



Section 1: Personal details

Personal Details	<Title> <Forenames> <Surname> <CustAdd>
------------------	--------------------------------------------

National Insurance Number <NINO>

Name and address of Appointee [box to be removed if not applicable]

<AppTitle> <AppForenames>
<AppSurname>
<AppAddress1>
<AppAddress2>
<AppAddress3>
<AppAddress4>
<AppPostCode>

Date of Outcome Decision <Decision Date>

Date of Mandatory Reconsideration Decision

Date of Appeal Request received by HMCTS

Decision maker's name and address: <Decision Maker>

Name and address of the decision maker's representative (if any):

Address where documents for the decision maker may be sent or delivered:

Name and address of any other respondents and their representatives (if any): <RepName>

Section 2: Schedule of evidence

Comment [M1]: List all evidence included in the submission

Document No.	Date of document	Date of receipt/issue	Brief description of document
			Secretary of State's Response
			Appeal Form/Letter [*Delete as appropriate]
			ESA50 Limited Capability for work questionnaire
			ESA85 Medical report form
			Score sheet
			Mandatory reconsideration request
			LT54 Mandatory Reconsideration

Section 3: The decision

Section 4: The facts of the case

1. <Title> <Surname> is a single/married <manwoman> and was born on <DoB>. <HeShe> was awarded Employment and Support Allowance from and including zClaimDate on the basis that <heshe> was suffering from zMedCon.

Comment [M2]: Apply as appropriate

2. <Title> <Surname> completed a questionnaire (form ESA50) on []. Form ESA50 asks the claimant to provide information about their capability to perform activities in order to assess whether they have limited capability for work. [*]

Comment [73]: Date of ESA50 completion

Comment [M4]: Enter summary of medical issues highlighted by customer in questionnaire. Eg 'customer states: has problems with bending, walking, manual dexterity.' etc.

3. On zExamDate <Title> <Surname> attended zMedEx for medical examination. In the opinion of the Health Care Professional as set out in the report (form ESA85ESA85a), <Title> <Surname> [*]

Comment [M5]: Only use if examination carried out. Otherwise delete

Comment [M6]: Apply as appropriate

4. The Decision Maker carried out an assessment of <Title> <Surname>'s capability for work taking all the available evidence into account, and decided that <heshe> scored zPhyScore points on the physical and zMentScore points on mental descriptors. <HeShe> did not have limited capability for work, and <hisher> award of Employment and Support Allowance was superseded and disallowed from zDecEffect.

Comment [M7]: State whether/which descriptors were met and summary of medical findings

Comment [M8]: Enter number of points scored

Comment [M9]: Include only if assessment against mental health descriptors was carried out

5. <Title> <Surname> requested a Mandatory Reconsideration on zDateRecon stating that [*]

Comment [SC10]: Insert reasons given for MR and brief detail of reasons for no change decision

6. The Mandatory reconsideration was carried out on.....The Decision Maker considered all of the available evidence and found no grounds to change the original decision.

7. <Title> <Surname> lodged an appeal with HMCTS on the approved form, on the grounds that *.

Comment [M11]: Briefly summarise customer's grounds of appeal, addressing only the points raised in appeal

Section 5: The response

1. Entitlement to Employment and Support Allowance depends on whether a claimant's capability for work is limited by their physical or mental condition, and if so, whether the limitation is such that it is not reasonable to require them to work.

Welfare Reform Act 2007, sections 1(3)(a) and (4)

2. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable or not of performing certain activities due to disease or bodily or mental disablement. Points may be scored if the claimant satisfies the appropriate descriptors for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

Welfare Reform Act 2007, section 8

Employment and Support Allowance Regulations 2008, regulation 19 and Schedule 2

3. The claimant can be treated as having limited capability for work pending assessment where certain conditions are satisfied, including the condition that the claimant provides medical evidence.

Employment and Support Allowance Regulations 2008, regulation 30

4. A claimant can be treated as having limited capability for work without assessment, or after being assessed as not having limited capability for work, where certain conditions are satisfied, such as where the claimant is undergoing specified treatment, or where there is a serious risk to health if the claimant is found not to have limited capability for work. This does not apply to <Title> <Surname>.

Employment and Support Allowance Regulations 2008, regulations 20, 25, 26 or 29

5. The Decision Maker decided that <Title> <Surname> scored |zPhyScore points for the physical descriptors, |

Comment [M12]: Enter points scored

Comment [M13]: State whether the point is disputed and why.

6. |The Decision Maker also decided that <Title> <Surname> scored |zMentScore points for the mental descriptors. *.

Comment [M14]: Para applies where examination of mental health has been carried out.

7. |. *Appeal submission goes here.*

Comment [M15]: Enter points scored

Comment [M16]: State whether the point is disputed and why

8. I respectfully request that the tribunal confirms the decision that <Title> <Surname> is not entitled to Employment and Support Allowance from zDecEffect as <heshe> does not have limited capability for work.

Comment [M17]: Include argument as to why the decision should be upheld. Consideration should be given to all points raised in their appeal. Include references to **relevant** legislation to justify the argument. Also include evidence used that influenced this view and why other evidence, if available, was not strong enough to contradict this

9. Should the tribunal decide that <Title> <Surname> does have limited capability for work; I respectfully request that they decide whether or not <Title> <Surname> has limited capability for work-related activity.

