

EMPLOYMENT AND SUPPORT ALLOWANCE

APPEALS GUIDE **Updated 28/10/2013**

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WHO IS THIS GUIDE FOR?

This guide helps you challenge a decision to refuse Employment and Support Allowance (ESA) following a recent medical (work capability assessment).

WHAT THIS GUIDE IS ABOUT

This guide takes you through the new process of challenging a 'work capability assessment' decision to refuse you ESA.

By following the simple steps you will be able to request a Mandatory Reconsideration, obtain supporting medical evidence and submit this evidence to the DWP for a reconsideration of your entitlement to ESA. Then to proceed to an appeal hearing if there is a negative reconsideration outcome.

MANDATORY RECONSIDERATION BEFORE APPEAL

For decisions made from 28 October 2013 you can only appeal after you have asked the DWP to reconsider their decision. This is called a 'mandatory reconsideration' and is a compulsory step before making an appeal.

On making the request for a mandatory reconsideration the DWP will look at the decision you disagree with again. If the mandatory reconsideration is unsuccessful you will the need to complete a further form called an SSCS 1 to register your appeal.

HOW TO REQUEST A MANDATORY RECONSIDERATION

STEP 1

If you decide to request a 'mandatory reconsideration' it is important that you do so within **one month** of the date at the top of the decision letter. Late requests may be refused so do not delay sending this request if you are still waiting for evidence. Enclosed in this pack is a Mandatory

Reconsideration Form that will need to be completed and send to the office that made the decision.

COMPLETING THE MANDATORY RECONSIDERATION FORM

You will need to complete the form including your details in section 1 and whether you have a representative at section 3 (if not at this stage leave it blank). You are then asked in section 4 what benefit you wish to appeal against and the date of the decision. It will be Employment Support Allowance and the date of the decision is on top of the DWP letter you received informing you.

You then need to complete the box in section 6 asking for reasons why you disagree with the decision. Below are some examples of what to write in this section. You can add more specific details if you wish.

Example 1:

I wish to appeal against the decision that I do not have a limited capability for work. I consider that the decision maker did not take full account of the severity of my condition or the way that it affects my everyday activities and bodily functions.

Example 2:

I wish to appeal against the decision to stop my Employment Support Allowance. In my questionnaire I feel that I provided enough evidence to support my claim and I feel that this has been overlooked.

At section 8 you sign and date the form

At section 9 it confirms whether you will or will not be sending further medical evidence (eg doctor or consultant report or medical records) with the reconsideration form. If you already have supporting medical evidence ring the relevant wording and send it in with the form. If you have to ask for supporting medical evidence which will be supplied at a later date you can ring the 'I will not' wording to prevent the

reconsideration being delayed. You can still submit evidence later at an appeal.

Mandatory Reconsideration (and ESA payment)

It is important to be aware that for decisions made from the 28th of October 2013 you cannot be paid Employment Support Allowance (ESA) during the mandatory reconsideration process if you have failed a 'work capability assessment'. No time limit has been set for how long the process will take but you can only be paid ESA from the appeal stage following an unsuccessful mandatory reconsideration

This will lead to a gap with no ESA payments from the date of the negative decision up until the mandatory reconsideration notification has reached Her Majesty's Courts & Tribunal Service. You will need to send it to the Tribunal Service with an appeal form (SSCS1). They inform the DWP that an appeal has been made.

You cannot avoid the gap in ESA payments, but you may be able to claim jobseekers allowance (JSA) instead (ring the contact centre on 08000 0556688 to claim). You will be required to sign a jobseekers agreement on what you will do to look for work weekly, and provide evidence of this at fortnightly signing on. If there are restrictions on what you are able to do due to disability make sure you get them noted in the agreement, because if you do not comply you will be sanctioned and will need to request hardship payments.

If you decide to claim Jobseekers Allowance during the mandatory reconsideration process and you then go on to appeal it will be possible to claim ESA again whilst waiting for the appeal. You will need to change your claim and supply a sick/fit note from your GP. Otherwise you will remain on Jobseekers Allowance.

