



Challenging an ESA Decision – Being Found Fit for Work

What is the ESA50?

Employment & Support Allowance is a benefit for people who are unable to work due to sickness or disability.

At regular intervals throughout an Employment and Support Allowance claim, the DWP apply their own assessment (the Work Capability Assessment) of whether the claimant can be considered eligible to continue to receive Employment & Support Allowance.

What is the Work Capability Assessment?

The Work Capability Assessment comprises of a series of activities (called 'descriptors'); points are awarded depending on the how much difficulty the claimant has in performing each activity. The claimant must score in excess of 15 points to satisfy the Assessment.

It is important to note that this Assessment does not take into account whether the claimant can carry out their usual or previous occupation or any work that they are qualified for – it is a general assessment of the ability to perform everyday actions in a *theoretical* work place setting.

This assessment usually comprises of the claimant first completing the ESA50 form called the 'Limited Capability for Work Questionnaire'. After that is returned some (not all) claimants are asked to attend a face to face assessment.

The activities used and the points allocated are laid out in law; you can see our factsheet listing the 'descriptors'.

The Assessment takes into account your ability to carry out the activities using any aids, adaptations or prosthesis that you normally use or that you could be reasonably expected to use.

The assessment covers physical activities and "mental, cognitive and intellectual functions".

The Assessment should take into account of whether the claimant can perform the activity with **repeated regularity** – this is important if you can only manage to perform the activity once or a limited number of times but not again and again. You should explain if you experience increased pain or fatigue and this limits the number of times you can perform an activity or if you would need to rest.

In some **exceptional circumstances** a claimant might be accepted as having a limited capability for work, even if they do not score enough points to satisfy the Assessment, if there is a risk to their own – or someone else's physical or mental health if they were found not to have a limited capability for work.

Some claimants can be treated as having a limited capability for work and are exempted from the Assessment if they meet specified conditions.

What if I am found fit for work?

You can ask for a mandatory reconsideration. This can be done by telephoning Employment and Support Allowance on 0345 608 8545 or by writing a letter to them. You should look at the list of descriptors and identify which apply to you and why. You should give this information to the DWP when you ask for the mandatory reconsideration. If you have extra evidence, you should also send this to them.

Can I still be paid Employment and Support Allowance whilst I challenge the decision?

You cannot be paid Employment and Support Allowance whilst the mandatory reconsideration is being dealt with. The only option to receive benefit payments during this time for many claimants will be to make a claim for Job Seekers Allowance; in order to claim and receive payment of JSA you must be available for and actively seeking work – although there are some reduced conditions for disabled claimants.

It is inevitable that claimants will experience some disruption and delay to benefit payments while new claims are processed.

What if I am still unhappy with a decision?

If the decision is not changed at this stage you will be sent written notification and a Mandatory Reconsideration Notice. This document should give reasons for the decision and confirm your rights to appeal. You will need this Mandatory Reconsideration Notice if you wish to register an appeal with the HM Courts and Tribunals Service (HMCTS); this is called 'direct lodgement'.

There is a one-month deadline from receiving notification of the revised decision to register an appeal.

Under mandatory reconsideration you are unable to register an appeal unless the decision has been already looked at again and the Mandatory Reconsideration Notice issued.

The appeal must be made in writing and there are rules about the information needed to ensure that the appeal is properly made; the easiest way to do this is to use the relevant HMCTS form; there is an HMCTS appeal form (form SSCS1 and SSCS5 for Tax Credits appeals). We have copies of this form available at our offices.

The completed form should be sent directly to HMCTS, SSCS Appeals Centre, PO Box 1203, Bradford BD1 9WP (for cases in England and Wales) along with a copy of the Mandatory Reconsideration Notice you have been sent. If your appeal does not include all the information required, HMCTS will not accept your appeal and this could result in you missing the deadline.

Claimants will have to make sure that they have taken action to instigate both stages to challenge a decision in time. Firstly there is a deadline to

request a mandatory reconsideration and then there is a second deadline to register an appeal with HMCTS.

What about my payments?

Once the Mandatory Reconsideration has been carried out and you have had a letter from HM Courts and Tribunals to confirm you have an appeal registered any claims for Job Seekers Allowance made in these circumstances can usually be transferred back to Employment & Support Allowance, but claimants should always check the situation with their own claim. This is only possible if you have a medical certificate from your GP confirming you are unfit for work at least from the date your Employment and Support Allowance was initially stopped.

You will then be paid at the assessment rate until your appeal is heard.

More details about how best to challenge decisions can be found on our factsheet 20: "Mandatory Reconsideration".



Community Law Service offer specialist benefit advice to assist with identifying benefit entitlement, claiming benefits, understanding benefit decisions and registering benefit challenges and appeal. We can offer appointments to give advice and assistance to prepare for benefit appeals.