

# Freedom of Information request 1046/2013

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## Information request

I am writing this letter regarding Appeals of ESA, so can I respectfully ask:

1) In April, how long will it take to have a reconsideration after you're found "fit" for work and appeal against the decision?

2) What will you claim after April 2013 when on appeal?

3) If you have NO CHOICE but to claim JSA (whilst appealing) won't it hinder your appeal?

4) If you lose an appeal and you have to claim JSA and you go into the JCP in a wheelchair/on crutches to sign on what happens when the JCP say you are unfit to work, when ATOS/DWP say you are "fit" to work? What is the recourse for the disabled then?

5) After October 2013 what will the disabled claim when on appeal from being found either "fit for work" or put in the WRAG and appealing to support group, if they can't claim ESA/UC/JSA rate they have to live on something

## DWP response

Taking your questions in turn:

1. **Note – in questions 1 and 2 you refer to April 2013. The answers provided relate to the position from October 2013 onwards, i.e. after mandatory reconsideration has been implemented.**

The length of time taken to complete mandatory reconsideration will vary from case to case and will be dependent on the complexity of the case and whether any additional evidence is required, and if so how quickly it is provided by the claimant. In any case where the Department requests additional evidence Regulations state that the Department must allow claimants one month to supply it, so these cases could take in excess of one month to process.

The Department aims to complete mandatory reconsideration without unnecessary delays, but the focus of the process is to ensure that the decision has been fully reviewed in light of any new evidence and explained to the claimant and this process will take time to complete. It would be difficult to give an estimate of the average time this process will take since it is new and untried, and processing times are likely to

range from a few days to a number of weeks depending on the complexity of the case.

2. Claimants appealing a decision to disallow an ESA claim on the grounds that they do not have limited capability for work will be able to receive payment of ESA at the assessment phase rate, as they do now, provided they continue to provide medical evidence.

Other benefits, such as JSA and Universal Credit, can be claimed providing the claimant meets the conditions of entitlement.

3. The tribunal decision is based on the evidence presented by the appellant and the DWP decision maker in the appeal response. Each tribunal case is judged on its merits and it is unlikely that a claim for JSA whilst an ESA appeal is pending will influence the outcome.
4. If a claimant's appeal is unsuccessful and they wish to claim another benefit they must meet the conditions of entitlement for receiving that benefit. If they do not agree with the decision of the First-tier Tribunal they have the option of applying for permission to appeal to the Upper Tribunal if they believe that the First-tier made an error in law.

Jobcentre Plus advisers cannot decide that a claimant is unfit for work, especially where a Tribunal has decided that a claimant does not have limited capability for work.

5. After October 2013 ESA can still be paid at the assessment phase rate to claimants appealing against a decision that they do not have limited capability for work, providing medical evidence continues to be provided.

Claimants appealing against a decision placing them in the Work Related Activity Group rather than the Support Group will continue to receive ESA, unless their entitlement to contributory ESA has been extinguished.

Claimants receiving Universal Credit must meet the conditionality requirements to continue receiving benefit, which will be paid at the appropriate rate.