



Benefits and Work
Guides you can trust

The Best Possible

Employment and Support
Allowance Appeals

Sample pages only

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Disclaimer

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Who is this guide for?

This guide is for you if you are unhappy about a decision in relation to your claim for employment and support allowance.

It is designed for people who used the Benefits and Work guides to ESA when making their claim. If you did not do so, please download copies from our website at www.benefitsandwork.co.uk There is information in the guides on how your capability for work and work-related activity is assessed that it is assumed readers of this guide are familiar with.

What this guide is about

This guide takes you through the process of challenging a decision in relation to your claim for ESA. It explains the difference between asking for a revision and lodging an appeal. It guides you step-by-step through the process of taking your case to a tribunal, either with a representative or by yourself, if you are unable to get help. We tell you what forms and paperwork to expect and how to deal with them. We also explain how to prepare your case and what will happen at the hearing. Finally, we tell you what steps you can take if you're unhappy with the tribunal's decision.

If the whole process seems too daunting for you, then go straight to the Help! pages and see if you can find someone to assist you with preparing your case and perhaps even representing you at your hearing.

Good luck!

Steve Donnison & Holiday Whitehead (barrister)

Is there any risk if you challenge a decision?

In relation to ESA, there are three main types of decision that you may be challenging.

1. You got no award of ESA at all.
2. You were awarded ESA but put in the work-related activity group when you consider you should be in the support group.
3. Your work-related activity component has been sanctioned because, for example, you failed to attend a work-focused interview or a work-focused health-related assessment..

The first and third of these should not carry any risk, but the second definitely does.

If you were awarded no ESA at all then you have nothing to lose by challenging the decision.

If you have had your work-related activity component reduced, the worst the tribunal is likely to be able to do is confirm the decision to cut your benefit. It's highly unlikely that they would take the view that they could look again at whether you were entitled to ESA at all.

However, if you have been awarded ESA with the work-related activity component there is a potential risk involved in challenging the decision. This is because by asking to have the decision looked at again, you open up the possibility that a new decision will be made that you are not entitled to any rate of ESA at all.

In the vast majority of cases this will not happen. But if you are challenging a decision that you belong in the work-related activity group rather than the support group then you need to do a risk assessment based on two things:

Firstly, is the evidence to support the current award so strong that there is little likelihood of it being taken away?

Secondly, is the evidence to support your entitlement to the higher support component sufficiently strong that it is worth taking even a relatively small risk by asking for the decision to be looked at again?

In the end, only you can make this decision, but if you can get advice from an experienced welfare rights worker that would clearly help.

The emotional effects

You need to be aware that the appeal process can be time consuming and emotionally gruelling. The experience of going to a tribunal and being questioned in great detail about your everyday life can be distressing and, not only is there no certainty of success, you might even end up worse off.

However, most tribunals are run in a sensitive way by people who will try to put you at your ease and make it as little of an ordeal as possible. And while we don't yet have statistics for success rates in relation to ESA appeals, for incapacity benefit the success rate for claimants challenging a finding that they are capable of work is around 60 % to 70%. Many people think that the success rate for ESA may be even higher.

What happens to your ESA claim whilst you are challenging a decision?

What happens to your claim will depend on which decision you are challenging.

Awarded ESA

If you have been awarded ESA, but only put in the work-related activity group, whereas you believe you should be in the support group, you will continue to receive your ESA with a work-related activity component as normal whilst you appeal.

Component sanctioned

If you are challenging a decision to sanction your ESA then you will continue to receive your ESA minus the sanctioned amount whilst you appeal.

Not awarded ESA at all

If you have not been awarded ESA at all, then you have two choices:

1. Claim JSA whilst you appeal. You should be able to restrict the work you are available for based on your health conditions. In addition, the fact that you have been claiming JSA should not be used against you in the appeal process.
2. Claim ESA at the assessment phase rate until a decision is made. If you choose to do this you will have to continue submitting sick notes until the matter is finally settled. You will only get the assessment phase rate of ESA, so you will be on a reduced rate if you are under 25 and there will be no additional work-related activity or support component.

If your appeal is successful you will be repaid any amounts that you have missed out on, whether you claimed JSA or ESA.

Revision or appeal?

There are two ways you can have a decision looked at again:

- you can ask for the decision to be revised; or
- you can lodge an appeal.

In general, as we explain below, we would recommend that you go straight to an appeal rather than asking for a revision first. Indeed, if you have received no award of main phase ESA at all and you wish to carry on claiming ESA at the assessment phase rate, rather than claiming JSA, then you need to appeal rather than asking for a revision.

Whichever you do there is a time limit: the DWP must receive your request **within one month** of the date on the letter giving the decision. There are limited circumstances in which a late request can be granted, but it isn't easy and you may need to seek advice.

If you write or telephone asking for a revision you are simply asking the decision maker to look at the matter again. However, if you have followed the instructions in the Benefits and Work ESA guides and made a detailed claim supported by evidence we would **not** advise you to ask for a revision as it is unlikely to result in a higher award.

The only exceptions to this are where either you are up against a very tight deadline for challenging the decision or, possibly, where there is very compelling new medical or other evidence.

However, if you appeal instead of asking for a revision, the decision will automatically be looked at again in any case before the appeal papers are prepared, so there really is no obvious advantage in asking for a revision. Moreover, at the time of writing, in many areas revisions are generally taking at least eleven weeks. If the revision is unsuccessful you will then have to appeal and wait at least a further three months for a hearing.

