

JSA AND EXTENDED PERIODS OF SICKNESS

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INTRODUCTION

- 1 This memo provides guidance on the Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2015 (S.I. 2015 / 339). The regulations come into force on 30.3.15¹.

1 Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2015, reg 1

- 2 The amendments may allow JSA claimants to remain entitled to JSA despite being unable to work due to illness for a period of up to 13 weeks. This means that claimants can elect to stay on JSA rather than make a claim to ESA. There are also changes to

ESA legislation which affect how the assessment phase is calculated for certain former JSA claimants. This memo must be read in conjunction with Memo DMG 10/15.

EXTENDED PERIOD OF SICKNESS FOR JSA

- 3 In addition to the existing short periods of sickness consisting of a period of no more than two weeks no more than twice in a JSP/12 month period¹ (see DMG 20991), there is now an extended period of sickness (EPS) of up to 13 weeks.

1 JSA Regs, reg 55

Conditions

- 4 This EPS¹ applies to a person who
1. has been awarded JSA **and**
 2. proves to the DM that they are unable to work because of some specific disease or disablement **and**
 3. either
 - 3.1 declares that they have been unable to work or expects to be unable to work for more than 2 weeks but does not expect to be unable to work because of that disease or disablement for more than 13 weeks **or**
 - 3.2 is a person who has already had 2 short periods of sickness within the current JSP or 12 months where the JSP exceeds 12 months
 4. during this period, satisfies the requirements for entitlement to JSA other than those to be available for and actively seeking employment and capable of work or not having LCW **and**
 5. has not stated in writing that they propose to claim or have claimed ESA or UC for that period.

1 JSA Regs, reg 55ZA(1)

- 5 The evidence required for the purposes of paragraph 4.2
1. where paragraph 4.3.1 applies¹, is a doctor's statement or other evidence for IfW or LCW purposes² and any other additional information as the Secretary of State requires **or**

2. where paragraph 4.3.2 applies³, is a written declaration in a form approved by the Secretary of State (JSA28) that they have been unfit for work from a certain date or for a specified period.

1 JSA Regs, reg 55ZA(2) ; 2 SS (Med Ev) Regs; 3 JSA Regs, reg 55ZA(3)

- 6 Where a claimant satisfies the above criteria they shall be treated as capable of work/not having LCW for a continuous period beginning on the first day on which the claimant is unable to work and ending on

1. the last day he is unable to work **or**
2. if that period of sickness exceeds 13 weeks, the day which is 13 weeks after the first day on which the claimant is unable to work.

1 JSA Regs, reg 55ZA(4)

- 7 A claimant can only have one period of EPS in any period of 12 months starting on the first day on which the claimant is unable to work as described in paragraph 6¹.

1 JSA Regs, reg 55ZA(5)

How the two types of sickness period can be used

- 8 The claimant will be able to make use of both the short periods of sickness and the EPS so that they can have two periods of up to two weeks and one period of up to 13 weeks in any JSP/12 month period. Where a claimant's sickness begins as a short period of sickness not exceeding 2 weeks but the sickness continues beyond 2 weeks, then the claimant can make use of the EPS up to the maximum period of 13 weeks. A claimant cannot start a short period of sickness immediately after the last day on which an EPS applied¹.

1 JSA Regs, reg 55(6)(b)

Example 1

Louise is in receipt of JSA and on 16 April 2015 she provides a medical certificate to say she is unable to work due to influenza for a period of 2 weeks. She is treated as capable of work for the period 16 - 29 April and as satisfying the conditions for the short period of sickness.

During this 2 week period, Louise contracts pneumonia and she provides a medical certificate for a further 8 weeks. She is then able to satisfy the conditions for the EPS for the whole period of sickness from 16 April to 24 June (10 weeks).

Louise has now used her EPS and could only now use the two short periods of sickness if she has any further sickness in her current JSP/12 month period.

Example 2

Patrick is in receipt of JSA and on 12 June 2015 he provides a medical certificate to say he is unable to work due to a fractured leg for a period of 13 weeks. He is treated as capable of work for the period 12 June to 10 September and as satisfying the conditions for the EPS.

He is due to return to normal jobseeking activity on 11 September. However he gets an ear infection which leaves him feeling dizzy and unable to sit or stand for anything other than short periods. His doctor prescribes antibiotics and recommends bed rest for 2 weeks. Although he still has 2 short periods of sickness available to use, as this short period would begin directly after the EPS ends and he has used the full 13 weeks allowable period of sickness on the EPS then he cannot remain on JSA and is advised to make a claim for ESA from 11 September 2015.

- 9 Where the EPS applies to a claimant, the short period of sickness cannot be applied during that same period¹.

1 JSA Regs, reg 55(6)(a)

When the extended period of sickness will not apply

- 10 The EPS will not apply to a claimant where¹
1. the first day they are unable to work falls within eight weeks beginning with the day the claimant ceased to be entitled to SSP **or**
 2. the claimant is temporarily absent from GB for the purposes of receiving NHS treatment abroad.

1 JSA Regs, reg 55ZA(6)

AMENDMENT TO GUIDANCE ON SHORT PERIODS OF SICKNESS

- 11 In DMG 20961 **4.** where there is the reference to ESA add after it “UC”.

THE LABOUR MARKET CONDITIONS

- 12 For JSA claimants making use of the EPS provision, the labour market conditions of availability for employment and ASE are amended.

