



Department
for Work &
Pensions

Secretary of State's Response

Section 1: Personal details

Name: <Title> <Forenames> <Surname>

Address:

NI No: <NINo>

Benefit: <Benefit Type>

Date of decision: <Decision Date>

Date decision notified: <SODN>

Date of reconsideration: zDateRecon

Date appeal received: <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 Form/Letter [<i>*Delete as appropriate</i>]
			ESA50 Limited Capability for work questionnaire
			ESA85 Medical report form
			Score sheet
			LT54 Reconsideration decision

Section 3: The decision

Section 4: The facts of the case

1. <Title> <Forenames> <Surname> is a married <manwoman> and was born on <DOB>. <HeShe> was awarded Employment and Support Allowance from and including * after <heshe> appealed against a decision to disallow Employment and Support Allowance after <heshe> failed to score 15 points following a Work Capability Assessment. He was suffering from zMedCon.
2. This payment was a new award, paid, pending the outcome of his appeal. <Title> <Forenames> <Surname> continued to supply medical evidence of <hisher> condition and there is no evidence that <heshe> was included in any other claims to Income Support or Jobseekers Allowance.
3. A First Tier Tribunal heard <Title> <Forenames> <Surname> appeal on * and the result of the hearing is that the appeal was disallowed and the Judge determined that <Title> <Forenames> <Surname> was not entitled to Employment and Support Allowance from *.
4. The Decision Maker carried out an assessment of <Title> <Forenames> <Surname>'s capability for work, during the period that he was receiving Employment and Support Allowance pending the tribunal outcome, taking all the available evidence into account. The Decision Maker 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 award of Employment and Support Allowance was superseded and disallowed from *.
5. The evidence the Decision Maker considered included <Title> <Forenames> <Surname>'s completed questionnaire (form ESA50) and the medical report produced after <Title> <Forenames> <Surname> attended zMedEx Medical Examination Centre for medical examination on zExamDate (form ESA85).
6. <Title> <Forenames> <Surname> made an appeal on the approved form, on the grounds *.
6. The decision of zDateRecon was reconsidered on * but not revised.

Comment [S2]: Insert date award pending appeal made

Comment [S3]: Enter date of tribu

Comment [S4]: Enter date

Comment [S5]: Date of disallowan

Comment [S6]: Insert brief statem on grounds of appeal as written in th customers letter of appeal.

Comment [S7]: Date of reconsideration

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.

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

5. When a decision is made to award Employment and Support Allowance following an appeal, a new assessment phase begins and will end when the appeal is determined or if the claimant notifies a new health or disability condition, or a deterioration in their existing condition.

Welfare Reform Act 2007, section 24(2)

Employment and Support Allowance Regulations 2008, regulation 6

Employment and Support Allowance Regulation 2008, regulation 30 (1) & (2)

6. Where a claimant can no longer be treated as having limited capability for work, because the appeal has been upheld or dismissed a determination of limited capability for work, for the period paid pending appeal, must be made afresh. If there is sufficient information available to determine whether the claimant has limited capability for work there is no need to refer to Medical Services for a questionnaire or examination and report. The claimant must be informed of this decision, the outcome of which they have the same right of appeal as the original decision.

Employment and Support Allowance Regulations 2008, regulation 21 (2)

Social Security Act 1998, section 12 (1)(a), (2) & (8)(b)

7. The Decision Maker decided that <Title> <Forenames> <Surname> scored zPhyScore points for the physical descriptors.

8. The Decision Maker also decided that <Title> <Forenames> <Surname> scored zMentScore points for the mental descriptors.

9. {(*)}

Comment [S8]: Input your appeal response here

10. I respectfully request that the tribunal confirms the decision that <Title> <Forenames> <Surname> is not entitled to Employment and Support Allowance from {(*)} as <heshe> does not have limited capability for work.

Comment [S9]: Enter date

11. Should the tribunal decide that <Title> <Forenames> <Surname> does have limited capability for work; I respectfully request that they decide whether or not <Title> <Forenames> <Surname> has limited capability for work-related activity. If they determine that there is insufficient evidence, the tribunal is requested to refer the case to the Decision Maker for determination.

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