



Department  
for Work &  
Pensions

## Secretary of State's Response

### Section 1: Personal details

Appeal Tribunal Reference Number

Personal Details <Title> <Forenames> <Surname>

<CustAdd>

Date of Birth <DoB>

National Insurance Number <NINO>

Date of Death [box to be removed if not applicable] [Customer\_DoD]

Name and address of Appointee [box to be removed if not applicable] <AppTitle> <AppForenames>  
<AppSurname>  
<AppAddress1>  
<AppAddress2>  
<AppAddress3>  
<AppAddress4>  
<AppPostCode>

Benefit <Benefit Type>

Date of Outcome Decision <Decision Date>

Date Outcome Decision Notified <SODN>

Date of Mandatory Reconsideration Decision

Date Mandatory Reconsideration Notified

Date of Appeal Request received by HMCTS

Date of Appeal Request received by DWP <Date Lodged>

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/ Letter
			ESA50 Limited Capability for work questionnaire (and enclosures if any)
			ESA85 Medical report form
			Score sheet
			Request for MR
			Record of reconsideration call to customer
			Mandatory Reconsideration Decision

## Section 3: The decision

## Section 4: The facts of the case

1. <Title> <Surname> has been receiving Employment and Support Allowance since on the basis that <heshe> was suffering from .
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 and if so, whether they have limited capability for work-related activity. <Title> <Surname> indicated on the questionnaire that <heshe> has difficulties with .....
3. On <Title> <Surname> attended Medical Examination Centre for a face-to-face assessment. The opinion of the Health Care Professional, as set out in the report (form ESA85) was that although <Title> <Surname> did have limited capability for work <heshe> did not satisfy any of the descriptors or exceptions in relation to a person's limited capability for work-related activity.

**Or**

4. On xx.xx.xx a Health Care Professional provided an opinion using the available clerical evidence **List here**..... The opinion of the Health Care Professional, as set

out in the report (form ESA85a) was that although <Title> <Surname> did have limited capability for work <heshe> did not satisfy any of the descriptors or exceptions in relation to a person's limited capability for work-related activity.

5. On {date} the Decision Maker carried out an assessment of <Title> <Surname>'s limited capability for work-related activity, taking all the available evidence into account, and decided that although <heshe> did have limited capability for work <heshe> did not have limited capability for work-related activity. Consequently <heshe> was entitled to the work-related activity component and was not entitled to the support component of Employment and Support Allowance.
6. On <Title> <Surname> requested a reconsideration of the original decision stating that .....
7. <Title> <Surname> was contacted by telephone on to ensure that the Decision maker was aware of all the available evidence in order to undertake the mandatory reconsideration.
8. The Mandatory Reconsideration was carried out on The Decision Maker carefully considered all of the evidence and found no grounds to change the original decision.
9. <Title> <Surname> directly lodged an appeal with HMCTS on on the grounds that .....

## Section 5: The Response

1. Whether or not a person has limited capability for work-related activity, is determined by assessment of whether that person's capability for work-related activity is limited by their physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require them to undertake such activity.

**Welfare Reform Act 2007 section 2(5) and 9**

**Employment and Support Allowance Regulations 2008, regulation 34(1).**

2. A claimant is treated as having LCWRA if they are

A. terminally ill **or**

B. is receiving, or is likely to receive within six months, or is recovering from, treatment for cancer by way of chemotherapy or radiotherapy, and the DM is satisfied that the claimant should be treated as having LCWRA **or**

C. in the case of a woman, she is pregnant and there is a serious risk of damage to her health or the health of her unborn child if she does not refrain from work-related activity.

None of these conditions apply to <Title> <Surname>.

**Employment and Support Allowance Regulations 2008, regulation 35(1)**

3. A claimant has Limited Capability for Work Related-Activity LCWRA if they satisfy at least one of the prescribed descriptors. A descriptor is satisfied if it applies to the claimant for the majority of the time or, as the case may be, for the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

**Employment and Support Allowance Regulations 2008, regulation 34(1), (2) and Schedule 3.**

4. The Decision Maker (DM) decided that <Title> <Surname> did not satisfy any of the physical or mental health Support Group descriptors and therefore did not have Limited Capability for Work-Related Activity (LCWRA)

5. A claimant who does not have LCWRA is treated as having LCWRA if

1. The claimant suffers from some specific disease or bodily or mental disablement  
**and**

2. by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if that claimant were found not to have LCWRA.

