



Employment and Support Allowance (ESA): a guide to making a claim and filling in the *Capability for work questionnaire* (ESA50)

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Introduction

Employment and Support Allowance (ESA) replaced Incapacity Benefit and Income Support in 2008 and is now the benefit that people who are not able to work because of sickness can claim.

There are two types of ESA:

- Contribution-based: this depends on you having paid enough National Insurance in the years preceding your claim. It is not means tested, but if you get an occupational pension, ill health retirement pension or permanent health insurance this may reduce the amount that you get. It is important to inform the DWP of any payments that you get or start to get once you have claimed as these payments could affect the amount that you get. Contribution-based ESA is taxable.
- Income-related: this does not depend on your National Insurance record and is means tested. This means that your savings over £6,000 will be taken into account along with your partner's income, as well as any other income that you have. If you or your partner has more than £16,000 in savings you will not qualify for income-related ESA.

You may get paid just contribution-based ESA (CB ESA) or just income-related ESA (IR ESA), or you may get CB ESA with some IR ESA paid as a "top up."

You may be able to get help with your mortgage costs through IR ESA. There is a waiting period before you can get any help with your mortgage costs.

If you get IR ESA you will qualify for help with NHS charges (for example free prescriptions, free NHS eyesight tests and free NHS dental treatment). CB ESA does not automatically entitle you to this help in the same way, but you may still qualify for help and will need to apply under the NHS Low Income scheme by filling in a HC1 form. To find out more call 0300 330 1343 or visit www.nhsbsa.nhs.uk/HealthCosts/1128.aspx

Disability Rights UK has produced a useful guide to ESA which provides background information. You can read this at: www.disabilityrightsuk.org/employment-and-support-allowance-overview

Making a claim for ESA

You need to be at least 16 to claim ESA. When you make a new claim, you need to contact Jobcentre Plus on 0800 055 6688 (Monday to Friday 8am to 6pm)

You will usually be asked a series of questions over the phone and then be sent the form ESA1 to check and sign. You will need to return this with a fit note from your GP. If your claim is approved you will then start getting paid your benefit at the assessment rate. See p 5 of this factsheet if you are being moved over to ESA from Incapacity Benefit, Income Support or Severe Disablement Allowance.

From the 30 March 2015, if you have been found fit for work under the Work Capability Assessment (WCA) and then make a repeat claim for ESA following this decision, you will only be paid ESA during the assessment phase if it is accepted that your condition has got substantially worse or that you have a new condition. If your condition has got worse/you have a new condition you will be expected to complete a form giving details of this.

At some stage you will be sent a more detailed claim form called the *ESA50 Capability for work questionnaire* to complete. This assesses your ability in a number of activities.

Most people then attend a face to face assessment with a company called Maximus. Maximus is contracted by the Department of Work and Pensions (DWP) to carry out these assessments, having taken over the contract from Atos. Your claim form and the Maximus report then go to a decision maker at the DWP who decides whether you are entitled to the benefit.

If you fail to return a questionnaire or fail to attend a face to face assessment you will be found not to have limited capability for work (ie. you will be treated as fit for work) and will have to show good cause for your failure to do these things.

If good cause is not accepted you will have to ask for reconsideration. If the reconsideration is not successful then you can take it to appeal. Your benefit will stop while this is happening.

If you are entitled to ESA, you will either be placed in:

- the Work Related Activity Group (WRAG) or
- the Support Group.

If you are in the WRAG you will be asked to attend work-focused interviews and may be asked to take part in other work related activity. If you are in the Support Group you will not have to participate in any work-related activity and will get a higher rate of benefit.

When filling in the ESA50 form you need to give a full description of your condition and how it affects you.

The test you are assessed under, the Work Capability Assessment (WCA) is meant to take into consideration how you are over a period of time. It also takes into account whether you can do things reliably, repeatedly and the effect that the activities have on you. So make sure you explain if you can only do an activity once or twice and are not able to keep doing it.

Factors such as tiredness, pain and discomfort should all be taken into account when assessing your ability to manage an activity.

DWP guidance states that when assessing claimants under the WCA, the healthcare professional must take account of factors such as pain, fatigue, stress and possible variability of the condition. It has been established that it must be possible for someone to be able to carry out the activities reliably, repeatedly and safely.*

**This guidance is on page 66-67 and 69-70 of the WCA handbook used by assessors which can be accessed at www.dwp.gov.uk/docs/wca-handbook.pdf*

Case law relating to Incapacity Benefit and ESA can also be relevant when considering these matters and Disability Rights UK highlight several cases dealing with reasonable regularity at www.disabilityrightsuk.org.uk

More generally, it states on p 7 of the ESA50 claim form that to answer yes to any of the questions, you must be able to do the activity:

- safely
- to an acceptable standard
- as often as you need to and
- in a reasonable length of time.

