**ESA and UC Appeals: Information for clients who have failed the Work Capability Assessment**

This factsheet advises on what to do if you receive a letter to say you are no longer entitled to ESA because you have scored fewer than 15 points in the work capability assessment and/or Universal Credit has carried out a work capability assessment and the DWP consider you to be capable of work or don’t meet requirements for Limited Capability for Work Related Activities . In simple terms – the DWP don’t consider that you are not able to look for work due to poor health. You may have received a letter or note on your journal stating that you don’t achieve 15 points on the work capability assessment or that you do not meet any of the criteria to show that you cant take steps for work preparation or work related activities.

You can be exempt from having to score 15 points in certain **exceptional circumstances** i.e

* You have an uncontrolled or uncontrollable life-threatening disease or something contagious that could be passed to another person
* Because of your illness, there would be a substantial risk to the mental or physical health of any person if you were to be found capable of work.

If you think you should be in one of these groups, you will need to provide evidence to support the fact, e.g. doctor’s letter. Other situations may meet this criteria but there are not all covered here

In order to pass the first stage of the Work Capability Assessment, you must generally score 15 points for your limitations in carrying out a range of activities (there are some exceptions to this) summarised below:

* Moving around
* Standing or sitting
* Reaching
* Picking things up and moving them
* Using your hands
* Speaking, writing and typing
* Hearing or understanding messages
* Getting around safely
* Control of your bladder, bowels or stoma
* Staying conscious when awake
* Learning how to do tasks
* Being aware of danger
* Starting a task and finishing to the end
* Coping with changes
* Coping with getting about on your own
* Dealing with other people
* Behaviour with other people

After you have had a Work Capability Assessment, there are 3 possible outcomes:

* You **scored 15 points or more** and have been placed in the **support group** for ESA or if you are on Universal Credit you will continue to claim without meetings with your personal advisor to consider steps to fining work. You will receive and additional amount on top of your ESA or UC (support group or limited capability for work related activity component. You do not need to do anything.
* You **scored more than 15 points** and have been placed in the **Work-Related Activities Group**. Your money will continue and you will be required to take part in work-related activities if you don’t, you may be sanctioned (benefit stopped/reduced)
* You **scored fewer than 15 points** and it has been decided that you are capable of work. Your **ESA will stop**/not be awarded and if you have no income you will need to claim Jobseekers Allowance or Universal Credit and take steps to find work required by the DWP. You can ask for a Mandatory Reconsider but should consider financial implications of not claiming one of the above benefits

Those people who are assessed as being incapable of any work-related activity will be placed in the **support group -** this is assessed as part of the Work Capability Assessment and will be notified to you in the decision letter. You could automatically be in the support group if:

* You have a terminal illness
* You are receiving chemotherapy or radiotherapy for cancer, are recovering from such treatment, or are expecting to receive such treatment in the next six months
* You are suffering from a specific disease or disablement because of which there would be a substantial risk to your mental or physical health or to the mental or physical health of someone else if you were found not to have limited capability for work-related activity
* You are pregnant and there would be serious risk of damage to your health or your baby’s health if you have to carry out work-related activity

**What to do if you disagree with the decision - Reconsiderations and Appeals**

**Mandatory Reconsiderations**  All cases have to be ‘reconsidered’ by the DWP before the case can be appealed. Reconsiderations can be done by phone or in writing (or by putting a note on your journal for Universal Credit). The claimant will not be eligible for ESA payments whilst this reconsideration is in progress, the review process has no time limit, guidance is 28 days. UC claimants will be required to carry out steps to look for work (which are agreed on the claimant commitment)

Remember the deadline to reconsider is ONE MONTH from the date on the decision letter (or note in UC journal) that refuses benefit so do not delay in requesting a reconsideration. Ideally put this in writing and post the original mandatory reconsideration request. You can phone the number on the top of the letter and verbally request a reconsideration, make a note of the day/time/person spoke to.

