

Freedom of Information request 596/2013

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Information request

Please can you tell me if there are being imminent changes made to the system while appealing against an ESA decision.

Is it correct that the appellant, if found fit for work following an Atos assessment, will no longer be able to claim the assessment rate of ESA while waiting for the appeal to be heard? If so are there any other benefits the appellant can claim if this is the case?

Is it the case that if appealing against being put in the WRAG group you can carry on claiming the WRAG rate of ESA up to the appeal being heard?

Also what is the average waiting time for a tribunal appeal?

DWP response

Yes, the Welfare Reform Act 2012 has introduced changes to the dispute process. Whilst decisions remain appealable as now, no one will be able to make an appeal until a decision maker has reconsidered the decision – known as mandatory reconsideration. If an appeal is made before a decision has been reconsidered then it will be treated as an application for reconsideration in the first instance; a second appeal will need to be made once the reconsideration has been done. A second change is that appeals will be made direct to Her Majesty's Courts and Tribunals Service, not to the Department for Work and Pensions (DWP). Furthermore, an appeal will not be accepted as valid unless it is accompanied by the Mandatory Reconsideration Notice which the claimant will have received after his application for reconsideration has been decided.

Turning to the payment of ESA pending appeal, this will not change. ESA will be paid once an appeal has been lodged. When Universal Credit (UC) is implemented those who currently claim ESA income-related will be able to claim UC on the same ground. If they are found fit for work and appeal they will continue to receive UC but without any disability-related elements. However, you should note that ESA will not be paid during the reconsideration process. During this period the claimant can claim Jobseeker's Allowance or Universal Credit. But if an appeal is made and another benefit has not been claimed in the meantime then ESA will be paid in arrears to cover the reconsideration period.

During the period pending appeal claimants only receive the assessment phase rate of ESA – of course, and as explained above, this will not be the case if the claimant is in receipt of UC.

Turning to waiting times, the latest period for which information is available is 1 July to 30 September 2012. In this period the average time HMCTS took to clear an appeal, i.e. from date of receipt of the DWP's response to the tribunal's decision being sent to the appellant was 19 weeks. No figures are available for DWP.