There are two tests and both are measured by descriptors (please see the appendices starting on p 22 of this factsheet for the full list of descriptors):

- the Limited Capability for Work test: this is a points-based test and you need to score 15 points to get into the WRAG
- the Limited Capability for Work-Related Activity test: this consists of 16 descriptors and if one of them applies to you, you will go into the Support Group.

(You may also get a letter that mentions a Work-Focused Health Related Assessment, although at present these are not being carried out, having been suspended more than two years ago).

If none of the Support Group descriptors apply to you and you score less than 15 points you will have failed the Limited Capability for Work Assessment. You may still qualify under the exceptional circumstance rule (see page 4). You will have the right to appeal against this decision (see 'If you are not happy with the decision that has been made' on p 16).

Time limiting of contribution-based ESA

Contribution-based ESA is time-limited to a year if you are in the WRAG (but can continue indefinitely if you are in the Support Group). Once the year ends it becomes means-tested so you may be able to go onto income-related ESA.

Some people can get another year of contribution-based ESA if they can satisfy the National Insurance contribution in a later year when they make a new claim after 12 weeks. This may apply to people who have worked in the last few years.

Even when your contribution-based ESA ends, due to time limiting, you should continue to get forms sent to you and if you want to carry on getting your national insurance credits paid you will need to fill them in and attend any face-to-face assessments that you are called for.

Migrating from Incapacity Benefit or Income Support

If you are moving over to ESA from one of these benefits the process will be a bit different. You will first of all get a letter telling you about the intended transfer.

You will then get a phone call. This is just to make sure that you got the letter and to see if you have any questions. You will then be sent the ESA50 questionnaire and may also have a face to face assessment.

If you are not contactable via phone, you will be sent the ESA50 anyway.

Exceptional circumstances rule

You may also be able to qualify for ESA under the exceptional circumstances rule.

The regulation that may apply to some people with M.E./CFS is Reg 29 (2)(b) of the ESA regulations. This refers to someone who is: *“suffering from some specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or physical health of any person if they were found not to have a limited capability for work.”*

The grounds for using the exceptional circumstances rule are that the person with M.E. is unable to sustain physical or mental activity without experiencing serious consequences. This could include increased fatigue with progressive deterioration and a worsening of symptoms if s/he continues to be active above his/her own sustainable level. This could lead to a serious decline in health or a relapse.

You may need to explain that you have a ceiling and that, if you have to do any activity above this ceiling, this will result in deterioration in your health and that, if exertion is continued, this could lead to a complete relapse. You may like to consider what would be involved if you were found fit for work and what impact this could have on your health.

There is a very similar rule (Reg 35)(2)(b), that allows entry to the Support Group, for someone who is: *“suffering from some specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or*

physical health of any person if they were found not to have a limited capability for work related activity.”

You may like to consider what the implications would be of having to attend interviews and possibly participate in work related activity. What effect would this have on your health?

For further information about this rule and its interpretation please see appendix III (p 31) of this factsheet.

Rules that came into force on 28 January 2013 mean that DWP Decision Makers can consider whether it is possible for employers to make reasonable adjustments in the work place that would reduce the level of risk.

Filling in the ESA50 questionnaire

Changes to the rules from 28 January 2013 mean that you may only be able to score in the 'Physical functions' section if you have a physical health diagnosis and you can only score in the 'Mental, cognitive and intellectual functions' section if you have a mental health diagnosis.

This could, of course, impact on people with M.E. who have both physical and cognitive problems. We suggest that you fill in both sections if you have difficulties in both areas and give as much detail as you can about the impact of the illness and its effects both physically and cognitively. It has been recognised that many conditions have both physical and cognitive symptoms and we have heard from people with M.E who score in both sections.

The first six pages of the questionnaire includes questions about your GP and consultant, what your illness/disability is and asks about any medication that you take.

On p 5 of the ESA50 questionnaire you are asked about your illness. You will need to give your diagnosis and list your symptoms.

On p 17 of the ESA50 questionnaire there is a section about the face-to-face assessment. You can explain any difficulties with travelling to the examination centre that you would have or any access needs once you are there.