Treated as available

- 13 A JSA claimant has to be treated as available for the period of time for which they are treated as capable of work or as not having LCW¹.

1 JSA Regs, reg 14(1)(1)

Treated as ASE

- 14 A JSA claimant who is treated as capable of work or as not having LCW has to be also treated as ASE if there are no steps in that week for which it would be reasonable for that claimant to take to seek employment¹.

1 JSA Regs, reg 19(1)(1z1)

- 15 For a JSA claimant who, notwithstanding their illness, could be reasonably expected to take steps to seek employment then their ASE should be determined with regard to the steps that they take to seek employment.

Example 1

Tony is in receipt of JSA. Following an injury playing football, Tony has had an operation on his legs and requires crutches. He is likely to be like this for 10 – 12 weeks. Rather than make a claim to ESA, Tony decides to stay on JSA. Following a discussion with his advisor, Tony agrees that he can still take steps of work search activity by searching for work on-line at home.

Example 2

Kathy is in receipt of JSA. She has had to go into hospital for an operation and has been advised by her doctor to have complete rest for four weeks once she has been discharged. Kathy has decided to remain on JSA. Her advisor agrees that it is reasonable for Kathy not to take any steps to seek employment whilst she is resting.

ESA ASSESSMENT PHASE

- 16 DMG 44011 et seq gives guidance on the ending of the ESA assessment phase¹ where a claimant is

1. found to have LCW² **or**

2. treated as having LCW³

following application of the WCA, including where PLCWs link⁴.

1 ESA Regs, reg 4 & 5; 2 reg 19; 3 reg 20, 25, 26, 29 & 33(2); 4 reg 145

17 The normal rule is that the assessment phase ends

1. on the last day of the period of 13 weeks beginning with

1.1 the first day of ESA entitlement¹ **or**

1.2 where the PLCWs link, the first day of the combined period of ESA entitlement² **or**

2. the date of the determination in paragraph 16 if later³.

1 ESA Regs, reg 4(1); 2 reg 5; 3 reg 4(2) & 5(3)

Ending of the assessment phase – new claimants

18 From 30.3.15, the assessment phase ends on

1. the last day of the relevant period¹ (see paragraph 19) **or**

2. the date of the determination in paragraph 16 if later².

1 ESA Regs, reg 4(1) & (3); 2 reg 4(2)

Meaning of relevant period

19 The relevant period is the period of 13 weeks beginning with

1. the first day of the assessment phase (that is, the first day of ESA entitlement)¹
or

2. where the first day of ESA entitlement immediately follows an award of JSA EPS, the first day of the EPS².

1 WR Act 07, s 24(2)(a); ESA Regs, reg (4)(a); 2 reg 4(b) & (5); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Pat is entitled to JSA, and sends in fit notes when he has flu and develops a chest infection. He starts an EPS on 10.6.15. Pat has serious injuries after a road traffic

accident on 9.7.15, and is admitted to hospital. He claims ESA from 9.7.15, and on 1.9.15 the DM determines that Pat is treated as having LCW. The relevant period begins on 10.6.15, the first day of the EPS, and ends on 9.9.15.

Ending of the assessment phase – previous claimants

- 20 DMG 44019 et seq gives guidance on when the assessment phase ends by combining periods of ESA entitlement where a person makes a further claim for ESA, and the periods of LCW link. From 30.3.15, when adding together periods of entitlement to ESA, a claimant is treated as entitled to ESA for any period where they were

1. entitled to JSA **and**
2. treated as capable of work or as not having LCW during an EPS¹.

1 ESA Regs, reg 5(1) & (1A); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Tricia is awarded ESA from 15.4.15 after injuring her wrist in a fall. She claims JSA from 14.5.15. Tricia is diagnosed with a suspected eye infection affecting her vision, and starts an EPS on 29.5.15 after sending in fit notes from her GP. She makes a further claim for ESA on 20.7.15, as she is now experiencing significant mobilising problems. Tricia is later diagnosed with multiple sclerosis, and found to have LCW. Tricia is awarded the support component from 30.7.15, as the ESA award for the periods 15.4.15 – 13.5.15 and from 20.7.15, are combined with the period of JSA EPS (29.5.15) to total 13 weeks.

DECISION MAKING AND APPEALS

- 21 A decision awarding ESA may be revised at any time where
1. it is made immediately following the last day for which the claimant was treated as capable of work or as not having LCW under specified legislation¹ and the period lasted 13 weeks **and**
 2. it is not a decision which embodies a determination that the claimant is treated as having LCW under specified legislation².

1 SS CS (D&A) Regs, reg 3(5J); JSA Regs, reg 55ZA & JSA Regs 13, reg 46A; 2 ESA Regs, reg 30

22 A superseding decision made in accordance with specified legislation¹ which embodies a determination that the claimant has

1. LCW **or**

2. LCWRA **or**

3. LCW and LCWRA

which is the first such determination shall take effect from the day after the last day of the relevant period as defined in specified legislation².

1 SS CS (D&A) Regs, reg 6(2)(r), 2 reg 7(38) 3 ESA Regs, reg 4(4)

ANNOTATIONS

Please annotate the number of this memo (DMG 9/15) against the following DMG paragraphs:

03341, 04707, 20961, 21362, 21774, 42357, 44011 (main heading), 44015 (heading), 44019 (heading), 44647 (heading).

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 3/13 - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: March 2015