

ESA K55 Work Capability Assessment

Topic 10 Re-referrals, Appeals and Repeat Claims

Approximately 55 minutes

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Topic 10 Re-referrals, Appeals and Repeat Claims

Re-referral to the WCA process

A re-referral could occur following an appeal or where the claimant is assessed as being entitled to Employment and Support Allowance (ESA). A re-referral prompt is set up in Jobseekers Allowance Payment System (JSAPS).

Appropriate timings for a subsequent WCA will be indicated by the Health Assessment Advisory Service (HAAS) in Medical Services Referral System (MSRS) outcome reports. These are:

- Claiming under Special Rules – terminally ill will be three years.

For other claimants it will take place at:

- three months
- six months
- 12 months
- 18 months
- 24 months; or
- three years.

Exceptionally, due to health conditions, for those claimants satisfying the Support Group Severe Conditions criteria, the common prognosis fixed date is input as 01/05/2030. Such claimants are deemed unlikely to require future reassessment



Advise the learners that these dates may change.

The Decision Maker (DM) has the right to set a prognosis date of any duration.

Remind the learners that if the claimant is within 91 days of their State Pension age when the next WCA Assessment referral date is due, the date must be advanced to a date after the age will be reached.

This will be based on the advice from the HAAS. The Healthcare Professional (HCP) will complete a re-referral Advice Report. They will do this by reviewing the information from the initial referral alongside any current information received.

The purpose is to identify if there is sufficient evidence of ongoing disability to meet the Limited Capability for Work (LCW) and or Limited Capability for Work Related Activity (LCWRA) threshold without the need for a face-to-face Health Assessment.

This process ensures that claimants who are in the Support Group (SG) and those where there has been no substantial change in their condition are dealt with quickly and without the need for a face-to-face Health Assessment.

Any subsequent WCA Assessment referral will follow the same format as the first.

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In some cases a face-to-face Health Assessment is not necessary as appropriate advice can be given on an Advice Report. This allows the HCP to advise on LCW and LCWRA.

Where a claimant is being assessed moving from the SG to the Work Related Activity Group (WRAG) then the claimant must attend a face-to-face Health Assessment.

Where a claimant moves to the WRAG then they will be required to attend a WFI. A JSAPS Work Available Report (WAR) will be sent to advise the Adviser Support to prompt appropriate WFI action.

Deterioration in Health and the WCA Process

If Contributory Based ESA (ESA (C)) has exhausted as a result of the 365 days time-limit, a claimant may re-qualify for an award of ESA (C)) if new Relevant Income Tax Years (RITYs) are used, or a deterioration in their health condition or a new health condition is notified.

The four circumstances which prompt the consideration are:

- If the claimant has LCW and has been in receipt of Credits Only or Income Related ESA (ESA (IR)) since their ESA (C) exhausted and then they have a routine WCA Assessment referral. The DM may determine the claimant has LCW and LCWRA and should be placed in the SG.
- If the claimant has LCW and has been in receipt of Credits Only or ESA (IR) since their ESA (C) exhausted and they then notify us of a deterioration in their health condition. The DM either accepts the deterioration in health, and places the claimant in the SG, or refers the claimant for a WCA. Based on the WCA outcome, the DM determines the claimant has LCW and LCWRA and should be placed in the SG.
- If the claimant makes a repeat claim to ESA stating their health condition has deteriorated and they are able to demonstrate they have had continuous LCW since their ESA (C) exhausted. The DM will then refer the claimant for a WCA. Based on the WCA outcome, the DM determines the claimant has LCW and LCWRA and should be placed in the SG.

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(NB For the above scenarios consideration is made first if a claimant can re-qualify for ESA (C) using new RITYs, and then any deterioration in their health is considered.)

- If the claimant is in the SG based on a previous period of deterioration and they have a routine WCA Assessment referral where the DM determines the claimant has LCW, but no longer has LCWRA. If the contribution conditions were met at the outset of the period of deterioration, the claimant will be entitled to ESA (C) in the WRAG and will be subject to the normal 365 day time-limiting. If the contribution conditions were not met at the outset of the period of deterioration, the ESA (C) award will cease and the claimant will be entitled to Credits Only.



Advise the learners that how contribution conditions affect the re-qualification of ESA (C) claimants following exhaustion due to the time limit is looked at in more detail in other learning.



