administered directly into a vein;
- intraperitoneally – treatment administered into the peritoneal cavity; or
- intrathecally – treatment administered directly into the spinal canal

The process also allows claimants receiving radiotherapy to be treated as having limited capability for work during any week for which they receive treatment (or days of recovery from that treatment). Under these circumstances the claimant would be placed in the WRAG. Placement in the Support Group for such claimants is not precluded if sufficient evidence is available that they meet the criteria.

At present, along with all other claimants, people who claim ESA and who have a diagnosis of cancer or who are undergoing treatment or recovering from treatment for cancer will be required to complete an ESA claim form (ESA1).

Following assessment of the claim, they will be sent a self-assessment questionnaire (ESA50) to complete. The ESA50 provides relevant information relating to the claimant's health condition and how it affects their capability for work. The completed questionnaire must be returned to the Department's medical services provider, together with any other relevant evidence, within four weeks of the date of issue.

Taking into account information entered on the ESA50 and all other associated evidence, the Department's medical services provider, wherever possible, will provide a recommendation to the Departmental Decision Maker (DM) to enable a decision on ESA entitlement to be decided on the basis of this clerical evidence. Where it is not possible to make a decision based on clerical evidence alone, further medical evidence may be requested. Only where this proves insufficient is a face-to-face medical assessment required.

There are almost 29,000 individuals claiming ESA due to a primary diagnosis of cancer. Around 70% of these claimants are placed in the Support Group from the outset of their claim ensuring that they receive the highest rate of benefit and are not mandated to complete activity to move them towards employment.

Original proposals consulted on

The evidence provided by Macmillan demonstrated that both oral and non-oral chemotherapy, as well as radiotherapy for cancer, can have equally debilitating effects and should not be treated differently in the WCA.

Macmillan also recommended that in relation to radiotherapy tumour sites should be defined.

As a result the Government developed proposals to **expand** the categories of cancer treatments under which a claimant may be treated as having LCWRA.

The proposals expanded the categories of cancer treatments to include individuals who are:

- Awaiting, receiving or recovering from treatment by way of oral chemotherapy; except when that therapy is continuous for a period of more than six months;
- Awaiting, receiving or recovering from combined chemo-irradiation; or
- Awaiting, receiving or recovering from radiotherapy in the treatment of cancer in the following sites: Head and neck; Brain; Lung; Gastro-intestinal; Pelvic.

In such cases the **presumption** would be that individuals undergoing the above cancer treatments should be in the Support Group. Each individual would be assessed on a paper basis and the vast majority would be placed straight into the Support Group. The information required would be evidence provided by the individual's consultant, GP or if appropriate their specialist cancer nurse.

The Consultation process

The consultation applied to England, Scotland and Wales, and ran from 16 December 2011 to 9 March 2012.

The consultation was made available on-line but also engaged directly with interested stakeholders including:

- individuals who have been or are being affected by cancer;
- their families and carers;
- healthcare practitioners and cancer specialists; and
- representative organisations and employers.

The consultation generated in the region of 90 responses. This is indicative of the importance of such a sensitive and emotive issue. It also confirms the need to ensure that our proposals for changing the WCA are the right ones.

This document outlines the responses received and provides further information on how we intend to change the way the Work Capability Assessment works for people receiving cancer treatment based on consideration of those responses.

We would like to thank the individuals and organisations who took time to consider our proposals for their helpful and thought provoking comments. We are especially grateful to individuals with direct experience of cancer who shared their own experience of the disease and its treatment. Their views were extremely helpful.

A list of employers and organisations that provided responses is available at **Annex A**.

Consultation Findings

Although the consultation focused on the debilitating effects of cancer treatments rather than the treatments themselves, analysis of the consultation responses has shown that there is a need to change the provisions to cover the effects on individuals of a wide range of treatments.

The evidence received provided insight into the effects of a broad spectrum of cancer treatments, and throughout there was general agreement for a requirement to change the way the WCA assesses people awaiting, receiving or recovering from cancer treatment.

Responses indicated considerable variation in the effects of different cancer treatments leading to a conclusion that cases should be assessed individually, based on their own merits.

Many of those who responded to the consultation indicated that employment could prove beneficial and that continuing to work, or to focus on returning to work, may make a positive contribution to recovery. However, this was not true for all cases. The responses also demonstrated that many larger employers are aware of the

effects of cancer treatments on their employees and have introduced supportive measures for both staff and their families.