If someone helps you fill out the form and you have to do it in stages over time, make sure you make this clear. If filling in the form has negatively affected your health, make sure you mention this. This information can all go in the 'Other information' section on p 17 of the questionnaire.

It's a good idea to photocopy the form before you post it, so you have a record of your answers.

The following questions correspond with the activities and descriptors listed in appendix I (p 22) and II (p 28) of this factsheet. So when you are looking at each question on the claim form, it is a good idea to also look at the corresponding descriptors. For example, when you are considering the question about Moving around and using steps, you would also look at the mobilising descriptor in both appendix one and two. You can then ensure that you give the most relevant information.

Part 1: Physical functions

Remember that to answer yes to any of the questions, you must be able to do the activity safely, to an acceptable standard, as often as you need to and in a reasonable length of time. This is clearly stated on the ESA50 form.

1. Moving around and using steps

This question refers to the activity “Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.”

It is about your ability to mobilise either on foot or using a wheelchair. If you would have problems self-propelling a wheelchair make that clear, for example it may be even more exhausting to self-propel in a wheelchair or you may lack sufficient upper body strength to do this. You may not be able to walk as much as 50 meters, which is the first tick box, so make sure that you point this out. This question considers your ability to walk 50, 100 and 200 meters and whether you can do this repeatedly.

If you are unable to mobilise 50 meters, or you cannot do this repeatedly within a reasonable time scale, you may qualify for the Support Group. The Support Group descriptor for mobilising is shown below.

1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; OR (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
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You could give information here about the symptoms that you experience when walking, for example exhaustion, muscle or joint pain, weakness, dizziness or breathlessness. You can tell them about the symptoms that occur at the time and afterwards. You may be able to walk the distance but then have to rest for a prolonged period afterwards.

There is also a question about walking up steps so explain any problems with this as well. You may have balance problems or dizziness and, while you may be able to do the activity once, you may not be able to keep doing it.

DWP guidance states: “Bear in mind that a person who can easily manage around the house and garden is unlikely to be **severely** limited in their mobility. A person who can mobilise around a shopping centre/supermarket is unlikely to be limited to mobility of less than 200 metres although consideration must be given to the size of shop, speed of walking, stops and pauses etc. Someone who is **only** able to move around within their home is unlikely to manage 50m reliably.”

2. Standing and sitting

Consider how long you are able to stand and sit for. The descriptor also looks at your ability to alternate between these two positions, so if for example you need to lie down in between, make this clear. In the descriptor it mentions being “at a work station,” so bear that in mind.

In the blank box, give details of any difficulties you experience with standing and sitting eg. nausea, tiredness, balance problems, muscle fatigue, breathing problems, muscle or joint pain.

If you need help to move from one seated position, you need to give information about this too.

3. Reaching

Can you raise either arm as if to put something in the top pocket of a coat or jacket? Can you put on a coat or jacket or raise either arm to put on a hat?

This section involves using the elbow and shoulder joints to perform simple reaching movements. Use the blank box to give more information, for instance could you reach up repeatedly or would you tire rapidly, or experience muscle weakness or tremors?

4. Picking up and moving things

Are you able to pick up and move a 0.5 litre or a litre carton full of liquid at table level with either hand?

Ask yourself, can you do this repeatedly? Do you have problems with grip, power or coordination? Do you experience tremor or pain? Do you suffer from fatigue or other after effects? The test does not include any other activity than moving the object, eg. it does not include pouring.

Answer the second question about an empty cardboard box giving similar details, or elaborate if this is a more difficult task for you.

5. Manual dexterity (using your hands)

Consider whether you have any difficulties manipulating small objects, eg. can you turn a ‘star-headed’ sink tap with either hand, pick up a pound coin and turn the page of a book? Do you have problems with grip, tremor, or pain while carrying these out - and can you perform the task repeatedly?

6. Communicating with people

Does speaking cause you pain or make you tired? Do you use wrong words or muddle up sentences to the extent that strangers don’t understand you? Do you give wrong answers or instructions? Are you always able to find the words that you need?

7. Other people communicating with you

Is your hearing over-sensitive? Do you confuse sounds? Can you hear when there is background noise? Do you suffer from tinnitus or a similar condition? If you can hear but cannot sustain concentration, describe this in the later section on mental/cognitive function.

8. Getting around safely

Ask yourself if you have blurred or double vision? Are you sensitive to light? Can you always focus on what you want to when you want to? Can you read 16 point print at a distance greater than 20cm?