Ask the learners to access the following Intranet site regarding the application of the WCA process as a result of the deterioration rules for ESA (C) claimants:

Home > Operational Instructions > Working Age Benefits > D to F > Employment and Support Allowance > 01 ESA instructions for service centre processing > 26 ESA(C)Time Limiting > 03

[Changes in claimant's health condition using new RITYs or repeat claims](#)

Appeals

A claimant may not accept the Health Assessment decision. They are entitled to have their claim reviewed under the ESA Disputes and Appeals process.



Advise the learners that earlier in this learning, they have already touched on Appeals Reform legislative changes effective from 28 October 2013. For appeals on decisions made prior to this date see guidance for details. Also introduced were the further ESA legislation changes from 30 March 2015.

Appeals On or After 28 October 2013

For decisions dated on or after 28 October 2013, the claimant will complete a Social Security and Child Support appeal form, SSCS1. This must be lodged direct to HMCTS, within one month of the Mandatory Reconsideration issue date, and must be accompanied by the Mandatory Reconsideration Notice.

It is possible for the claimant to provide HMCTS further information at the appeal stage, however this may extend the length of time it takes for their appeal to be heard, as DWP will need to consider the case in light of the new evidence.

Once HMCTS has notified the DWP of the appeal lodgement, and the disallowance decision was made before 30 March 2015, an ESA repeat claim can be paid at the Assessment Rate pending the appeal outcome, from the effective date of the disputed decision.

Legislation Changes From 30 March 2015

To recap, when a claimant who was previously found to have no LCW, makes a repeat claim with an Initial Date of Contact on or after 30 March 2015, they will have to show that their health condition has significantly worsened or they have a new health condition, before their ESA entitlement can be reassessed. ESA can be paid pending a further WCA Assessment referral.

The regulations do not apply to a claimant who is treated as having no LCW because they failed to attend a WCA or return questionnaire ESA50.

If the claimant has a new health condition, they will need to provide medical evidence regarding this new health condition i.e. Statement of Fitness for Work.

Evidence of a significantly worsened condition can be obtained using form ESA83, which can either be sent to the claimant or completed over the phone if the claimant prefers.



Ask the learners to access the following link on the Intranet:

Home / Operational Instructions / Customer Products / Employment and Support Allowance /

Forms

Ask the learners to locate form ESA83 and review the information that the claimant needs to confirm.



Display slide 70 – Completing Form ESA83.

If the repeat claim is disallowed, the claimant can request a Mandatory Reconsideration and if the decision is not changed the claimant can appeal.

ESA cannot be paid pending the outcome of the appeal as it is an appeal against a second consecutive decision that the claimant has no LCW.



Display slides 71 to 73 – Decision Examples (1/3), (2/3) and (3/3).



Advise the learners that guidance and examples on repeat claims can be found on the Intranet at:

Home > Operational Instructions > Working Age Benefits > D to F > Employment and Support Allowance > 01 ESA instructions for service centre processing > 03 Action when a claim received > 13

[Repeat claims](#)

JSAPS Action Following Disallowance of a Repeat Claim

When a repeat claim is made and the claimant's previous claim was disallowed following a decision that they did not have LCW, the repeat claim should be built on JSAPS using the normal new claims processing procedure.

No award should be made until a decision about the claimant's LCW has been made by the DM. If the repeat claim is disallowed:

- The claim should be processed on CAM (**Assess Award**) which pushes information to Dialogue **JA610 Claim Maintenance Details** on JSAPS; and
- The claim should be terminated; and
- A disallowance notice issued/input on the same day.

Access Dialogue **JA060 Register Claim/Event** as previously covered:

- Input **17** in the **Event Type** field.
- Input **01** in the **Event Sub Type** field.
- Input today's date in the **Receipt/Reg Date** field; and
- Select **End**.

At this point JSAPS will show the claim as '**Live NP**'.



Display slide 74 – screen JA674693 PERSONAL CAPABILITY ASSESSMENT DETAILS.



Display slide 75 – screen JA674694 PERSONAL CAPABILITY ASSESSMENT OUTCOME.



Display slide 75 – screen JA099091 RECORD CLAIM TERMINATION DETAILS.