If you did not claim Jobseekers Allowance during the mandatory reconsideration process, and there is a successful mandatory reconsideration, or you go on to successfully appeal, you can usually be paid ESA for the whole period from the date of the original decision. This will continue as long as you continue to supply sick/fit notes to cover the whole period.

It is likely that someone from the DWP will also telephone you during the reconsideration process to ask for more details. Whatever you tell them can be used as further evidence so it may be advisable to note or record what is said during this call.

REQUESTING FURTHER EVIDENCE

If you are submitting supporting medical evidence it is advisable to include this along with the mandatory reconsideration form within the first 28 days. If you do not have medical evidence, or you have to request further medical evidence, it is best to provide this later if you proceed to appeal to prevent the reconsideration being delayed.

STEP 2

Enclosed in this guide is 'blank letter 1 (p8) for you to request supporting evidence. This should be sent along with the Physical/Mental Health medical questionnaire to either your GP or someone who is aware of your medical problems and how they affect you; this could be a consultant, social worker, therapist or a carer.

Example letter 1 included for your information (p9).

SUBMITTING FURTHER EVIDENCE

STEP 3

If you cannot submit further evidence with your mandatory reconsideration form because you have to wait it can be still submitted at appeal stage. When you receive a completed questionnaire back you will then need to forward this along with 'blank letter 2' (p10) to Her Majesty's Courts and Tribunal Service (HMCTS) once your appeal has been lodged in the envelope included in this pack if your appeal is for Leicester. If you are downloading this form from another area you will need to contact the office who made the original decision to request appropriate freepost envelopes. If possible try to keep a copy for your own records. Example letter 2 included for your information (p11).

AWAITING THE MANDATORY RECONSIDERATION DECISION

STEP 4

You will need to await a mandatory reconsideration notification form from the DWP.

- If you have not heard within 4 weeks you may need to contact the ESA section for an update by calling 0845 608 85 25.

PROGRESSING TO APPEAL

As previously mentioned you will not now be able to continue to appeal until the 'mandatory reconsideration' has been completed and you have received the notification form.

If your mandatory reconsideration does not change the decision and you want to continue to a full appeal tribunal hearing you will need to complete the new SSC1 appeal form (enclosed). Send this directly to **HM Courts & Tribunal Service, SS&CS Appeals, ASC, PO Box 14620, Birmingham B16 6FR** and attach the mandatory notification form you received.

At this point, when the DWP are informed of your decision to appeal, you may be able to reclaim Employment Support Allowance pending your appeal being heard. It would be advisable to re-contact the Welfare Rights Service **Benefits Advice Line on 0116 454 5570** (Mon, Tues, Thu, 1-4pm) for further advice at this stage.

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Dear

RE: _____

Recently I had a medical in connection with my benefits. The DWP has deemed me as fit to work. I feel that due to my health problems I am not currently in a position to work. Therefore I wish to challenge the decision.

I would like to ask if you are in a position to help in this matter by completing the enclosed form that asks specific questions related to the point scoring system used for this benefit.

Many people with mental health difficulties and physical problems are losing their benefits as they are being classed as able to work.

I would like to thank you for all your help in this matter.

I look forward to hearing from you.

Yours faithfully

.....

Mrs Jane Smith
0116 123 4567

EXAMPLE LETTER ONE

15/08/2009

Dr Spock
Dr Spock's Surgery
Enterprise Road
Leicester, LE1 1CC

Dear Dr Spock

RE: Mrs Jane Smith, 44 Picnic Road Leicester LE1 1BB
Dob. 01/01/1945, Nino. NN 11 22 33 44 X

Recently I had a medical in connection with my benefits. The job centre has deemed me as able to work. I feel that due to my health problems I am not currently in a position to work. Therefore I wish to challenge the decision.

I would like to ask if you are in a position to help in this matter by completing the enclosed form that asks specific questions related to the point scoring system used for this benefit.

Many people with mental health difficulties and physical problems are losing their benefits as they are being classed as able to work.

I would like to thank you for all your help in this matter

I look forward to hearing from you

Yours faithfully

Jane Smith

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HMCTS

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Dear Sirs

RE: _____

My name is and I have recently submitted an appeal for ESA.