Evidence received as part of this consultation has also led us to consider further proposals including:

- Questioning the specific site approach to radiotherapy treatments proposed by Macmillan and
- Highlighting particularly aggressive forms of treatment such as a combination of both chemotherapy and radiotherapy

The consultation responses also made it clear that as well as specific changes in proposals and processes, certain issues and terminology used in the ESA and WCA procedure require clarification.

These include the requirement for a definition of what the Government means by chemotherapy treatment for cancer sufferers. This is because chemotherapy may also be used as a treatment for other conditions, for example arthritis.

Some responses also raised issues that were not directly covered by the scope of the consultation.

A number of responses requested more consideration be given to the psychological effects of cancer diagnosis and subsequent treatment as well as the physical effects. In many cases these effects were ongoing and proved more significant than the physical treatment. The necessity and value of vocational rehabilitation, as part of a successful return to the workplace, was also highlighted.

Revised proposals as a result of the consultation

As a result of the evidence gathered from the consultation process we have revised our original proposals.

The originally proposed site specific approach to people awaiting, receiving or recovering from radiotherapy was challenged by cancer specialists and others. The Department has accepted their arguments and now proposes to assess radiotherapy similarly to chemotherapy, considering the general impact of the treatment on the individual rather than singling out specific tumour sites.

For the same reason the Department has also decided to remove the condition that treatment must be continuous for a period of more than six months. Ultimately it is the impact of treatment, not the duration that should be the final determinant.

The revised proposals therefore expand the categories of cancer treatments under which a claimant may be treated as having LCWRA, to now include individuals who are;

- Awaiting, receiving or recovering from treatment by way of chemotherapy irrespective of route; or
- Awaiting, receiving or recovering from radiotherapy.

It is the debilitating effects of such treatment that will determine entitlement but the **presumption** would be that an individual undergoing the above treatments for cancer should be in the Support Group subject to confirmatory evidence. Each individual would be assessed on a paper basis and the vast majority would be placed straight into the Support Group.

Additional evidence confirmed that a combination of chemotherapy and radiotherapy is generally a more aggressive form of treatment than either administered singly, with some respondents suggesting that it may require particular consideration. However, having considered this further, we believe the presumption that individuals will be placed in the Support Group, based on the receipt of the prescribed evidence, will be sufficient to cover those receiving combined therapy.

We will also take the opportunity when drafting revised regulations to define chemotherapy and radiotherapy to be for the purposes of cancer treatment.

The process for gathering evidence to support the presumption is intended to be as simple as possible. This will help to minimise any further distress to individuals at what is already a difficult time.

We are developing (in consultation with Macmillan and the Royal College of Radiologists) a suitable 'light touch' evidence gathering process to support the change proposals. This is likely to be a simple proforma, attached to the ESA50 self assessment questionnaire, to be completed by a relevant healthcare professional. This could be the claimant's oncologist, GP or, where appropriate, a specialist cancer nurse.

The expectation is that this proforma will form part of the ESA50 and claimants will be directed to this section of the form after completing the initial details on the ESA50, thus negating the requirement to complete the whole questionnaire.

It is anticipated that this approach will considerably reduce the need for face to face assessments, with the vast majority of decisions being made on the evidence provided by the healthcare professional.

In exceptional circumstances, where insufficient evidence is available, a face to face assessment will be completed as per the normal WCA process.

This approach recognises the needs of people awaiting, receiving or recovering from cancer treatment and reduces the burden upon them during a particularly difficult time. The proposed changes will replace the existing provisions with a more individual assessment of claimant's capability for work.

We believe that these changes will improve the way people with cancer are assessed and will result in more cancer sufferers being placed in the Support Group rather than the work-related activity group.

Based on a sample of case studies, we estimate that an additional 10% of all ESA WRAG claimants with a cancer related health condition will move to the Support Group as a result of these changes. This equates to around 600 additional people per year

We expect these changes to be welcomed by Professor Harrington, Macmillan and the majority of individual cancer sufferers, as well as those who support them.

Summary of Responses

Question 1

Given the evidence underpinning the proposals, do you believe that the selected group of treatments covers all the cancer treatments that should be included?

Leading themes from the respondents

- General agreement for widening of the group of treatments included
- All cases should be considered on an individual basis
- Consideration should be given to other co-morbidities and pre existing conditions
- Both psychological and physical effects of treatment and recovery should be taken into account

“Yes, in my experience the group of treatments are those that would most commonly merit presumption of Support Group status.”

