

DWP Central Freedom of Information Team

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

Our Ref: FOI2020/43792

21 September 2020

Dear Amanda Hart,

Thank you for your Freedom of Information (Fol) request received on 10 August. You asked:

Background: In 2017 the department stopped the ESA benefits of 63 year old Teresa Geale from Kent after missing one of its appointments for "No Good Reason" despite the fact it was them who cancelled the appointment.

Our request: If they exist, please provide the documents containing procedures, processes or safeguards put into place since the blunder to ensure benefits are no longer stopped under the circumstances described above.

Parameters: 2017 onwards, Employment and Support Allowance

Source for public ref: <https://evolvepolitics.com/disabled-womans-benefits-stopped-ten-months-failed-attend-interview-cancelled-dwp>

Thanks.

DWP Response:

I confirm we hold information relating to your request.

The following information is available to Decision Makers when considering good cause for a Failed to Attend Work Capability Assessment. The tool kit is subject to regular revision and this is the latest version. Please find the requested information below, we have highlighted the key parts of the documents:

Failure to attend or submit to a medical examination

General

42480 Claimants may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether they have LCW¹. The purpose of the medical examination is to enable the DM with the benefit of a medical opinion to determine whether a claimant meets the threshold for LCW.

1 ESA Regs, reg 23(1)

42481 Claimants can be treated as not having LCW if

1. they fail without good cause to attend or submit to a medical examination¹ **and**

2. they

2.1 had at least seven days' written notice of the examination² or

2.2 agreed to accept a shorter period of notice whether given in writing or otherwise³.

1 ESA Regs, reg 23(2); 2 reg 23(3)(a); 3 reg 23(3)(b)

42482 Medical services will contact the claimant by telephone to arrange an appointment for the examination and will keep a detailed record of the date, time and place of the examination agreed with the claimant and written notice will be issued to confirm the arrangement. The claimant can agree to accept a shorter period of notice than seven days.

The Secretary of State's duty

42483 Unless the claimant has agreed to accept a shorter period of notice whether given in writing or by telephone (see DMG 42862 and DMG 42485), when considering whether a claimant should be treated as not having LCW, the DM has to be satisfied that the Secretary of State has complied with the duty set out in the legislation¹, that

1. a written notice was sent and
2. the notice included the time and place of the examination and
3. the notice was sent at least seven days before the date of the examination and

4. the examination had not been cancelled.

1 ESA Regs, reg 23(3)

42484 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the DM decides that seven days had not elapsed¹, they should consider whether the claimant has agreed to accept a shorter period of notice whether given in writing or by telephone. If there is no evidence that the claimant had agreed to accept a shorter period of notice the claimant cannot be treated as not having LCW.

1 ESA Regs, reg 23(3)

From Operational Instructions

1. When ESA was introduced it was stressed how important it is to work with our claimants and move them closer to the labour market.
2. Decision Makers (DMs) have a crucial role to play in this and any rulings made by a DM must be made while considering the statement above. The actions of a DM can influence claimant behaviour and it is important DMs are aware of the consequences their actions may bring.
3. This toolkit highlights the basic things that should be considered when making DNA decisions, and as the preferred method of communicating with the claimant is by phone, also includes suggested questions to ask the claimant. There are extensive instructions for DMs. See [DMG Chapter 42](#).

Note: Take care to safeguard vulnerable claimants.

Evidence and Best Practice

Always try to speak to the claimant on the phone

4. Any evidence collected over the phone is valid, but the DM must always ask for evidence of appointments, such as appointment cards or letters to be sent in.
5. The onus is on the claimant to provide any evidence required to make a fair and balanced decision. DMs must not make assumptions. However, it is also not appropriate for

a DM to decide they are willing to accept good cause as it is the claimants first FTA, see [DMG 01344](#).

6. DMs must not make reference in their decisions regarding what might happen at a future event, for example state that good cause may not be accepted on a subsequent occasion or reference stern warning letters have/should be issued as they hold no place in good cause consideration and could result in reputational risk for the department. See [DMG 42261](#).

7. If information is gathered from the claimant that the provider would benefit from knowing, such as failing to attend an appointment to take a child to school. Evidence this in the decision so that the provider can take this into account and try to schedule a more appropriate appointment time to reduce potential for a subsequent failure.

Always check Legacy notepad, LMS conversations, MSRS and CAM

8. In all cases records must be checked for previous history of avoidance, similar explanations for non-attendance in the past, or previous FTA markers or rearranged WCA and WFI appointments. This gives a better picture of claimant behaviour and builds evidence for your decision.

Explain to the claimant the importance of attending their appointment and the consequences of not attending

9. This message is important if we are to ensure that claimants take responsibility for their actions. However, the claimant is advised at the point of claim, in the ESA40 and in the ESA35 that they might be called for an assessment and warned of the possible consequences, before they get the appointment letter.

Please see the enclosed links to information which is already reasonably accessible to you that you might find useful:

<https://www.gov.uk/government/publications/work-capability-assessment-handbook-for-healthcare-professionals> a copy of the Revised Work Capability Assessment (WCA)

Handbook that is issued to approved Healthcare Professionals (HCPs) employed by Centre for Health and Disability Assessments (CHDA).

<https://www.gov.uk/government/collections/decision-makers-guide-staff-guide> a copy of the Guidance for DWP staff who make decisions about benefits, pensions and allowances

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@dwp.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
Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745