



## Being Found Fit for Work – ESA or UC

Claiming Employment and Support Allowance or Universal Credit on the grounds of being unfit for work requires claimants to be assessed by the DWP and a test called the Work Capability Assessment being applied. This involves the claimant completing a questionnaire (ESA50 for ESA claimants and UC50 for Universal Credit claimants).

At regular intervals throughout such claims, the DWP apply Work Capability Assessment.

### ***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.

The activities used and the points allocated are laid out in law.

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 you.

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 such as having treatment for some conditions such as cancer, or who are in hospital.

### ***What if I am found fit for work?***

You can ask for a mandatory reconsideration within 1 month of the decision. This can be done by contacting the office that made the decision. 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 benefit whilst I challenge the decision?***

You cannot be paid Employment and Support Allowance whilst the mandatory reconsideration is being dealt with. Seek advice if you live in an area starting to roll out Universal Credit. If you claim Universal Credit at this time, you may not be able to return to ESA even if you later win your challenge. Universal Credit claimants would remain entitled but you are likely to be required to be available for and actively seeking work – although there are some reduced conditions for disabled claimants. Speak to your work coach.

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 HMCTS form SSCS1; 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?***

For Employment and Support Allowance claimants, once the mandatory reconsideration has been carried out, it may be possible to re-start your claim at the assessment rate pending the appeal hearing. For this to happen the following must apply:

- you have had a letter from HM Courts and Tribunals to confirm you have an appeal registered
- you have provided ESA with 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 have not claimed Universal Credit.

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

For Universal Credit claimants, your payments should have continued and continue to do so pending your appeal, but you may still be required to meet work search requirements. Any concerns you have over this should be discussed with your work coach and you can ask for your Claimant Commitment to be reviewed if the requirements are difficult to meet due to your illness/disability.

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.**