“I support the extension of the eligibility criteria to include oral chemotherapy and combined treatments.”

“I do not think that the selected group of treatments fully represents all the cancer treatments especially those relating to radiotherapy. The list of cancer sites qualifying for entry to the Support Group is too narrow.”

Question 2:

How reasonable is it to assume that in some cases where the effects of cancer treatment are less debilitating, an individual can return to or continue to work?

Leading themes from the respondents

- No assumptions should be made as individual experience will vary
- Cases should be assessed on a case by case basis
- Even where work is considered reasonable and/or beneficial, effects such as low immunity may rule out a return to work

“I am a little more concerned about this. I think in these cases it is reasonable to have a face to face assessment and consider holistically the claimants other health concerns. There could be mental health issues, or non related physical health issues that must be considered.”

“My own experience is that it is entirely reasonable to assume that an individual can continue in work throughout treatment, provided that the employer (and the individual) are alert to any indications that job performance may be negatively impacted by fatigue or other symptoms.”

Question 3:

Given the wide variation in symptoms experienced as a result of cancer treatments, how important do you believe it is for some individuals to be able to work?

Leading themes from the respondents

- Work can be therapeutic and beneficial
- Individuals should be allowed a choice in whether or not they can return to work
- Individuals who wish to return to work should receive full support in order to be able to do so within their capabilities
- Full account should be taken of other aspects of cancer and effects of treatment both physical and psychological

“In my own case, it was of vital importance that I was able to continue to work on a “business as usual” basis. It maintained my self esteem and allowed me to be optimistic that a favourable outcome was the norm.”

“Obviously, if a person feels they want to work – and can be supported to be able to do so – with flexibilities built in area treatment regimes etc – then fine. That doesn’t mean that everyone should be dealt with as if they all could work – only if they wanted to.”

“We understand that some people undergoing cancer treatment would wish to work (in a supportive environment). However, we feel that this fact should not disadvantage patients who feel unable to continue in employment, due to physical or psychological impairment. Cancer is an extremely distressing, sometimes life-threatening illness and during treatment the patient will have to cope with very many uncertainties about their lives and family. Uncertainties over financial support or the need for an assessment should not be added to this list.”

Question 4a:

Do you agree that the debilitating effects of cancer treatments can vary from individual to individual?

Leading themes from the respondents

- Agreement across the board that all cases should be assessed on their own merits

“Although I am not medically qualified the debilitating effects of cancer do appear to vary from individual to individual.”

“I do agree that the effects are different for the individual but I also feel the mind set of the individual plays a large part in how they function in areas of daily activity.”

“Yes. The debilitating effect of cancer varies between individual despite similarity in type of cancer, disease stage and treatment. Patients react

differently physically and emotionally to cancer and its treatment. No assumptions can be made.”

Question 4b:

In your experience, are some patients who are undergoing, or have undergone treatment for cancer able to continue with or return to some work (with appropriate adjustments)?

Leading themes from the respondents

- The majority would not be able to continue or return to work within the first six months
- Many wish to return to work for financial reasons, but an early return may prove damaging
- Phased return and support is essential

“It was important in as much as it provided reassurance that I could still do my job, that my absence was felt, that colleagues were wishing me a good recovery and that there was still a job for me to return to.”

“Prior to my condition I had consumed very little sick leave over the previous 8 years. My employer provided me with the opportunity to return to work gradually as my energy levels picked up. That worked well for me, the plan was reviewed on a fortnightly basis as I got better.”

Question 5a:

How important to you and/or your family was work during treatment for cancer or during recovery from that treatment?

Leading themes from the respondents

- A focus on returning to work and ‘normality’ can be a vital part of recovery for both individuals and their family
- A return to work may be a financial necessity
- A return to work can be essential for maintaining confidence and reduces feeling of isolation from the colleagues and the workplace

“To me work was critical to both my well being and recovery. It gave me an aim, for it is just too easy to sit at home and believe you are worse than you are. Yes there are some days when it is an effort but once made the feeling of well being is worth it. It also is a form of therapy for you discuss it with others and face up to the problems.”

“After treatment, my work was very important to me and my family. It was good to regain some control of my life again, and embrace normality.”