Beware the Explanation Team

In addition, if you ask for a revision you may be put through to, or telephoned at home by, the Explanation Team who will explain to you how the decision was reached. They may then attempt to persuade you to withdraw your challenge by saying, for example, that your condition is not severe enough for an award, or a better award, to be made.

In some cases, even people who fill in an appeal form are contacted by the Explanation Team. If the team are successful in persuading you to agree to withdraw your appeal, you will then be sent a form to sign stating that you wish to withdraw.

Protecting you from the Explanation Team

If you make a telephone request for a revision, you should state clearly that you do not require an explanation. If you are put straight through to someone who attempts to explain the decision you should politely explain that you are unable to deal with such a complex matter over the telephone and that you simply wish to have the decision looked at again.

If you make a written request for a revision, you should state in writing that you do not wish to be telephoned with an explanation. For example:

I wish to have the decision that I do not have limited capability for work [or for work-related activity] looked at again.

If you wish to contact me about this please do so in writing. I do not wish to receive any telephone calls as I consider welfare benefits too complex to be discussed over the telephone.

Please also note that under no circumstances will I withdraw my request verbally. If my request is ignored and I am contacted by telephone any apparent verbal request to withdraw my challenge will be based on a misunderstanding on your part.

Making the best possible ESA claims on mental health and learning difficulties grounds

Thursday 25 June 2009 10am - 4.00pm
Easton Business Centre, Felix Road, BRISTOL BS5 0HE

*"There has never been a more **badly designed, confusingly drafted or complex assessment procedure** for benefits entitlement than the work capability assessment for Employment and Support Allowance."* Holiday Whitehead (Barrister)

This is especially true for claimants with mental health conditions or learning difficulties, most of whom have to complete a **highly misleading** ESA50 questionnaire designed to limit the evidence they provide and for whom there are no exemptions.

This invaluable training is based on our uniquely comprehensive ESA guides. It will save you time, whilst ensuring you are well prepared and highly effective in getting the best possible results for your clients.

Training suitable for

Although no previous benefits knowledge is required, this course is highly recommended for welfare rights workers as well as support workers. It deals in greater detail with the complexities of the work capability assessment than any other training currently available.

Outcomes

By the end of the day participants will:

- Have the knowledge and confidence to provide the kind of detailed and effective evidence that the DWP are trying to exclude.
- Understand all the descriptors relating to qualifying for the limited capability for work and support groups on mental health and learning difficulties grounds.
- Understand how to present evidence about exemptions and exceptional circumstances.
- Know how to present evidence relating to the support group;
- Be able to fill in the ESA50 questionnaire effectively, in detail and without falling into the traps set within it.
- Know how to support clients asked to attend a medical examination.
- Be better equipped than DWP decision makers to argue the law.

Also available in-house. For further info please call 01297 442549 or

email: benefitsandwork@aol.com

or visit: <http://www.benefitsandwork.co.uk/content/view/79/103/>

How to lodge an appeal

If you do decide to lodge an appeal the most important thing is to do so **within one month** of the date on the decision letter. Get a copy of booklet GL24 *If you think our decision is wrong*, which explains the appeals process and also includes an appeal form to tear out and complete. You can get the booklet from your local DWP office, jobcentre or advice agency. You can also download a copy from the DWP website.

The appeal form asks you for:

- Your name and address
- Your date of birth
- Details of your representative if you have one – don't worry if you're not sure if you can get one yet, their details can be given to the Tribunals Service at any time
- Your national insurance number
- The benefit you are appealing about – this will be ESA
- The date shown at the top of the letter telling you about the decision – this is to check if your appeal is within the time limits
- *Why* you disagree with the decision (see below)
- Your signature and the date

If you can't get a copy of the form then you should write a letter containing *all* the information above. But bear in mind that the DWP are not obliged to accept an appeal that is not on the proper form, so only do this as a last resort.

Explaining why you disagree with the decision

As you may have been given very little information about why you have not received an award it can be difficult to explain why you disagree. You can request that the DWP send an explanation for the decision and if you do so the deadline for the appeal will be extended by 14 days. We would *not* advise you to do this. The opportunities for confusion and missed deadlines are increased, the reasons given may still not be very detailed and it may make completing the appeal form more difficult unless you have detailed knowledge of benefits law.

Where no award of ESA has been made:

Where no award has been made, the explanation below should be sufficient.

I wish to appeal against the decision that I do not have limited capability for work. I consider that I provided enough evidence for a finding to be made that I do have limited capability for work [if you think you should be in the support group add the words 'and limited capability for work-related activity'].

I do not consider that the decision maker took full account of the severity of my condition or of the way that it affects my everyday activities and bodily functions.

[If you wish, you can give an example of why you think the decision maker got it wrong, such as: *For example, in my questionnaire I stated that because of my depression I usually cannot motivate myself to do everyday things like getting out of bed, washing, dressing or eating breakfast unless my partner repeatedly encourages me. Yet I was awarded no points for this. This is only one example of why I think the decision is wrong.*]

Please do not ask me to provide further details of my grounds of appeal as I will not be able to do so until I have been provided with a full copy of the papers and had the opportunity to try to get independent advice and support.