DWP will carry out an internal review of the decision. This means that a different person but someone within the DWP will reconsider the decision again and may reinstate ESA/accept reduced or not work seeking activities. Most cases fail to get a new decision but your reconsideration is more likely to be successful if you provide supporting medical evidence so if you can send more information it would be worth doing so at this stage. You will not be entitled to any ESA whilst the DWP are reconsidering their decision at present we do not know how long this stage may last so if you have no income consider other options mentioned in the factsheet below (JSA /UC claim)

**Appeals**

Once your case has been ‘reconsidered’, if the decision is still to refuse you can appeal. You should appeal within one calendar month of the date at the top of the decision letter, using a form SSCS1. Send it to the office that made the decision and attach a copy of the mandatory reconsideration refusal letter. Keep a copy of the form. It should be sent directly to the appeals services. **If you have never lost an appeal in the past** once your appeal has been accepted by the appeals service your ESA will be reinstated and backdated for the period it ceased. You still need to be covered by a medical certificate. Benefit will be paid at the lower basic rate until the appeal is heard. It may take some time before the appeal is lodged and money reinstated so you should also consider the following:

In the case of UC applicants even though you are appealing you will still have to have a claimant commitment that will require you to be actively seeking and available for work, carry out steps to find work in order to continue to be eligible for benefit

* If you are on ESA your Housing Benefit/Council Tax Reduction will stop and you may be asked to pay full rent/council tax. Let the HB section know that you are appealing an ESA decision, provide proof of any income you do have, and ask them to continue to pay HB. (See template letter)
* You may have the option of claiming Universal Credit or JSA while you are asking for a reconsideration as your benefit will stop completely until the reconsideration has been completed. You may not be able to manage financially without claiming UC or JSA. If you do decide to claim UC/JSA you should inform them of limitations in you abilities to look for work because of health/disability but you must be ‘available for’ and ‘actively seeking’ work to be eligible. Also remember that you do not HAVE to claim these you might be able to receive a lower rate of ESA whilst appealing and you will never be able to return to ESA if you claim Universal Credit
* Universal Credit is not likely to be financially advantageous whilst appealing and could mean loss of some components paid in ESA, check [www.turn2us.org](http://www.turn2us.org) to check the financial implications
* In the long term all ESA claimants will be transferred to UC
* If you have a partner, it may be better for them to become the benefit claimant (if possible) whether for JSA, ESA or Income Support if they are a carer. UC is a joint claim (both members of the couple have to meet criteria)
* If your condition has significantly worsened since your WCA, or if you have a new medical condition that makes you unable to work, you can make a fresh claim for ESA or ask Universal Credit to assess you for your capability to work

**If you have had a previous ESA appeal which ‘lost’ you will not be paid any ESA whilst appealing. You should strongly consider the alternative options above (JSA/Universal Credit).**

Once an appeal has been lodged, it will eventually be listed by the Tribunal Service for a hearing. You should attend the hearing as this is your opportunity to explain how your condition affects you and why you think you are unable to work/should be in the support group. It may take between 1 and 3 months for a hearing

While you are waiting for your hearing you should seek medical evidence and advice for support on your case. GP and/or your consultant if you have one, a copy of an Occupational Therapy assessment, care plan, would be good evidence for the tribunal. Send supporting medical evidence to the DWP unless you have received a letter from the Tribunal Service to say they have received your appeal, in which case send it to them.

**The hearing**

Some weeks or months after sending your appeal, you will receive a **bundle of papers** containing all the information about your ESA decision and appeal. It will include a copy of the ESA50 you completed, and a copy of your work capability (medical) assessment. You should read this carefully to see if there are any gross inaccuracies. The Tribunal Service will arrange a hearing which should be at an accessible venue in London.

You should make every effort to attend the hearing, and if it is at a time or date you cannot make, you should call or write to the Tribunal Service as soon as possible to ask for it to be re-arranged. If you are unable to use public transport and your GP will give a letter confirming that is the case, you will be able to claim back the cost of cab fares to and from the hearing.

The appeal will be heard by two people, a lawyer and a doctor. They will ask you questions about your condition and about how you spend a typical day. If you have asked for an interpreter/signer, they should be there and you do not need to go ahead if they are not. You should be given a decision in writing on the day, but occasionally this may be posted out the next day.

If you are in financial hardship and/or have no income you may be eligible for **crisis support grant** or **foodbank** vouchers <http://myaccounts.towerhamlets.gov.uk/scripts/orev.wsc/ibsxmlpr.p?docid=da_screentree>

Advice centres can help you access these

**You can obtain advice on dealing with reviews and appeals from a number of advice centers in Tower Hamlets, wwww.thcan.org.uk lists agencies, factsheets, opening times, services**

[**http://thcan.org.uk/benefits-advice/**](http://thcan.org.uk/benefits-advice/)