9. Controlling your bowels and your bladder

If you sometimes lose control of your bowels or bladder, say how frequently this happens. Even if you don't lose complete control, but sometimes have to act quickly to avoid situations where this might happen, you should mention this here.

10. Staying conscious when awake

Do you have problems staying conscious when awake at least once per week, or once per month or have you had these problems twice in the six months previous to filling in this questionnaire? Do you suffer from lost or altered consciousness which results in disrupted awareness or concentration? Has this left you in a dangerous situation? Do you fall and injure yourself?

Part 2: Mental, cognitive and intellectual functions

11. Learning tasks

Do you have problems learning or remembering how to perform simple or more complex tasks such as setting an alarm clock or shopping and ironing clothes? Do you need physical help with tasks or verbal prompts?

12. Awareness of everyday hazards (such as boiling water or sharp objects)

Do you suffer from reduced awareness of everyday hazards or need supervision to help keep you safe?

In other words, have you injured yourself perhaps by cutting yourself on a sharp object or by burning yourself in the kitchen or with the iron? Have you fallen or injured yourself in the street? Have you damaged property (burnt the kettle, the saucepan, your clothes) and has this led to avoidance of attempting tasks? Is your GP aware of this and do you have evidence of any accidents? Have they been noted in your medical or other records, for instance dentistry records?

13. Starting and finishing tasks

Are you able to plan, organise, problem solve, prioritise, and switch tasks due to cognitive impairment without verbal prompting for most of the time, or from time to time?

Does 'brain fog', forgetfulness and lack of concentration prevent you from completing tasks such as cooking a meal, getting drinks, getting up and dressed to leave the house and attend appointments without someone to remind you of what you need to do?

Even if you have someone to remind you, are you still unable to complete the above tasks? If not you should say so.

14. Coping with change

Do you find it significantly more difficult to manage your day when there are unexpected minor changes, for instance in the timing of appointments on the day they are due? Do you have to stick to strict pacing routines to enable you manage and get through the day?

15. Going out

Are you unable to get to places that are familiar to you without being accompanied by another person on every occasion, for the majority of the time, or frequently? If you need someone with you, explain why.

For instance do you get forgetful while you are out or do you suffer from brain fog or panic attacks?

Remember that this question is about your ability to cope mentally or emotionally with going out. If you have physical problems which mean you can't go out, you need to record this in the Moving around and using steps section on page 7 of the ESA50 questionnaire.

16. Coping with social situations

Do you get fearful, scared, panicky or anxious when you are visiting new places or engaging in social contact? If you do, do you feel the need to avoid these situations all of the time, for the majority of the time, or frequently?

Explain why and how you feel in these situations eg. if you feel overwhelmed and unable to cope, say so.

17. Behaving appropriately

This question considers whether you have episodes of "aggressive or disinhibited behaviour." It particularly looks at whether behaviour would be unreasonable in a place of work.

If being in a work environment could affect your behaviour to the point where you may be at risk of behaving in a way that you would not choose, this activity could possibly apply to you. Examples could include being so overwhelmed and exhausted that you experience uncontrollable crying or distress. You may suffer with panic attacks and this could also count.

Part 3: Eating and drinking

18. Eating and drinking

This question relates to the Support Group and descriptors 15 and 16 in appendix II (p 28) of this factsheet. It deals with feeding yourself and your ability to actually chew and swallow food.

If you need physical assistance with eating and drinking, ie. conveying food and drink to your mouth, you can explain this here. If you require any aids such as tube feeding this needs to be explained here. You could also give information about any serious digestive problems or food allergies.

You may need prompting and encouraging to eat if you are exhausted and feeling very ill. Perhaps nausea means that you often don't want to eat and need prompting to do so. Does eating cause any physical symptoms such as pain or discomfort or do you experience muscle weakness or fatigue while eating or afterwards? Does eating and drinking exhaust you or make any of your symptoms worse?

Other information

You can use this space to give other information about your M.E. symptoms and how they affect you. Things you may like to include could be a short history, for example including information about any attempted returns to work that have resulted in your condition getting worse.

You could also talk about activities that you can no longer do. This could include seeing friends or family, or taking part in hobbies as well as domestic and personal tasks.

If you think that the exceptional circumstances rule (see p 5 of this factsheet) applies to you, you could explain that here too. You don't need to actually say that you think it applies (although you can do) you can just talk about your baseline and what happens if you exceed that.