Advise the learners that guidance on JSAPS action can be found on the Intranet at:

Home > Operational Instructions > Working Age Benefits > D to F > Employment and Support Allowance > 01 ESA instructions for service centre processing > 03 Action when a claim received > 13 Repeat claims > [Repeat claim disallowed](#)



Check the learners' understanding and answer any queries before moving on.

Following completion of Dialogue **JA099 Record Claim Termination Details** proceed as normal through Dialogues **JA200 Award and Decision**, and **JA405 Compute Payment**.

Using decision type **07** sets a system case control (S308 WCA Appeal Outstanding) which matures after 30 days. By inputting the termination code and closing the claim this case control is removed.

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If an appeal is made following an unsuccessful Mandatory Reconsideration, an entry should be made in Dialogue **JA110 Maintain Notepad** that an appeal has been received.

If the appeal is successful, the claim will need to be re-built on JSAPS and arrears of ESA issued, after recovery of any JSA/IS that has been paid in the interim period.



Advise the learners that guidance and JSAPS action upon receiving an appeal hearing outcome can be found on the Intranet at:

Home > Operational Instructions > Working Age Benefits > D to F > Employment and Support Allowance > 01 ESA instructions for service centre processing > 11 Disputes And Appeals Process > [05 Handling appeal hearing](#) > Appeal hearing outcome received from Tribunal Service.

Closed Certificates and Repeat Claims from 30 March 2015

It is essential that whenever a further medical certificate is received, a check is made to see whether the diagnosis has changed.

When a closed certificate is received for a short term condition supporting a repeat claim and the claimant was found to have no LCW in their previous claim, the claimant can be treated as having LCW pending the outcome of a WCA.

This is only if the short term condition is different from that in their previous claim.

If the claimant then provides a further certificate giving their health condition as the same as that in their previous claim, the case should be referred to a DM for a decision as to whether the claim can be disallowed or referred for a further WCA.



Display slide 77 and 78 – Closed Certificate
Example (1/2), (2/2).

Re-referrals Following the Dispute Process

If a claimant has had a successful appeal, the DM should apply the recommendation of the Tribunal with regard to when the next WCA should take place, from the date of the original decision, unless the Tribunal states otherwise.

Otherwise, an eight month review period should be set as a minimum between successful appeal and subsequent WCA, unless the Tribunal recommends longer.



Check the learners' understanding and answer any queries before moving on.

Review Exercise 03



Refer the learners to Review Exercise 03 in their work book.

Allow 15 minutes for the learners to complete the exercise.

Following completion review their answers as a group.



Answer 01

It is a condition of the WCA that when assessing the claimant's ability, the inability to perform the required activity must arise from a:

- specific bodily disease or disability
- specific mental illness; or
- direct result of treatment provided by a registered medical practitioner.



Answer 02

A claimant will be allowed to change or cancel a scheduled appointment once. If they wish to cancel a second time the HAAS will advise them that this is not possible.



Answer 03

A Healthcare Professional means a registered:

- medical practitioner
- nurse
- occupational therapist; or
- physiotherapist.



Answer 04

The physical function descriptors include:

- Moving around and using steps
- Standing and sitting
- Bending and kneeling
- Reaching
- Picking up and moving things
- Manual dexterity
- Communicating with people
- Other people communicating with them
- Getting around safely
- Controlling bowels, bladder and used a collecting device
- Staying conscious when awake.



Answer 05

The mental, cognitive and intellectual function descriptors include:

- Learning how to do tasks
- Awareness of hazard or danger
- Initiating Actions
- Coping with change
- Going Out
- Coping with social situations
- Behaving appropriately with other people.



Answer 06

The Logic integrated Medical Assessment (LiMA) software package produces the scoring.



Answer 07

The points that can be allocated are:

- 15
- 9
- 6
- 0



Answer 08

The MSRS screen DMs review for a list of the Output Reports is the Browse New Response List.



Answer 09

They are a claimant:

- is in SG as a result of SR provisions
- has LCW but no LCWRA
- has LCW and LCWRA
- has LCW, LCWRA and Severe Conditions
- does not have LCW
- fails to return self-assessment form ESA50
- fails to attend or participate in WCA.



Answer 10

The outcome decision is made based on the:

- Law
- Facts
- Medical Evidence
- Healthcare Professional's opinion
- Claimant's own perception of their illness.



