**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 Employment Support Allowance because you have scored fewer than 15 points in the work capability assessment or a letter/note on your Universal Credit journal stating that you did not achieve 15 points on the work capability assessment and/or that you do not meet any of the requirements for limited capability for work-related activities. In simple terms – the DWP do not consider that you are not able to look for work due to poor health.

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 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

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

* 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.

***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 these criteria but there are not all covered here.***

**After you have had a Work Capability Assessment there are three possible outcomes**

* You ***scored 15 points or more*** and it has been decided that you are incapable of any work-related activity. If you are on ESA you will be placed in the support group; if you are claiming Universal Credit you will be placed in the LCWRA group. You do not need to do anything and will get paid an additional amount. ***You could be automatically placed in these groups if you meet any of the exceptional circumstances mentioned above.***
* You ***scored more than 15 points*** and it has been decided that you have limited capability for work but need to take steps to prepare for work in the future. You will be required to take part in work-related activities, no compliance could lead to sanctions (benefit stopped/reduced) and you will only be paid an additional amount if you were receiving ESA before 3 April 2017.
* You ***scored fewer than 15 points*** and it has been decided that you are capable of work. If you are on ESA your benefit stops, and you may need to claim Universal Credit. If you are already claiming Universal Credit you will have to be actively looking for work, or you could be sanctioned.

**What to do if you disagree with the decision**

**Mandatory Reconsiderations**

If you think the WCA decision is wrong, you can ask the DWP to look at it again. All cases have to be ‘reconsidered’ by the DWP before the case can be appealed. 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, either by post or add a note to your UC journal. You can also phone the number on the top of the letter and verbally request a reconsideration, make a note of the day/time/person spoke to. The 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 your benefit or 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 eligible for ESA payments whilst this reconsideration is in progress, the review process has no time limit, guidance is 28 days. If you have no income consider other options, as claiming Universal Credit. If you are already in receipt of Universal Credit your standard allowance will continue to be paid as normal, but the limited capability for work element will stop.

If your condition has significantly worsened since your WCA, or if you have a new medical condition that makes you unable to work, you will need to claim Universal Credit and ask them to reassess you for capability for work. You can only make a new ESA claim if this is contribution-based, now called New-style Employment Support Allowance. This means you will need to have been an employee or self-employed and paid National Insurance contributions, usually in the last 2 to 3 years.

**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 (if you miss the one month-time limit you can ask for an appeal within 13 months of the date the decision if you can give good reasons why this is late). You can lodge your appeal online [https://www.gov.uk/appeal-benefit-decision/submit-appeal or using a SSCS1](https://www.gov.uk/appeal-benefit-decision/submit-appeal%20or%20use%20a%20SSCS1) form. Keep a copy of the form which should be sent directly to the appeals services.

* ***If you have never lost an appeal*** once your appeal has been accepted by the appeals service, your ESA will be reinstated and backdated for the period it ceased. This will be paid at the lower basic rate until the appeal is heard and you still need to be covered by a medical certificate. In the case of UC applicants even though you are appealing you will still have to have a claimant commitment that may require you to be actively seeking and available for work, carry out steps to find work to continue to be eligible for benefit.
* If you are on ESA, your HB&CRT 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 while you are asking for a reconsideration as your benefit will stop completely until the reconsideration has been completed. If you do decide to claim UC, normally you have to be ‘available for’ and ‘actively seeking’ work to be eligible. Therefore, you must inform them of limitations in your abilities to look for work because of health/disability and provide a medical certificate.
* Claiming Universal Credit whilst appealing could mean loss of some components paid in ESA, check [www.turn2us.org](http://www.turn2us.org) to find out if transitional rules apply. Also, remember that that UC is a joint claim (both members of the couple have to meet the criteria). You might be able to receive a lower rate of ESA whilst appealing as you will never be able to return to ESA if you claim Universal Credit.
* If you decide to claim UC and your ESA appeal is successful, the limited capability for work element can be included from the start of the first assessment period and a new WCA may not be immediately necessary. The limited capability for work element abolished in UC (work-related activity component in ESA) will continue to be paid provided you have been getting ESA from before 3 April 2017.
* In the long-term all ESA claimants will be transferred to UC.

***If you have had a previous ESA appeal which ‘lost’ you will not be paid any ESA whilst appealing and should consider claiming Universal Credit.***

Once an appeal has been lodged, it will eventually be listed by the Tribunal Services 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/take part on the work-related activities. It may take more than three months for a hearing. While you are waiting for your hearing you should seek medical evidence in support of your case. Letters from GP and/or your consultant if you have one, a copy of an Occupational Therapy assessment, care plan, are good evidence for the tribunal. You can send supporting medical evidence to the Tribunal Services anytime whilst waiting for your appeal to be listed, but no less than 14 days before your hearing.

**The hearing**

After a month or so of lodging your appeal, you will receive a ***bundle of papers*** containing all the information about your WCA decision and appeal. It will include a copy of the ESA50 and/or UC50 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 may take place over the phone or by video call, and in some instances at a venue in London. If you have to travel to attend your hearing and 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.

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 Services as soon as possible to ask for it to be re-arranged.

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 **the residents support scheme** or **foodbank** vouchers <https://www.towerhamlets.gov.uk/lgnl/advice_and_benefits/Residents_Support_Scheme.aspx>

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/)