Supporting medical evidence

On the first page of the ESA50 questionnaire, it says: "Send copies of any medical or other information you already have, that tells us how your health conditions, illnesses or disabilities affect how you can do things on a daily basis."

On page 4 of the questionnaire there is a detailed list about the type of information they would like to see. They say that you do not need to get any new or specially prepared information. They may contact your GP or health professional for a report but they do not always do this. You may decide that you do want to enclose a letter prepared especially for your claim and you may decide to ask your G.P or other health professional to help with this.

If you are able to, you can include any letters or reports that you have from your GP consultant or anyone else on the list on page 4 of the form. Not all professionals are willing to write letters of support, and some of those that do may charge you for this.

If you do ask for a letter, it is best if it includes some information about the activities that you are having difficulty with, rather than being general and just saying you are not able to work.

Action for M.E. has produced a factsheet for you to share with your healthcare professional to help them understand how important this evidence can be. A copy of it (*Supporting medical evidence for people with M.E./CFS*) should be enclosed.

The face-to-face assessment

Most people have to attend this. It will be with a healthcare professional employed by Maximus. For information about the Health Assessment Advisory Service, please contact the Centre for Health and Disability Assessments (this is the name that Maximus operates under for carrying out assessments for the DWP). Call 0800 288 8777 or visit www.chdauk.co.uk

If you are not able to attend make sure you contact the number on the letter inviting you for the appointment as soon as you can. It may be possible to rearrange the appointment.

If you do not manage to rearrange your appointment it is important that you attend as otherwise you will be found fit for work and will have to demonstrate good cause for non-attendance. See page 16 for more information about this.

You could be seen by a doctor but it is far more likely to be nurse or other health care professional. You can ask for a home visit, but will usually need to provide a letter from your GP or similar saying you are not able to travel to an examination centre.

At the assessment you will be asked questions about your typical day. You are often asked to describe a typical day. It is likely that you will be asked how you travelled to the assessment centre and you may be asked about how you manage shopping and housework and other routine activities.

The health care professional will use the information that you provide to consider how you may manage the activities listed on the ESA50 form. The healthcare professional will also observe you at the meeting and may comment on how you cope.

You will need to tell the examiner about fluctuations in your condition as well as when there are days you are not able to do things, eg. getting washed and dressed and cooking a meal. If you only do things occasionally make sure you make this clear and explain that you cannot do the activity reliably and repeatedly.

Make sure you tell them about problems that you may have with using a computer, travelling, concentrating and taking in and processing information.

Explain the need to pace your activities and tell them about how extra events like GP appointments etc. can affect you. If you have recent experience of work, voluntary

work or attending meetings at the Job centre and these things have affected your health in a detrimental way, ensure that you tell the health professional about this.

It's a good idea to have someone with you at the assessment to help support you if possible.

What happens next?

Your ESA50 questionnaire and the Maximus assessor's report will be sent to a Decision Maker at the DWP, who will decide your application. It is worth being aware that this report may be used if you make a claim for Personal Independence Payment. We advise that you request a copy of the report from the DWP and writing to the DWP if there are any errors in the report that need correcting.

You will then get a decision letter. If you are awarded ESA you will either be put in the WRAG or the Support Group (see p 3).

If you are not happy with the decision that has been made

You may have been unsuccessful in getting the benefit at all, or you may have been put in the WRAG and think that you meet the criteria for the Support Group. You can appeal either of these decisions.

You will need to ask for a mandatory reconsideration first. If the decision is still not changed you have the right to appeal to an independent tribunal.

If you have been found fit for work and are in the mandatory reconsideration phase you will not be able to get any ESA paid and may need to consider claiming Jobseekers Allowance (JSA) instead.

If the decision is not changed at the reconsideration stage and you are appealing, you will be paid at the assessment rate until a new decision has been made. You will need to send in fit notes (which, according to the DWP "is advice for a patient that they can use as evidence of their fitness for work, for sick pay and for benefit purposes").

From 30 March 2015, if you are appealing a decision on a repeat claim and you were found fit for work at your previous WCA, you won't be able to get ESA paid while appealing unless you can show that your condition has got substantially worse or you have a new condition. You will need to consider claiming Jobseekers Allowance instead.

If you are in the WRAG and are appealing to get into the Support Group, you will be paid your benefit while appealing and will not need to send in fit notes.

If you did not attend a face-to-face assessment or return your ESA50 questionnaire and have consequently been found fit for work as a result of this, you will need to show good cause for why you did not attend/return the questionnaire. Your benefit will be stopped in this situation.