Question 5b:

If you are willing, please could you provide details about your treatment and the effects on your ability to work?

Leading themes from the respondents

- Varies depending on type of cancer and treatment
- Very subjective and reinforces the requirement to treat each case individually

“I take an oral chemotherapy tablet on a daily basis - 400 mg Glivec (Imatinib) and will take this every day for the rest of my life as there is no cure for the type of cancer I have. The side effects, namely the intense fatigue and continual sickness affects my ability to work the full 37 hrs per week, hence why I have reduced my hours and have all the school holidays off.”

Question 6:

Are you able to offer examples of workplace support that you have offered or provided for staff members undergoing cancer treatment? For example, flexible working patterns, work place adaptations, etc

Leading themes from the respondents

- Phased and flexible return to work
- Additional time given for rest periods
- Adaptations and reasonable adjustments
- Career breaks
- Access to counselling and psychological support
- Benefit advice

“We have offered reduced hours, phased return to work, light duties to enable people to reintegrate following cancer treatment. We would make adjustments to the work place but as yet we have never been required to do this as a result of Cancer.”

Question 7:

Is there anything else that you would like to tell us that you think is relevant to this subject?

Leading themes from the respondents

- Work is an important part of recovery but must be handled with sensitivity
- Work is not possible for everyone
- Where work is possible support mechanisms are vital

- More support required for small employers and the self employed
- Each case should be treated on an individual basis
- A requirement to clearly define what is meant by chemotherapy and what elements are included
- Agreement with 'light touch' evidence gathering process

“The recovery period is just not the physical recovery but an emotional one, from the conveyor belt of treatment, which has often been very fast, people need time for recovery and not forced back to work too soon, as mental health issues can arise.”

“During cancer treatment and after it ends, it is not unusual for people to have persistent feelings of depression or anxiety. These symptoms occur in almost a third (about 30 per cent) of patients and survivors. Where people living with cancer have a past history of depression or anxiety, their risk of re-developing the symptoms is higher.”

“We agree that it is important that the process for determining eligibility should be 'light touch' and not place undue burdens on claimants nor healthcare professionals. We also feel that the discretion available to decision makers to decide eligibility for ESA should be limited, with greater weight given to medical evidence. We feel in particular that those cancer patients currently eligible for automatic qualification into the support group should not be subject to additional barriers in order to qualify for this group.”

Next steps

We intend to implement the proposed changes to the WCA by early 2013. This will require regulatory and process delivery changes.

Work towards this is progressing well and in the meantime we continue to work with Macmillan and others to fulfil our statutory commitment to independently review the WCA annually for the first five years of its operation and to accomplish the Department's aim to continuously evaluate and improve the assessment process to ensure that it is as fair and as accurate as possible for both claimants and tax payers.

In addition to the on line version of this document, paper versions are available upon request from:

The Work Capability Assessment Policy Team

Floor 2, Section B
Caxton House
Tothill Street
London
SW1H 9NA

Email: WCA.team@dwp.gsi.gov.uk

This document is available on request in a range of formats, including large print, Braille, audio, BSL video/DVD and easy read, either from our website or upon request from:

The Work Capability Assessment Policy Team

Floor 2, Section B
Caxton House
Tothill Street
London
SW1H 9NA

Email: WCA.team@dwp.gsi.gov.uk

Annex A

List of employers and organisations that provided responses

ACPOPC; Association of Physiotherapists in Oncology and Palliative Care

Anglia Cancer Network Patient Partnership Group

Arden Cancer Network

Atos Healthcare

Bradford and Airedale Cancer Support

Breast Cancer Campaign

Citizens Advice

CLIC Sargent

Disability Solutions West Midlands

Durham County Council

Fenland CAB

Lancashire and South Cumbria Cancer Network

The Lancashire and South Cumbria Cancer Partnership Group

Law Centre NI

The Lymphoma Association

Macmillan Cancer Support

National Association of Laryngectomy Clubs

North West London Hospitals NHS Trust

The NET Patient Foundation.

Peninsula Cancer Network

Peterborough CAB

Royal College of General Practitioners

Royal College of Radiologists

Sainsburys

Social Security Agency Belfast

South Essex Partnership University NHS Foundation Trust

South Lanarkshire Council

Spoke. Disability Resource Centre

Swindon and District CAB

Voice; the Organisation of Independent Cancer Patients
Weston Park Hospital Specialised Cancer Services

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