Please find enclosed a medical questionnaire completed by professionals involved in my care. Please could you reconsider the decision as the medical evidence provided disputes the decision and supports my appeal.

I look forward to hearing from you

Yours faithfully

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Mrs Jane Smith
0116 123 4567

EXAMPLE LETTER 2

ESA Appeal

07/09/2009

HMCTS
SS& CS Appeals ASC
Po Box 14620
Birmingham B16 6FR

Dear Sirs

RE: Medical Evidence for Mrs Jane Smith, NN 11 22 33 44 XX

My name is *Jane Smith* and I have recently submitted an appeal for ESA.

Please find enclosed a medical questionnaire completed by professionals involved in my care. Please could you reconsider the decision as the medical evidence provided disputes the decision and supports my appeal.

I look forward to hearing from you

Yours faithfully

Jane Smith

Employment & Support Allowance

Physical Health (decisions from 28/3/11)

updated 1/5/13

Questionnaire as to whether a person has a
Limited Capability for Work

Name _____

Address _____

DoB _____

NINo _____

Please confirm current diagnosis.....

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Current medication.....

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Part 1 - Physical Functions

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.

- a) Cannot, unaided by another person, **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.
- b) Cannot unaided by another person mount or descend two steps even with the support of a handrail.
- c) Cannot, unaided by another **either**
 - (i) mobilise more than 100 metres on level ground without stopping in order to avoid severe discomfort or exhaustion **OR**
 - (ii) (ii) repeatedly mobilise more than 100 metres within a reasonable timescale because of significant discomfort or exhaustion
- d) Cannot unaided by another person **either**
 - (i) mobilise more than 200 metres on level ground without stopping in order to avoid severe discomfort or exhaustion **OR**
 - (ii) Repeatedly mobilise more than 200 metres within a reasonable timescale because of significant discomfort or exhaustion.
- e) None of the above applies.

Please select one of the above and give reasons for your choice:

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2 Standing and sitting

- a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
- b) Cannot for the majority of the time, remain at a workstation:
 - (i) standing unassisted by another person (even if free to move around);
 - (ii) (ii) sitting (even in an adjustable chair) or
 - (iii) A combination of paragraphs (i) and (ii) for more than 30 minutes before needing to move away in order to avoid significant discomfort or exhaustion .
- c) Cannot for the majority of the time, remain at a workstation,
 - (i) standing unassisted by another person (even if free to move around);
 - (ii) sitting (even in an adjustable chair)
 - (iii) A combination of paragraphs (i) and (ii) for more than an hour before needing to move away in order to avoid significant discomfort or

exhaustion.
d) None of the above applies.

Please select one of the above and give reasons for your choice:

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3 Reaching

a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
b) Cannot raise either arm to top of head as if to put on a hat.
c) Cannot raise either arm above head height as if to reach for something .
d) None of the above apply

Please select one of the above and give reasons for your choice:

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4 Picking up and moving or transferring by the use of the upper body and arms
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a) Cannot pick up and move a 0.5 litre carton full of liquid with either hand.
b) Cannot pick up and move a one-litre carton full of liquid with either hand.
c) Cannot transfer a light but bulky object such as an empty cardboard box.
d) None of the above apply.

Please select one of the above and give reasons for your choice:

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5 Manual dexterity

a) Cannot either (i) press a button, such as a telephone keypad; OR (ii) turn the pages of a book with either hand.
b) Cannot pick up a £1 coin or equivalent with either hand.
c) Cannot use a pen or pencil to make a meaningful mark with either hand
d) Cannot single- handily use a suitable keyboard or mouse.
e) None of the above apply

Please select one of the above and give reasons for your choice:

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6 Making self understood through speaking, writing, typing or other means normally used unaided by another person

- a) Cannot convey a simple message, such as the presence of a hazard.
- b) Has significant difficulty conveying a simple message to strangers.
- c) Has some difficulty conveying a simple message to strangers.
- d) None of the above applies.