Answer 11

Where the claimant has attended the Health Assessment the Assessment report will be ESA85.

Where the claimant has not attended a Health Assessment the Advice report will be ESA85A.



Answer 12

A report may be classed as not fit for purpose if the advice given:

- is unfair, not impartial or could compromise decision making
- is not legible and concise
- is not comprehensive and does not explain clearly the medical issue raised
- is not complete and information is missing or some questions are unanswered
- contains contradictions.



Answer 13

The MSRS screens that the DM can review are:

- Browse New Response List
- View Referral Screen
- View Contact History Screen
- View Medical Outputs
- View FME
- View Examination History
- View History Letter.



Answer 14

The only document that should be printed from MSRS is the scoring sheet.



Answer 15

The two forms the DM will compare for consistency are:

- ESA50/ESA50A; and
- ESA85/ESA85A.



Answer 16

Has LCW and LCWRA and placed in **Support Group**.

Does not have LCW **ESA Claim Disallowed**.

Has LCW but does not have LCWRA placed in **Work Related Activity Group**.



Answer 17

The points threshold for both the physical and mental health functions is 15.



Answer 18

Examples of these outcome decisions are where:

- the outcome agrees that the claimant is terminally ill
- the claimant scores at least 15 points and is placed in the Support Group or Work Related Activity Group
- there is no change of circumstances on re-referral; or
- the claimant's ESA50 scores 0 and the HAAS scores 0 following the WCA.



Answer 19

Form ESA72 notifies the claimant when they have attended their Health Assessment and have a score above the LCW threshold.



Answer 20

The DM will record the outcome of their decision on the Decision Making and Appeals Case Recorder (DMACR) system.

There are two separate templates for recording WCA decisions:

- Band B WCA decision template; and
- Band C WCA decision template.



Answer 21

The decision outcome categories are:

- Support Group has LCW and LCWRA.
- Support Group has LCW, LCWRA and Severe Conditions
- WRAG has LCW but not LCWRA.
- Disallowed does not have LCW.
- Disallowed did not attend WCA.



Answer 22

The following information is checked on MSRS when a claimant fails to attend their Health Assessment:

- the date of the appointment
- the date letter AL1 was issued
- details of any contact with the HAAS; and
- whether the Mental Health flag is set.



Answer 23

Letter BF223 (ESA) is issued to the claimant when they fail to attend their Health Assessment and they are given seven working days to providing a reason for their non-attendance.



Answer 24

When the claimant fails to attend their Health Assessment the following details are input into screen **JA674693 PERSONAL CAPABILITY ASSESSMENT DETAILS:**

- the date the case was on MSRS output
- the appointment date from MSRS View Examination History screen; and
- the date BF233 (ESA) was issued from MSRS View Letter History screen.



Answer 25

When the claimant provides a reason for their non-attendance you need to input the date the BF223 (ESA) or the telephone call was received in screen

JA674693 PERSONAL CAPABILITY ASSESSMENT DETAILS.

You will also need to input an appropriate code this could be one of the following:

- [01] Medical Condition
- [02] Caring Responsibilities
- [03] Transport Difficulty
- [04] Severe Weather
- [05] Bereavement
- [06] Appt not Notified
- [07] Other.



Answer 26

Form MF37 should be completed to request a safeguard visit.

This form should be fully completed and it is important that the following details are included:

- claimant's health condition
- claimant's representative/third party
- details of the action to be taken to contact the claimant/representative; and
- whether good cause has been considered.



Answer 27

A re-referral could occur following an appeal or where the claimant is assessed as being entitled to ESA.



Answer 28

Appropriate timings for a subsequent WCA will be indicated by the HAAS in MSRS outcome. These are:

- Claiming under Special Rules – terminally ill will be three years.

For other claimants it will take place at:

- three months
- six months
- 12 months
- 18 months; or
- three years.



Answer 29

The purpose is to identify if there is sufficient evidence of ongoing disability to meet the LCW and or LCWRA threshold without the need for a face-to-face Health Assessment.



Check the learners' understanding and answer any questions before moving on.

Module Summary



Display slides 79 and 80 – Module Summary (1/2) and (2/2).



Check the learners' understanding and answer any final questions.

End of Module