

To J Newman
C/o request-92283-640dec2a@whatdotheyknow.com

DWP Central Freedom of Information Team

e-mail: freedom-of-information-xxxxxxx@xxx.xxx.xx

Our Ref: VTR 2661-3738

DATE 9 January 2012

Dear J Newman

Thank you for your Freedom of Information request dated 7 December 2011 that was received by Department for Work and Pensions (DWP) Adelphi and forwarded for response by the DWP Commercial Management of Medical Services Freedom of Information Officer.

In your email you asked to be provided with information answering the following questions:-

Dear DWP Adelphi Freedom-of-Information-Request,

I am sorry, but I am still confused:

Claimants are told to take all relevant information to a WCA for the Atos HCP to consider. The HCP also has the ESA50. To do their job correctly and make a sound recommendation through the ESA85, the HCP has to take account of this information in the way they conduct the WCA and make their final recommendation over fit to work or not. There is therefore nothing additional for a DM to consider as the ESA "decision" has already been made as it directly relates to fit to work or not.

If this is not the case, the DM is potentially left with various possibly conflicting medical information that they are not qualified (as they are not medically trained) to judge. If they then make a decision that someone is fit to work, against medical opinion, they become directly culpable for any consequences in the same way as doctors can be held liable for their mistakes. They cannot have the authority without the corresponding accountability.

- 1. Who decides I am fit to work - DM or HCP? I understand that the DM makes the subsequent ESA decision.*
- 2. If through the WCA I am forced back to work and my health suffers, who is accountable?*

In answer to **Q 1** benefit entitlement is determined by DWP Decision Makers (DM), not the Healthcare Professional (HCP) who undertakes the Work Capability Assessment (WCA), the HCP plays no part in the actual decision making process. In order to make a decision on benefit entitlement the DM considers all the available evidence not just the reports received from Atos Healthcare. Further evidence may include the claimant's 'self assessment', reports from GPs, hospital doctors and other clinicians.

The Medical Provision Contract specifies that all medical advice shall be fair and impartial. HCPs are required to produce a report, which states their own clinical opinion of the effects of a claimant's illness.

In reply to **Q 2** the continuous assessment of a claimant's incapacity for work in relation to the award of Employment and Support Allowance (ESA) is served by the WCA, the conditions of which must be satisfied or be treated as being satisfied in order for entitlement to ESA to be established or to continue receiving this benefit.

The WCA focuses on the functional effects of an individual's condition rather than the condition itself and provides a comprehensive and accurate assessment of an individual's ability to work, taking into account the modern workplace.

The report of the Department led review of the WCA that was published on 29 March 2010, found that generally the WCA accurately identifies individuals for the most appropriate benefit and support.

If a claimant was to return to work and their health deteriorated, then it would be for the claimant to contact their G.P. for consideration to be given to the issue of a Statement of Fitness for Work.

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@dpw.gsi.gov.uk or by writing to DWP, Central Fol Team, 5th Floor The Adelphi, 1-11, John Adam Street, London WC2N 6HT. 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 www.ico.gov.uk