

DWP Central Freedom of Information Team

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

Our Ref: VTR 4300

30 September 2013

Dear C. Robinson,

Thank you for your Freedom of Information request received on 8 September 2013. You asked:-

Dear Department for Work and Pensions,

I am writing this FOI because I have seen many differing views regarding clause 99 and the catch 22 situation that it puts sick and disabled claimants in,

So my questions are thus:

Q1 When a person is refused ESA and appeals against the decision, what benefits can he claim if s/he has no income?

Q2 If an ESA refusal claimant is too "fit" for ESA, but too sick or disabled for JSA what is there recourse?

(i) How will they pay their bills?

(ii) How will they be able to get medication? (as they will not be on any benefits to qualify for free prescriptions)

(iii) What about their homes? Will you still cover the rent? Or will you be setting up modern-day workhouses?

(iv) Where are their human rights? I refer to article 6 and 25 respectively. Article 6 of the European Convention on Human Rights act is a provision of the European Convention which protects the right to a fair trial. In criminal law cases and cases to determine civil rights it protects the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged in a criminal case (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter). Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event

of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Q3 How can someone have a fair hearing (see article 6 above) at a tribunal when you have driven them into a catch 22 situation? i.e. A claimant refused ESA, through sheer destitution has to sign on and as soon as they do it cancels out their appeal, even though they are too ill to work and have no chance of getting a job. How legal is this since the UK signed the Human Rights act? Pursuant of this how many appeals will be made to the ECHR?

Q4 When a person is turned away from the JCP because s/he doesn't fit the criteria to sign on (their illnesses means hospital appointments, etc) what are their rights if any?

Q5 What impact will Clause 99 have on the Infrastructure? i.e:

(i) The NHS?

(ii) Foodbanks?

(iii) Social Services?

(iv) The Police (people HAVE turned to crime when they have no income whatsoever)

(v) Local Councils (How can people pay the council tax with no money)?

Q6 How long will it be before the application of Clause 99 causes chaos and meltdown?

Q7 How many deaths will this cause?

Contrary to your interpretation, I can confidently say that Clause 99, which became section 102 of the Welfare Reform Act 2012, does not create a catch-22 situation.

When someone is found fit for work, in the period whilst their application for mandatory reconsideration is being considered, that person can claim Jobseeker's Allowance, Carers Allowance, Personal Independence Payment or Income Support. It is accepted that for the majority it will be Jobseeker's Allowance which is where you see the catch-22 arising. But this is not correct.

Although someone who is seeking a reconsideration may protest to the Jobcentre adviser that they are not fit for work, the adviser is trained to work with those who so present themselves. Disability Employment Advisers, trained by specialist staff from the department's Disability Employment Service, will work with those who identify themselves as having a health condition or disability. They will take into account individual circumstances and will consider placing limitations on a claimant's availability or modifying their work conditionality. Even if an individual provides a Fit Note from their doctor they can still claim and be entitled to Jobseeker's Allowance if they meet the eligibility rules.

Against this background your questions about paying bills, buying medication, paying rent, human rights, a fair tribunal hearing, the NHS, food banks etc., all fall away. Your concerns are not new having been raised by welfare groups and in Parliament. But Parliament has agreed that the right safeguards are in place to mitigate the effects you and others believe will arise.

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, London, 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