

Freedom of Information request 1991/2013

Received 25 April
Published

Information request

Further details/clarification regarding the mandatory review process due to be launched for claimants appealing a decision that they do not have LCW/LCWRA following application of the Work Capability assessment.

In particular answers to the following questions I have about the changes.

1) During the mandatory review there will be no entitlement to assessment rate ESA, meaning that a claimant who was in receipt of ESA (IR) and only ESA (IR) at the time of the disallowance would have no other option than to claim JSA. From the information I have read it would seem this is the intended route in such a situation but my confusion is that in order to claim JSA a claimant must sign a declaration as being "fit for work" However it is also the case that during the period of the JSA claim the claimant would need to continue to submit med3/sick notes in order to keep their ESA claim/review live. Can you clarify if it is the case that to claim JSA(IB) during a ESA(IR) review the claimant would effectively have to declare themselves fit for work and unfit for work for a simultaneous period?

2) once the DWP have completed the mandatory review a claimant can then submit an appeal and receive ESA at the assessment rate. My question is, in a situation where a claimant:

*Requests a mandatory review of an ESA(IR) disallowance AND
The DWP does not revise the decision to disallow AND
The claimant does not claim JSA(IB) or any other benefit or allowance during the review AND
The claimant has received no other income during the review which would mean entitlement to the full personal allowance of income related benefit had a claim been live at the time,*

Is the claimant upon submitting an appeal either:

Entitled to ESA(IR) assessment rate from the date the appeal is lodged, hereby creating a substantial gap in payment for a period which the claimant has no entitlement to benefit at all

OR

Entitled to ESA(IR) from the date of the original disallowance decision on the grounds that they have had no income during the review period thus creating entitlement to income related benefits, and that the review period in question relates to a determination of a claimants LCW and that since the LCW determination has been appealed the claimant should be treated as having LCW until the appeal is heard.

3) If a claimant submits an ESA appeal and goes on to win the appeal, is the claimant entitled to arrears of WRAG or Support Group ESA from the date the appeal was lodged or from the date of the original “does not have LCW” determination?

4) Currently the law says that a new claim for ESA cannot be made within 6 months of the date of a previous claim ending on the grounds that the claimant does not have LCW. Under the new changes does the 6 month time limit apply from the original disallowance or from the date the DWP decided they could not revise the decision after the mandatory review?

Also if a claimant submits an appeal and then loses it, does the 6 month time limit for making a new ESA claim begin from the date of the original disallowance, OR the date the DWP completed the review but not revise the decision OR the date on which the appeal court upheld the original decision was correct?

5) It is my understanding that claimants waiting for a review on a ESA(IR) disallowance who have no other income have the option to claim JSA(IB). My questions about this are:

Would those waiting for ESA revisions be subject to the same conditionality as normal JSA claimants?

If a claimant failed to take part in work related activity or a mandatory interview because their health condition (the reason they were claiming ESA) made it impossible or inappropriate for them to do so at the time, does the DWP still intend to impose sanctions on the JSA of those in that situation?

If a claimant were to attend a jobcentre interview with a med3 form from a GP stating they are not fit for work (this will be needed to

continue the ESA mandatory review anyway) or that the work related activity the jobcentre staff have asked them to do would be unreasonable in their circumstances, would that have any impact on their JSA claim? If so what impact would it be likely to have?

6) In a situation where a claimant:

*Fails the WCA and asks for a reconsideration on their ESA(IR) decision
AND*

Claims JSA(IB) during the mandatory review period AND

*Has a health problem that causes them to fail to action their
Jobseekers agreement to the extent a DM takes the view the claimant
is not fit for work AND*

The DM sanctions or closes the JSA claim because of this.

In this situation does the DWP consider that the claimant is "fit for work" as per the outcome of the WCA and the fact they have claimed JSA which signifies they can work OR does the DWP consider that the claimant is unfit for work as per the decision to close the JSA claim and the fact the claimant is submitting certification as being unfit for work to complete the ESA review?

The mandatory review process causes contradiction in that everyone who claims JSA(IB) following an ESA(IR) review seems to be classed as neither fit for work nor unfit for work by the department. ESA say a WCA failure means you are fit for work but JSA say the sick notes and the inability to keep to a jobseekers agreement mean you are unfit for work. I would like clarification on which would apply to the claimant in this situation?

7) If a claimant requests a review of ESA(IR) disallowance and claims JSA(IB) during the review but then has their JSA sanctioned for failing to action their jobseekers agreement due to ill health, that would mean:

*ESA cannot be paid because a mandatory review is in progress AND
JSA cannot be paid because a sanction has been applied.*

In this situation is the claimant entitled to payments under the hardship provision?

If so would the deduction from their personal allowance be 40% as it is with the current JSA hardship rules or would it be 20% on the grounds that they are ill/disabled as proven by their ESA claim/review?

8) During the mandatory review process for ESA fit for work decisions will the DM be able or likely to request that Atos healthcare conduct a second face to face assessment at a MEC?

Also is the claimant given the opportunity to submit their own evidence during this process for example a medical report from a GP?

Is the claimant given the opportunity to speak to the DM over the phone or in person during the review process?

9) currently the law allows a new ESA claim to be submitted during an existing appeal on the original ESA claim if their condition has worsened or they have a new condition.

If a claimant develops a new or worsening condition after the original disallowance but before the review process is complete will they be allowed to submit a new ESA claim?

10) If a claimant is waiting for a review on a ESA(IR) decision and does not claim any other income related benefit in the mean time, what would happen with regards to their entitlement to other passported services such as free prescriptions, dental care, housing benefit and council tax reduction?

DWP response

1. This situation should not arise. ESA claimants who are found fit for work can either:
 - claim Jobseeker's Allowance;or
 - continue to submit continuous medical evidence to support their ESA claim and go down the mandatory reconsideration/appeal route. Claims can be made for JSA by people with health conditions and they are not required to provide medical evidence to do so.
2. In the circumstances you have outlined, so long as a claimant provides medical evidence ESA can be paid at the assessment phase rate pending the appeal from the date of the original disallowance decision.
3. If the appellant wins their appeal, any arrears of the component will normally be paid from the 14th week of the claim, in the event of a new claim, or the date the component was withdrawn in the case of a review.
4. The introduction of mandatory reconsideration does not change this. In both of these scenarios the 6 month time limit will apply from the date of the original disallowance decision (where that decision is upheld by the Decision Maker at mandatory reconsideration or by the Tribunal at appeal).

However, a new ESA claim can be submitted within 6 months where a claimant's current condition worsens or they develop a new condition.

5, 6 and 7

All claimants on JSA are subject to the associated conditionality regime and are required as a condition of entitlement to be:

- available for employment and
- actively seeking employment.

However, there are easements for claimants with a physical or mental health condition.

A claimant with a physical or mental health condition may restrict their availability in any way provided the restrictions are reasonable in the light of their physical or mental health condition. For example, a person with emphysema could restrict the:

- type of work - to avoid working in smoke or fumes;
- number of hours worked in a week;
- number of hours in a shift.

Where the claimant imposes acceptable restrictions because of their physical or mental health condition they do not have to show they have reasonable prospects of getting a job. However, they must show all the restrictions are reasonable and are connected with their health condition. A claimant may also restrict their travel time if they have a physical or mental health condition, which affects their ability to travel.

If a claimant provides a Statement of Fitness for Work (medical statement) and their Doctor has ticked 'you are not fit for work', they can be treated as capable, available and actively seeking employment.

The claimant can declare two short periods of sickness, without their entitlement to JSA being affected however, each period of sickness must not exceed 14 days and must not fall within 8 weeks of an earlier claim to Statutory Sickness Pay (SSP).

If a claimant provides a Statement of Fitness for Work and their Doctor has ticked 'you may be fit for work taking into account the following advice', they do not need to be treated as available and actively seeking employment or claim an alternative benefit.

In these situations the adviser will consider the claimant's availability and any restrictions which may be appropriate in light of the Doctor's comments and may review and amend the claimant's Jobseekers Agreement.

8. The Decision Maker will not request that a second work capability assessment is undertaken as part of the mandatory reconsideration process.

When a claimant raises a dispute on their benefit decision, they will be given an explanation by telephone and helped to identify any additional evidence that could change the decision. The Decision Maker will then reconsider the decision, taking into account the reasons for the dispute and any new evidence – therefore ensuring that claimants receive their correct entitlement at the earliest opportunity.

The Decision Maker can decide to revise the decision or to leave it unchanged. Regardless of the outcome, the claimant can appeal if they choose to do so.

9. As currently, a claimant will still be able to submit a new ESA claim after the original disallowance decision but before the review process is complete where their current condition has worsened or they have developed a new condition.

10. Claimants wishing to continue to receive passported benefits, such as help with health costs, would need to apply for these benefits in their own right on the grounds of low income. Further information is available from the NHS website:

<http://www.nhs.uk/NHSEngland/Healthcosts/Pages/Prescriptioncosts.aspx> .