**Employment and Support Allowance Appeals**

**Information for clients who have failed the Work Capability Assessment**

If you have attended a Work Capability Assessment and have now received a letter to say you are no longer entitled to ESA, this means that you have scored fewer than 15 points in the assessment, and the DWP consider you to be capable of work.

You will 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 Work Capability Assessment, you must 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

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

* **You scored 15 points and have been placed in the support group. Your ESA will continue at the support group rate. 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.**

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 should 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**

**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. The claimant will not be eligible for ESA payments whilst this reconsideration is in progress, we are unsure yet as to how long the review process will take at present, guidance is 28 days.

Remember the deadline to reconsider is ONE MONTH from the date on the decision letter that refuses benefit so do not delay in requesting a reconsideration.

Reconsideration requests can be faxed to the ESA in Glasgow the number is: 0141 3548 777 You should also post the original. Alternatively they can phone the number on the top of the letter and verbally request a reconsideration, they should make a note of the day/time/person spoke to.

If you are in financial hardship and/or have no income you should phone and try and ensure the decision is made as quickly as possible. You could also send further evidence at this stage, you may receive a phone call from DWP discussing your health and disabilities in order to reconsider their decision, you should provide as much information as possible and as soon as possible.

DWP, they will recarry 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. 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 claim)

**Appeals** Once your case has been ‘reconsidered’, if the decision is still to refuse ESA 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 reconsideration refusal letter. It is a good idea to keep a copy of the form. It should be sent directly to the appeals services.

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 (£71.70 if you are single, £112.55 for a couple but you might be entitled to additional premiums on top of this) 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:

* 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)
* It may be more in your interests to claim 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 JSA. You should inform JSA of limitations in you abilities to look for work because of health/disability but must be ‘available for’ and ‘actively seeking’ work to be eligible
* In some situations you may be financially better off and It may be more in your interests to claim JSA while you are requesting reconsideration/appealing, e.g. if you get Disability Living Allowance you will be entitled to extra benefit (Disability Premium) which is not payable with ESA.
* If you have a partner, it may be better for them to become the benefit claimant whether for JSA, ESA or Income Support if they are a carer.
* 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.
* Once six months have passed from the date of the decision that you were capable of work, you can make a fresh claim for ESA.

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 3 and 12 months for a hearing

While you are waiting for your hearing you should seek medical evidence to support your case. This may be a letter from your GP and/or your consultant if you have one, a copy of an Occupational Therapy assessment, care plan, a diary kept by you for a week or two describing the help you needed/difficulties you experienced during that period, letters from carers/family/friends.

When you obtain supporting medical evidence you should send it 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 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.