**Employment and Support Allowance Regulations 2008, regulation 35(2)**

6. The Decision Maker has decided that there would not be a substantial risk to <Title> <Surname> health or to the health of any other person if <heshe> were found to be capable of LCWRA.

7. A claimant may only appeal against a decision about Employment and Support Allowance if the Secretary of State has received and considered an application asking for that decision to be revised. This condition is satisfied.

**Social Security and Child Support (Decisions and Appeals) Regulations 1999, regulation 3ZA.**

8. An appeal was received from <Title> <Surname> on the grounds that .....

9. **Appeal response to disputed areas of decision goes here.....**

10. In relation to the possible risk involved in undertaking work related activity I would draw the tribunal's attention to the fact that in *IM v SSWP* (ESA) [2014] UKUT 412 (AAC), a three Judge panel of the Upper Tribunal held that the Secretary of State should include evidence of all 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.

11. I attach a list of the work-related activity available from [Work Programme providers in [nearest town] for the Tribunal's consideration] [use if prognosis is 12 months or less] /

[claimant's Jobcentre]. The list contains information about some of the least and most demanding WRA available in [Jobcentre]

12. 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.

or

13. I have enclosed examples of the least and most demanding WRA available in {name of jobcentre}. This is because at present it is not possible to produce the entire WRA available, both because the list is too great to be produced, and because it only contains information about referrals for contracted out WRA. In addition to the selection provided the Secretary of State can agree discretionary tasks such as – setting individual goals such as exercise routines or place to visit or techniques for coping with negative thoughts, anxiety or panic attacks.

14. Examples of the most demanding types of WRA in the area where <Title> <Surname> lives would be .....and the least demanding WRA could include.....

15. Explain here what evidence you have used to support the view that there would be no risk.....

**Replace with your own version** EG. CUST has not worked for a number of years. In her action plan she has discussed the possibility of doing voluntary work with Ty Hafan. She currently does some one to one activity at the school with her grandchildren on a weekly basis with no indication that this is having a detrimental effect on her physical or mental health.

Taking into consideration the activities that CUST is able to perform **Explain**.....it would be reasonable for her to undertake WRA without any substantial risk to his/her own health in relation to her journey to and from the provider or whilst there. Also there is no evidence that CUST would put anyone else at substantial risk.

16. As held in IM, the question is not whether the claimant could undertake any work-related activity, nor whether they would be sanctioned inappropriately. Being unable to carry out an activity does not mean there would be a risk to anyone's health if the claimant is required to do so. A substantial risk to health must be identified.

17. Whilst it is not in doubt that <Title> <Surname> does have a health condition that affects <his/her> day to day living, this does not limit <his/her> functional abilities sufficiently for <his/her> to have limited capability for work-related activity for employment and support allowance purposes.

18. I respectfully request that the Tribunal confirms the decision that <Title> <Surname> does not have, and cannot be treated as having, limited capability for work-related

activity.

LCWRA Activities & Descriptors	
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.	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.	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).	Not pick up and move a 0.5 litre carton full of liquid.
5 - Manual dexterity.	Cannot either: (i) press a button, such as a telephone keypad or; (ii) 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 (i) verbal means (such as hearing or lip reading) alone, or (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.	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

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.	At least once a week experiences  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.
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 hazards.	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, (iii) such that they require 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 individual.
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.
15 - Conveying food or drink to the mouth.  <b>NB</b> - 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.	(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;  (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;  (c) Cannot convey food or drink to the claimant's own his mouth without receiving regular prompting given by someone else in the claimant's physical presence; or  (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimants own mouth without receiving— (iii) (i) physical assistance from someone else, or (ii) regular prompting given by someone else in the claimant's presence



<p>16 - Chewing or swallowing food or drink.</p> <p><b>NB</b> - 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; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to:</p> <ul style="list-style-type: none"> <li>(i) chew or swallow food or drink; or</li> <li>(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.</li> </ul>
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#### **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>