Please select one of the above and give reasons for your choice

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7 Understanding communication by(i) verbal means (such as hearing and lip reading) alone (ii) non verbal means (such as reading 16 point print or braille) alone: or a combination of sub paragraphs (i) and (ii) using any aid that it is normally or could reasonably be used unaided by another person

- a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.
- b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.
- c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.
- d) None of the above applies.

Please select one of the above and give reasons for your choice:

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8 Navigation and maintaining safety, using a guide dog or other aid if either or both are normally used or could be reasonably used

- a) Unable to navigate around familiar surroundings without being accompanied by another person, due to sensory impairment.
- b) Cannot safely complete a hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.
- c) Unable to navigate around unfamiliar surroundings without being accompanied by another person, due to sensory impairment.
- d) None of the above applies.

Please select one of the above and give reasons for your choice:

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9 Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bedwetting) despite the wearing or use of any aids or adaptations which are normally or could used

- a) At least once a month experiences:
 - (i) 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 cleaning and a change in clothing.
- b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.
- c) None of the above applies.

Please select one of the above and give reasons for your choice:

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10 Consciousness during waking moments

- a) At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.
- b) At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.
- c) None of the above applies.

Please select one of the above and give reasons for your choice:

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Is the person suffering from a physical or mental disablement that would cause a substantial risk to the health of themselves or any other person if they were found capable of work?

YES/NO

If yes outline what you think the risk would be

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Any further comments

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Signed

Date

Profession

Official Stamp

Employment & Support Allowance

Mental Health (from 28/3/11)

updated 1/5/2013

Questionnaire as to whether a person has a
Limited Capability for Work

Name _____

Address _____

DoB _____

NINo _____

Please confirm current diagnosis.....

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Current medication.....

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Part 2 - Mental, Cognitive and Intellectual Function Assessment

11 learning tasks
a) Cannot learn how to complete a simple task, such as setting an alarm clock.
b) Cannot learn anything beyond a simple task, such as setting an alarm clock.
c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.
d) None of the above applies.

Please select one of the above and give reasons for your choice:

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12 Awareness of everyday hazards (eg boiling water or sharp objects)
a) Reduced awareness of everyday hazards leads to a significant risk of: I. Injury to self or others OR II. damage to property or possessions, such that the claimant require supervision for the majority of time to maintain safety
b) Reduced awareness of everyday hazards leads to a significant risk of: I. Injury to self or others OR II. damage to property or possessions, such that the claimant frequently requires supervision to maintain safety.
c) Reduced awareness of everyday hazards leads to significant risk of: I. Injury to self or others OR II. damage to property or possessions, such that claimant occasionally requires supervision to maintain safety
d) None of the above apply

Please select one of the above and give reasons for your choice:

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13 Initiating and Completing personal action (eg planning, organisation, problem solving, prioritising or switching tasks)
a) Cannot due to impaired mental function reliably initiate or complete at least two sequential personal actions.
b) Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions for the majority of the time
c) Frequently cannot, due to impaired mental function reliably initiate or complete at least two sequential personal actions.
d) None of the above apply

Please select one of the above and give reasons for your choice:

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14 Coping with change
a) Cannot cope with any change to the extent that day to day life cannot be managed.
b) Cannot cope with minor planned change (such as the pre arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.
c) Cannot cope with minor, unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.
d) None of the above apply

Please select one of the above and give reasons for your choice:

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15 Getting about
a) Cannot get to any place outside the claimants home with which the claimant is familiar.
b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person
c) Is unable to get to a specified place which the claimant is unfamiliar without being accompanied by another person.
d) None of the above apply

Please select one of the above and give reasons for your choice:

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16 Coping with social engagement due to cognitive impairment or mental disorder
a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant
b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.
c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.
d) None of the above apply

Please select one of the above and give reasons for your choice

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17 Appropriateness of behaviour with other people due to cognitive impairment or mental disorder
a) Has on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace
d) None of the above applies.

Please select one of the above and give reasons for your choice:

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Is the person suffering from a physical or mental disablement that would cause a substantial risk to the health of themselves or any other person if they were found capable of work?

YES/NO

If YES please outline what you think the risk is

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Any further comments

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Signed

Date

Profession

Official Stamp