If the DWP do not accept that you had good cause for failing to attend or return the questionnaire, you can ask for a reconsideration and appeal, but in this circumstance you will not be paid ESA whilst you appeal.

You will need to put in a new ESA claim in case your appeal is unsuccessful but you will not be paid ESA until you have had a successful WCA. In order to get any

benefit it is likely that you will need to claim JSA whilst waiting for the outcomes of the appeal and new ESA claim.

Please see Action for M.E.'s guide to ESA reconsiderations and appeals for more information.

Work-focused interviews

The DWP says that people in the WRAG will be expected to attend an initial work-focused interview. This will assess the steps that you may be able to take to prepare for a return to work.

You will be asked questions about your background including questions about how your symptoms affect you and your educational and work history.

If you are not able to take any steps to prepare for going back to work you will either need to appeal to get into the Support Group or discuss this with your adviser.

Work Programme

The Work Programme is designed to try and get people off benefits and into work. It is delivered by organisations contracted by the DWP to provide the programme on its behalf. Often these organisations sub-contract to smaller organisations. They are paid by results so the more people they help back to work, the more they are paid.

Organisations running the Work Programme are required to offer a minimum level of service, but are free to deliver it in the way that they choose. This means that the support offered may vary considerably depending on where you live. The Work Programme is supposed to be flexible and tailored to the individual.

You may be required to take part in the Work Programme if you are claiming income related ESA and you are in the WRAG.

There is more information about the work programme available on the DWP website. www.gov.uk/moving-from-benefits-to-work/job-search-programmes

If you are only on contribution-based ESA (without any income related ESA) you may be asked to attend a mandatory information session about the Work Programme, but it is not compulsory for you to take part in the actual programme.

You should be given a written action plan that sets out the work-related activity that you need to undertake. You cannot be expected to:

- apply for a job OR
- undertake work OR
- undergo medical treatment.

Aside from this the work related activity that you will be expected to do is left to your adviser. It is meant to be activity that will prepare you for work. It could include training, voluntary work, CV workshops etc.

If you are on the Work Programme and fail to carry out the work-related activity that is expected of you, your benefit may be reduced unless you can show that you had good cause for not complying. You are given five working days to submit your reasons and show good cause from the date that you are notified that you have failed to take part in work-related activity.

Glossary

Appeal: If a claim for Employment and Support Allowance is refused the claimant has the right to appeal to an independent tribunal.

Maximus healthcare professional: A doctor or nurse employed by Maximus Healthcare, who has been approved by the DWP's Chief Medical Adviser. Maximus Healthcare provides medical services to the DWP.

Decision maker: The person employed by the DWP who decides if a customer is entitled to benefit on behalf of the Secretary of State.

Disability: Limitation of ability in an activity area. The Disability Discrimination Act (DDA) defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.

Employment and Support Allowance (ESA): ESA is the welfare benefit that was introduced in October 2008 to replace Incapacity Benefit and Income Support paid on incapacity grounds

Limited capability for work: The extent to which a claimant's illness or disability affects their capability for work.

Limited Capability for Work Assessment (LCWA): The LCWA helps to determine benefit entitlement based on the extent to which the claimant's illness or disability affects their capability for work.

Limited capability for work-related activity: The extent to which a claimant's illness or disability affects their capability for work-related activity. Claimants identified as having limited capability for work-related activity will be in the Support Group.

Limited Capability for Work-Related Activity Assessment (LCWRA): The LCWRA aims to assess whether the customer can be placed into the Support Group because the effect of their condition is so severe that they are unable to engage in work-related activity.

Personal adviser: An adviser employed by Jobcentre Plus - or by a private or voluntary service contracted by Jobcentre Plus - to agree with the claimant an action plan of steps towards an eventual return to employment and/or to give the claimant help and advice with identifying job goals and any additional support that may be required.

Support Group: Claimants placed in this group will not have to take part in any work-related activity. These customers will receive a higher rate of Employment and Support Allowance without the need to engage with a Personal Adviser as a condition of receiving benefit (although they can volunteer to do so).

Work Capability Assessment (WCA): The medical assessment process to determine if a person is considered as having limited capability for work. The WCA

plays an important role in determining entitlement to benefit. The assessment has 3 components: the Limited Capability for Work Assessment (LCWA), Limited Capability for Work-Related Activity Assessment (LCWRA) and the Work-Focused Health-Related Assessment (WFHRA).

Work-focused interviews: Most people claiming Employment and Support Allowance will be expected to take steps to help prepare for work. Claimants will be expected to attend a series of work-focused interviews with a Personal Adviser.

Work-related activity: this is activity that may help you to prepare for a return to work and could consist of a range of things, from preparing your CV to taking part in training or work placements. You should not have to apply for jobs, undertake work or undergo medical treatment.

Work-Related Activity Group (WRAG): Claimants placed in this group will take part in work-focused interviews with a Personal Adviser and have access to a range of support to help them prepare for suitable work.

Work-Focused Health-Related Assessment (WFHRA): An interview in which the ATOS healthcare professional discusses with the claimant how they feel their illness or disability is stopping them from working, and what help they may need to start work. The report produced by the healthcare professional will advise the claimant's Personal Adviser about potential barriers to work and any relevant health-related interventions identified.

Useful contacts

Action for M.E.

Information and support for people with M.E. and their carers

General enquiries: 0117 927 9551 (Mon-Fri 9am-5pm)

Enquiries email: admin@actionforme.org.uk

Welfare Advice and Support Service: 0800 138 6544 (times vary)

Online M.E. Centre: www.actionforme.org.uk

Citizens Advice Bureau

Offers advice on a range of issues and may complete a benefits check for you

www.citizensadvice.org.uk

Civil Legal Advice

Help with some benefit appeals for eligible people.

www.gov.uk/civil-legal-advice

Disability Information and Advice Line (DIAL)

To find your local DIAL office, contact Scope, 6 Market Road, London N7 9PW

Tel: 0808 800 3333

www.scope.org.uk/help-and-information/dial-groups

Disability Rights UK

Factsheets on benefits, tax credits and independent living

www.disabilityrightsuk.org

Local councils

Some local councils employ welfare rights workers and/or may also have information about other services in your area.

www.gov.uk/find-your-local-council



If you have found the information in this factsheet helpful, please consider making a donation to help us help more people with M.E. Visit www.actionforme.org.uk or call 0117 927 9551. Thank you.

Note to the appendices:

Appendix I (below) assesses whether a claimant has limited capability for work. If you score 15 points or more from section one you will be placed in the Work-Related Activity Group.

Appendix II (p 28) assesses whether a claimant has limited capability for work-related activity. If one or more of the descriptors there apply to you and this is accepted, you may qualify for entry into the Support Group.

Appendix I: assesses whether a claimant has limited capability for work

Activity	Descriptors	Points
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 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.	15
	(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(c) Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; OR (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d) Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; OR (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
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.	15
	(b) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); OR (ii) sitting (even in an adjustable chair); OR	9

Activity	Descriptors	Points
	(iii) a combination of (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 work station, either: (i) standing unassisted by another person (even if free to move around); OR (ii) sitting (even in an adjustable chair) OR (iii) a combination of (i) and (ii) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d) None of the above apply	0
3. Reaching	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above apply.	0
4. Picking up and moving or transferring by the use of the upper body and arms	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0
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.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark.	9

Activity	Descriptors	Points
	(d) Cannot single-handedly use a suitable keyboard or mouse.	9
	(e) None of the above apply.	0
6. Making yourself understood through speaking, writing, typing, or other means which are normally or could reasonably be used, unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply.	0
7. Understanding communication by (i) verbal means (such as hearing or lip reading) alone OR (ii) non-verbal means (such as reading 16 point print or Braille) alone OR (iii) using any aid that 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.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above apply.	0
8. Navigation and maintaining safety, using a guide dog or other aid if either or both are normally or could reasonably be used	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0

Activity	Descriptors	Points
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or 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.	15
	(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.	6
	(c) None of the above apply.	0
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.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0
11. Learning tasks	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above apply.	0
12. Awareness of everyday hazards (such as 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 they require supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; OR	9

Activity	Descriptors	Points
	(ii) damage to property or possessions such that they frequently require supervision to maintain safety.	
	(c) 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 they occasionally require supervision to maintain safety.	6
	(d) None of the above apply.	0
13. Initiating and completing personal action (which means 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.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least two personal actions for the majority of the time.	9
	13(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least two personal actions.	6
	(d) None of the above apply.	0
14. Coping with change	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a 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.	9
	(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.	6
	(d) None of the above apply.	0
15. Getting about	(a) Cannot get to any place outside the claimants home with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9

Activity	Descriptors	Points
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0
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 individual.	15
	(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 individual.	9
	(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 individual.	6
	(d) None of the above apply.	0
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.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	0

Appendix II: assesses whether a claimant has limited capability for work-related activity

If one or more of the following descriptors apply to you and this is accepted, you may qualify for entry into the Support Group.