Employment and Support Allowance Regulations 2008, regulation 34 and Schedule 3

This paragraph is included in the event that the First-tier Tribunal finds that [name of claimant] has, or is treated as having, limited capability for work.

In *IM v SSWP (ESA)* [2014] UKUT 412 (AAC), a three Judge panel of the Upper Tribunal held that in appeals about whether the claimant has limited capability for work, the Secretary of State's response should include a submission about whether the claimant has limited capability for work-related activity. The submission need only refer to the relevant legislation, and need not explain why it is considered that those provisions do not apply, as this will be implicit from the explanation as to why it is considered that the claimant does not have limited capability for work.

The Judges held that the submission should also contain a list of the types of work-related activity available in the claimant's area at the date of the decision under appeal, either provided directly by the Department for Work and Pensions, or contracted out. The list should specify how demanding the activity is considered to be. I attach a list of the work-related activity available from Work Programme providers in [nearest town] for the Tribunal's consideration.

The First-tier Tribunal will wish to note that, due to the way information is recorded, it is not possible to be certain that all the work-related activity was available in the claimant's area on <Decision Date> However, the types of work-related activity have not changed significantly since the introduction of the requirement to undertake work-related on 1.6.11.

ESA Regulations 2008, regulations 34 and 35, and Schedule 3

Physical descriptors of the work capability assessment (Schedule 2, part 1 of the Employment and Support Allowance Regulations 2008).

Activity	Descriptor	Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be worn or used.	(a) Cannot unaided by another person either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot, unaided by another person, mount or descend two steps even with the support of a handrail.	9
	(c) Cannot unaided by another person either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion	9
	(d) Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
	(e) None of the above applies.	0
2. Standing and sitting.	(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair); or (iii) a combination of (i) and (ii) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9

	(c) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair); or (iii) a combination of (i) and (ii) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d) None of the above apply	0

Activity	Descriptor	Points
3. Reaching.	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above apply	0
4. Picking up and moving or transferring by the use of the upper body and arms.	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0
5. Manual dexterity	(a) Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark with either hand.	9
	(d) Cannot single-handedly use a suitable keyboard or mouse.	9
	(e) None of the above applies.	0
6. Making self understood through speaking, writing, typing, or other means which are normally or could reasonably be used unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply.	0
7. Understanding communication by – (i) verbal means (such as hearing or lip (reading) alone, (ii) non-verbal means (such as reading 16 point print or braille) alone, or (iii) a combination of (i) and (ii), using any aid that is normally, or could reasonably be used, unaided by another person.	(a) Cannot understand a simple message such as the location of a fire escape due to sensory impairment..	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment	6
	(d) None of the above applies.	0

Activity	Descriptor	Points
8. Navigation and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be used.	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0
9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally, or could reasonably be worn or used.	(a) At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.	15
	(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) Neither of the above applies.	0
10. Consciousness during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0

Mental, cognitive and intellectual function descriptors (Schedule 2, part 2 of the Employment and Support Allowance Regulations 2008)

Activity	Descriptor	Points
11. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	None of the above apply.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant requires supervision for the majority of the time to maintain safety	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that the claimant frequently requires supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant occasionally requires supervision to maintain safety	6
	(d) None of the above apply	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	6
	(d) None of the above applies	0
14. Coping with change.	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6

	(d) None of the above apply.	0
15. Getting about.	(a) Cannot get to any place outside the claimant's home with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant	9
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.	6
	(d) None of the above applies	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	0

Physical descriptors of the work capability assessment (Schedule 3, part 1 of the Employment and Support Allowance Regulations 2008).

Activity	Descriptor
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be worn or used.	(a) Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

3. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms. (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule)	Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity	Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be used, unaided by another person.	Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

Activity	Descriptor
8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally or could reasonably be, worn or used.	(a) At least once a week experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.

Mental, cognitive and intellectual function descriptors (Schedule 3, part 2 of the Employment and Support Allowance Regulations 2008)

Activity	Descriptor
9. Learning tasks.	Cannot learn how to complete a simple task, such as setting an alarm clock due to cognitive impairment or mental disorder
10. Awareness of everyday hazards (such as boiling water or sharp objects).	Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant requires supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.
12. Coping with change.	Cannot cope with any change due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.

13. Coping with social engagement due to cognitive impairment or mental disorder.	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

Activity	Descriptor
<p>15. Conveying food or drink to the mouth</p> <p>NB- where this activity is appropriate to the claimant, they will be treated as having limited capability for work and will have limited capability for work related activity.</p> <p>.</p>	<p>(a) cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping or experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:</p> <p style="padding-left: 40px;">(i) physical assistance from someone else; OR</p> <p style="padding-left: 40px;">(ii) Regular prompting given by someone else in the claimant's presence.</p>
<p>16. Chewing or swallowing food or drink.</p> <p>NB- where this activity is appropriate to the claimant, they will be treated as having limited capability for work and will have limited capability for work related activity.</p>	<p>(a) Cannot chew or swallow food or drink;</p> <p>(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence;</p> <p>or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to:</p> <p style="padding-left: 40px;">(i) chew or swallow food or drink; or</p> <p style="padding-left: 40px;">(ii) Chew or swallow food or drink without regular prompting given by someone else in the claimant's presence</p>

Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at:
<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at:
<http://www.dwp.gov.uk/commdecs/index.asp>