

DWP Central Freedom of Information Team

e-mail: freedom-of-information-request@dwp.gsi.gov.uk

Our Ref: FOI 4180

12 September 2013

Dear Ms Lowe,

Thank you for your Freedom of Information request dated 30 August 2013. In this request, you asked:

I have just read over 200-pages of your: Can the Work Programme work for all user groups? First Report of Session 2013-14 and it begs some questions:

You state in this document and I quote:

"We recommend that DWP work with providers to agree a process by which participants whom providers believe are clearly unfit for work can be referred back to Jobcentre Plus".

So my questions are thus:

Q1. When a person fails the ATOS assessment and is found "fit for work" what happens if he doesn't fit the criteria for JSA? What is his/her recourse, when he's failed the claim for ESA and can't sign on? What benefits can he claim?

Q2 if a failed ESA claimant – through sheer destitution – signs on JSA and the work programme find him/her clearly unfit for work do you:

- (i) Sanction the claimant because he's deemed too ill?*
- (ii) Deny the claimant any benefits at all?*
- (iii) Allow him/her the ESA s/he was initially denied?*
- (iv) Let the claimant claim sickness pay*

Q3. ATOS assessors claim they have nothing to do with the decision making and yet Atos Trainer 1 (on Channel 4's dispatches aired Monday 30 July 2012 at 20:00) said: "You shall remember this new benefit Employment Support Allowance was meant to take people off the benefit." Please can you tell me how much involvement ATOS has in the decision making? And why do the decision makers always believe ATOS, even if you the claimant can prove that ATOS lied or were inaccurate?

I will answer each of your questions in turn:

Question 1:

When a person does not meet the criteria for Employment and Support Allowance or Jobseeker's Allowance they may satisfy the criteria for Carers Allowance (CA) or Income Support (IS).

Information about the eligibility for CA and IS is available on the GOV.UK internet site via the following link:

<https://www.gov.uk/browse/benefits>

Question 2:

To qualify for Jobseeker's Allowance (JSA), unemployed people must be available for and actively seeking work. They are also required to enter into a Jobseeker's Agreement in which they agree the steps they will take to improve their chances of finding employment. JSA claimants generally have to be available immediately for any work and for a minimum of 40 hours each week; however there are exceptions to this rule.

In accordance with Regulation 13(3) of the Jobseeker's Allowance Regulations (1996), people who suffer from a mental or physical condition that limits the work they are able to do can restrict their availability for work in any way providing their restrictions are reasonable in the light of this condition. .

The Jobseeker's Allowance Regulations (1996) are freely available on the internet via the DWP Website, and can be accessed via the following link:

<http://www.dwp.gov.uk/docs/a11-4001.pdf>

The role of a Work Programme Provider is not to determine whether a person is fit/unfit for work, rather providers are required to help Work Programme participants find and stay in work.

Whilst people are on the Work Programme, they usually have to continue to fulfil the conditions for claiming JSA. Where a Work Programme Provider suspects that a claimant is not fulfilling these conditions then they are required to notify Jobcentre Plus of this.

Where a claimant does not actively seek work and/or is not available for work their JSA will stop and their claim will end. In order to get paid Jobseeker's Allowance again the person will need to reclaim JSA, however if a person reclaims JSA after such a failure, they may have a further sanction imposed on their JSA, in accordance with Regulation 69B of the Jobseeker's Allowance Regulations (1996).

Question 3:

The Decision Maker gives a considered opinion taking into account all available information. This includes the claimants answers on the form ESA50, any supporting evidence the claimant may have included or have been obtained by Atos Healthcare e.g. doctors or consultants reports and the assessment report provided by Atos Healthcare. All evidence is given equal consideration. Before a claim is disallowed the Decision Maker will attempt to contact the claimant by phone to discuss if they have any further evidence they would wish to be taken into account.

Information about the Work Capability Assessment process is available on the internet in the DWP Decision Makers' Guide via the following link:

<http://www.dwp.gov.uk/docs/dmgch42.pdf>

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk