



## Fit notes **SHOULD** be issued to ESA claimants who are appealing

Employment and support allowance (ESA) claimants who lodge an appeal against a decision that they are capable of work **should** be issued with fit notes by their GP. This was confirmed by the Secretary of State for Work and Pensions in March 2019.

Failure to issue fit notes in these circumstances, due to a mistaken belief that they are no longer required, could lead to a complaint being made against a GP.

Where a claimant suffers harm due to the lack of a fit note, either because they are left destitute or because they are obliged to attempt to meet job seeking requirements which further damage their health, there are likely to be grounds for a legal claim against the GP practice.

### Background

The DWP have made changes to the form ESA65B, which is issued to GPs when a claimant is found capable of work.

Previously form ESA65B clearly stated that *“you may have to give your patient new medical statements if they decide to appeal against our decision”*.

In an attempt to simplify the form, references to appeals were omitted from the new ESA65B. However, the regulations relating to fit notes have not changed in any way and it is still necessary to issue them to claimants who have lodged an appeal.

Currently, 74% of claimants who lodge an ESA appeal go on to win, meaning that in the vast majority of cases the independent tribunal agrees with the view of the GP rather than the DWP.

### Confirmed by Secretary of State

The requirement to resume issuing fit notes during an appeal was confirmed by the Secretary of State for Work and Pensions, Amber Rudd on 18 March, 2019. Her statement is recorded in ***Hansard Topical Questions*** and on the parliament website. Rudd stated [See 1 overleaf]: *“These letters simply inform GPs when a claimant has been found fit for work, and are not intended to dissuade them from issuing fit notes for ESA appeal purposes. To claim otherwise is inaccurate.”*

### Confirmed by DWP

This requirement is also included in the current edition of: ***The benefits system: a short guide for GPs*** March 2018, published by the DWP and available from the .gov.uk website. [See 2 overleaf]: *“No further fit notes will be required unless the patient wishes to appeal the decision.”*

### Problem highlighted by Work and Pensions committee

The problem caused by the DWP issuing a misleading communication in relation to ESA fit notes was raised in a letter dated 11 January, 2019 from Frank Field, Chair of Work and Pensions Committee to Sarah Newton MP, the minister for disabled people at that time. A copy of the letter can be downloaded from the parliament website. [See 3 overleaf].

### Conclusion

Unless a patient’s condition has improved to the degree that their GP no longer considers that they meet the requirements for a fit note, then fit notes should be issued as normal until their appeal has been decided.

### **1 Hansard. Topical Questions 18 March 2019**

<https://hansard.parliament.uk/Commons/2019-03-18/debates/5F534D50-687F-4704-9864-B5EA0D13C763/TopicalQuestions#contribution-A20D21F1-0733-41DD-8924-2F27B443825E>

Marsha De Cordova (Battersea) (Lab)

Shocking reports have emerged today that ill and disabled people are being left without vital social security, as the Department for Work and Pensions has sent misleading letters to GPs advising them that they no longer need to provide fit for work notes to patients who are refused employment and support allowance. Patients need those notes to access the assessment rate of ESA if they are appealing the decision, and this obviously results in many being left close to destitution and in rent arrears. Will the Secretary of State commit today to reword these letters and immediately prevent any further harm to any ill and disabled people?

#### **Amber Rudd**

I thank the hon. Lady for giving me the opportunity to set the record straight. These letters simply inform GPs when a claimant has been found fit for work, and are not intended to dissuade them from issuing fit notes for ESA appeal purposes. To claim otherwise is inaccurate. We are committed to ensuring our communication is clear, which is why the wording of this letter was cleared by both the British Medical Association and the Royal College of General Practitioners. However, we will of course consider feedback when revising the letter.

### **2 The benefits system: a short guide for GPs. DWP publication, March 2018**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691502/the-benefits-system-a-short-guide-for-gps.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691502/the-benefits-system-a-short-guide-for-gps.pdf)

Fit notes are required until DWP makes a decision on their claim if the patient remains unfit for work. Once DWP has made a decision on whether to award benefit, they will write to you and your patient to let you know. No further fit notes will be required unless the patient wishes to appeal the decision. If your patient's appeal is unsuccessful, you should only issue further fit notes if their condition worsens significantly or they develop a new condition.

Where an ESA disallowance is confirmed following an MR [mandatory reconsideration], ESA is payable pending an appeal against a decision that a claimant does not have limited capability for work, unless this was due to the claimant's failing to return the ESA50 questionnaire or attend a medical assessment.

### **3 Letter to Sarah Newton MP from Frank Field, Chair of Work and Pensions Committee. 11 January 2019**

<https://www.parliament.uk/documents/commons-committees/work-and-pensions/FF-SN-ESA-GP-letters-17-19.pdf>

Employment and Support Allowance (ESA) claimants who are appealing the Department's initial decision on their ESA claim are entitled to receive an "assessment rate" of ESA pending their appeal. To obtain this they must supply regular "fit notes" from their GP.

It has been brought to my attention that the Department has been writing to claimants' GPs attempting to dissuade them from issuing fit notes for this purpose.

You can download copies of this factsheet from this link:

<https://www.benefitsandwork.co.uk/employment-and-support-allowance/esa-appeals#gp>