

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

DWP Central Freedom of Information Team

e-mail: [freedom-of-information-xxxxxxx@xxx.xxx.xx](mailto:freedom-of-information-xxxxxxx@xxx.xxx.xx)

Our Ref: 2764-IR10

DATE 07 February 2012

Dear Mr Newman,

Thank you for your Freedom of Information request dated 10 January 2012 and clarification letter dated 02 February that was received by the Department for Work and Pensions (DWP) Adelphi and forwarded for response by DWP Medical Services Contracts Correspondence Team (MSCCT) Freedom of Information Officer. In your email you asked to be provided with information answering the following questions:-

*Q1: As I pointed out on my previous note, I know the DM makes the ESA decision, but my question was who decides if I am fit to work?*

*Also, all the "further" evidence you describe would have been available to the Atos HCP who should have reviewed and assessed its content as part of the WCA. What is there left therefore for a DM to consider? Or are you saying that none of this evidence should be taken to the WCA?*

*Q2: You have not answered my question. If a DM has countermanded my GP's advice in sending me back to work, they must surely take accountability for that decision. Or are you saying categorically that DMs have no accountability for the consequences of their decisions?*

Clarification dated 02 February:

*If it helps you with this, the important point here is that*

- The decision to pay ESA or not is based exclusively on the fit-for-work decision, so in reality can be made by anyone armed with the FFW outcome.*
- The FFW decision (regardless of whether it is based on clinical history or work capability) can only be made by someone medically qualified who understands both and the relationship between them. No level of ad hoc training or internet interrogation allows a DWP administrator to make this judgement safely.*

*Can you imagine an analogy in the NHS where an administrator with*

*no medical qualifications would be allowed to make decisions that could affect a patient's well-being – I can't and rightly so.*

*I want to know who within the laid down procedures makes the FFW decision - it is not clear in any of the manuals.*

As Reviewing Officer, I have read your letter and accepted this as a request for an Internal Review in order that I can check that the information sent to you clearly and accurately answered your request. I have therefore conducted a full investigation into your original request and the information supplied to you. I have also reviewed any decisions to withhold information and in doing so I have fully considered the public interest in disclosure.

I wish to further explain that the only decision that is made within the ESA claim process is by the Decision Maker (DM) and the decision is whether a person meets the work capability test needed to receive ESA. A medical background is not required for a DM to consider the opinions of the claimant, HCP and other medical professionals to make a judgement on a claim to benefit. The DM decision is a benefit matter and that is what the Department is held accountable for.

In reviewing your request I uphold the decision of the Freedom of Information Officer. I therefore find that the original response dated 09 January 2012 (FOI 2661-3738) was correct and that all the information that DWP are able to supply to you has been supplied.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

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### **Your right to complain under the Freedom of Information Act**

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](http://www.ico.gov.uk)