<i>Activity</i>	<i>Descriptors</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; OR (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this schedule).	Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity.	Cannot either: (a) press a button, such as a telephone keypad; OR (b) turn the pages of a book with either hand.
6. Making self understood through speaking, writing, typing, or other means normally used.	Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.
8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or	At least once a week experiences: (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; OR (b) substantial leakage of the contents of a

<i>Activity</i>	<i>Descriptors</i>
adaptations normally used.	collecting device sufficient to require the individual to clean themselves and change clothing.
9. Learning tasks.	Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (a) injury to self or others; OR (b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions.
12. Coping with change.	Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.	(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else; OR (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort; OR (c) Cannot convey food or drink to the claimant's own mouth without receiving regular

<i>Activity</i>	<i>Descriptors</i>
	<p>prompting given by someone else in the claimant's physical presence; OR (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving: (i) physical assistance from someone else; or (ii) regular prompting given by someone else in the claimant's presence.</p>
<p>16. Chewing or swallowing food or drink.</p>	<p>(a) Cannot chew or swallow food or drink; OR (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort; OR (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; OR (d) Owing to a severe disorder of mood or behaviour, fails to: (i) chew or swallow food or drink; or (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence."</p>

Appendix III: Reg 29 (2)(b) and (Reg 35)(2)(b) of the ESA regulations

Under previous Incapacity Benefit law there was a very similar regulation (Reg 27) and over time various commissioners have considered the meaning of Reg 27 and 29. This has resulted in case law that sets out how decision makers and tribunals should approach these rules. The case law that applies to Reg 27 is also relevant to Reg 29.

The most influential case is a Court of Appeal case, Charlton V Secretary of State for Work and Pensions (this case actually relates to Reg 27 but as the wording is the same it can be applied to Reg 29). This case and subsequent case law sets out four situations in which finding someone capable of work may cause a substantial risk to their health:

1. The actual communication of the decision

This could apply in cases where the person gets a letter or phone call telling them that they are fit for work and the anxiety and stress that this causes leads to a deterioration in physical or mental health and possibly a relapse.

2. Having to claim Jobseekers Allowance (JSA)

It has been established that the potential effect of the person having to claim JSA should be taken into account. So consider the effects that having to sign on would have on you. There has also been a case that has suggested that if someone is not likely to find employment (due to age, health and perhaps not having worked for a long time) this should be taken into consideration. This case suggests that having to keep looking and applying for work without hope of success could have a detrimental effect on the person's mental well-being.

3. Actually having to attend work

It has been established that the decision maker needs to assess risk taking into account the type of work that a claimant may be able to do. It should be considered what kind of work the claimant could do taking into account their individual background and current circumstances. Think about the type of work that you have done and the risks that could be associated with being employed again.

4. Travelling to work

Think about the effect on your health if you had to get up too quickly and get to work by a certain time rather than having the time to pace yourself. There may also be issues with safety, for example, driving or using public transport when feeling ill and perhaps lacking in concentration. Some people with M.E. have sensitivities to chemicals etc so using crowded public transport could pose a risk.

Additionally, there is another very similar rule (Reg 35)(2)(b) that allows entry to the Support Group for any person that is: "suffering from some specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or physical health of any person if they were found not to have a limited capability for work-related activity."

This looks at the risk that could occur when someone is found fit for work-related activity. This can be harder to establish as it is not always known what type of work-related activity may be available or offered to an individual. We know that most people will be asked to attend work-focused interviews and may be asked to attend further meetings with an adviser, people may be asked to attend to workshops or group meetings and some people will be referred to the Work Programme. T

The Work Programme lasts for up to two years and could involve a variety of activities designed to prepare someone for work.

Think about the effect that doing any of the above may have on you. If you are housebound getting to appointments may not be possible, think about the consequences to your health from having to attend appointments etc.

Disability Rights UK have published a useful information sheet with links to some of the relevant case law. You can access this at www.disabilityrightsuk.org/charlton-v-secretary-state-work-and-pensions-2009-ewca-civ-42

They also have other links to case law related to Regulation 29 and other matters connected with the WCA. You can access this at www.disabilityrightsuk.org/how-we-can-help/benefits-information/law-pages/case-law-summaries/employment-and-support-allowance

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