

C Robinson

C Robinson <request-175900-33fd6581@whatdotheyknow.com>

13 January 2014

FOI ref: IR 906

Dear C Robinson

Thank you for your Freedom of Information (FOI) review request, which we received on 26 December 2013.

I am of a senior grade to the person who dealt with your request previously, and can confirm that I have carried out an internal review. I am now in a position to respond to you.

You have asked us ... "I am writing to request an internal review of Department for Work and Pensions's handling of my FOI request 'Clause 99 and the Catch 22 situation it puts ESA Claimants' in'.

because you state and I quote from your reply: "Your original question is based on the premise that there is a middle ground between being found not to have limited capability for work following an ESA work capability assessment and being able to meet the conditions for receiving JSA. Decisions made on limited capability for work following completion of a work capability assessment are binding on decision makers across the Department. Where an ESA decision maker has decided that a particular claimant does not have limited capability for work a JSA decision maker cannot subsequently dispute that decision.

I should also like to remind you that the Freedom of Information Act is about the supply of recorded information held only, and is not about entering into a debate. A number of the questions you pose are purely seeking opinion or attempting to initiate a debate on the merits of Departmental policy. In view of this the Department is under no obligation to answer, and

may decide not to respond to further FOI Requests on this matter.

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

First of all allow to say I don't want to get into any form of debate with you over politics or any other matter, I simply asked you for information and you answered with lies, allow me to elucidate:

you claim that there is NO middle road or catch 22 if you will between being found not to have limited capability for work following an ESA work capability assessment and being able to meet the conditions for receiving JSA and yet cases are being exposed every day about claimants that are too ill to sign on JSA see this link:

<http://www.gloucestercitizen.co.uk/Christmas-cancelled-Gloucester-disabled-family/story-20337786-detail/story.html>

you state that: Where an ESA decision maker has decided that a particular claimant does not have limited capability for work a JSA decision maker cannot subsequently dispute that decision. How come your JCP staff wouldn't allow this man to sign on if that were so? You claim in the above newspaper article A spokesperson for the Department of Work and Pensions said: "It is important that we don't simply write people off. There is strong evidence that working can be beneficial for many people who have a health condition." Isn't this evidence of what I initially said: clause 99 causes catch 22 and how can this poor man work if

*1) he's too ill to be allowed to sign on
2) your disability denial factory AKA WCA, (which is that FLAWED even the prime minister said -on Oct 16th 2013 = that it had to improve) has found him "fit" for work Finally, I have another question, if someone is in a clause 99/catch 22 situation what rights does he have since its illegal (under the Human Rights Act) to starve a person.*

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/clause_99_and_the_catch_22_situa

First, the principles and process outlined in the previous reply remain good law. Someone coming off ESA cannot be denied the right to claim Jobseeker's Allowance (JSA) if that is their choice. Some claimants will genuinely believe that they cannot possibly be entitled to JSA because they are too sick to work - as evidenced by their Mandatory Reconsideration application. However, any claimant who presents himself at a jobcentre must be given the opportunity to make a claim, explain his predicament, as he sees it, and for the Adviser to let him know that that may not be an obstacle to employment. It is 'may' because, of course, there is the Claimant Commitment to be signed. But, and as you are aware, this can be drafted to reflect the claimant's health condition. This may not be as 'softly, softly' as the claimant would like but then at that time he has been found fit for work by a decision maker (not Atos) - a decision moreover which is final in law - and is claiming a benefit for job seekers.

The rights of ex-ESA claimants are as explained above. Further, whilst a claimant is claiming Jobseeker's Allowance if he has requested a Mandatory Reconsideration this will be dealt with separately. If this is not successful the claimant can then appeal and go back on to ESA if that is his choice. I cannot, of course, comment on the handling of the cases you refer to.

I hope this is helpful but if you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely

DWP Freedom of Information

Your right to complain under the Freedom of Information Act

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