



Benefits and Work
Guides you can trust

The Best Possible

Employment & Support
Allowance and Universal
Credit Claims On Physical &
Mental Health Grounds

Random sample pages

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INDEX

Introduction - why this guide is so big	4
This guide is for physical and mental health conditions	5
Should you claim ESA, UC or both?	6
How to start your claim for ESA	7
How to start, or change, your claim for UC	9
How you move from claim to assessment to award	11
The different routes into the work-related activity group – with or without points.....	15
Seven ways to get into the work-related activity group without scoring any points.....	16
Should you score enough points to get into the work-related activity group?	20
Four ways to get into the support group without using the descriptors.....	22
More on the very important 'substantial risk' rules	23
Should you be in the support group because a descriptor applies to you?	27
Completing the ESA50 or UC50 questionnaire	30
How to show you score points even if you can actually do an activity.....	32
Aids and appliances	34
How to complete pages 1-7	35
Completing Part 1– Physical functions and Part 2 - Mental, Cognitive and Intellectual functions.....	38
How to explain problems with: 1. Moving around and using steps	40
How to explain problems with: 2. Standing and sitting	45
How to explain problems with: 3. Reaching	50
How to explain problems with: 4. Picking up and moving things	53
How to explain problems with: 5. Manual dexterity (using your hands)	56
How to explain problems with: 6. Communicating – speaking, writing and typing	59
How to explain problems with: 7. Communicating – hearing and reading	62
How to explain problems with: 8. Getting around safely.....	65
How to explain problems with: 9. Controlling your bowels and bladder and using a collecting device.....	68
How to explain problems with: 10. Staying conscious when awake	71
How to explain problems with: 11. Learning how to do tasks	73
How to explain problems with: 12. Awareness of hazards or danger	79
How to explain problems with: 13. Starting and finishing tasks	85
How to explain problems with: 14. Coping with changes	91
How to explain problems with: 15. Going out.....	96
How to explain problems with: 16. Coping with social situations.....	100
How to explain problems with: 17. Behaving appropriately	104
How to explain problems with: 18. Eating and drinking	108

Face-to-face assessment	110
Providing 'Other information'	111
Signing the 'Declaration'	111
For people filling in this questionnaire for someone else.....	111
What to do next	111
Cancer treatment – for completion by a healthcare professional	112
Supporting evidence means more chance of success	113
Face-to-face assessment– will you have to have one?.....	116
Preparing for an assessment.....	117
What happens at your LiMA computer controlled assessment.....	122
Questions you are likely to be asked at your assessment.....	125
How the decision is made and what to do when you get it.....	127
Where to look for help with claims and appeals.....	132

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Introduction - why this guide is so big

Dear Reader,

The first thing you're likely to notice about this guide is its sheer size.

We realise that when you already have to cope with a serious health condition or disability, discovering you need a publication of this size just to make a claim for a single benefit isn't good news.

Unfortunately, Employment and Support Allowance (ESA) includes the worst and most complex assessment procedure for a benefit that we have ever encountered. To make matters even more confusing, another benefit called Universal Credit (UC) is now being 'rolled out', as the government puts it. Some people will need to claim UC instead, or even as well as, ESA.

All this means our guide has to help you make sense of things that take a great deal of explaining. Fortunately, we don't need to worry too much about the differences between ESA and UC in this guide. This is because although there are many differences between the two benefits, the way they assess how your health conditions or disabilities affect you is exactly the same.

At the heart of the assessment procedure is something called the **work capability assessment**, which includes two medical tests.

These tests were designed by dubiously constituted committees, tried out on a statistically insignificant number of claimants, reworked to make them harder to pass and then hastily written up into almost incomprehensible legislation.

In 2011 the test was revised to make it shorter and even harder to pass, if not simpler to understand.

In 2013 it was revised again to make it still harder to pass for most people.

The questionnaire you have to fill in is misleading and, at times, different from the actual legal tests. The guidance given to health professionals carrying out the medicals is, in our view, at some points equally questionable.

So, this guide is designed to allow you to make an effective claim in spite of the system set up by the Department for Work and Pensions (DWP).

Our method is a slow, repetitive and painstaking one with quite a few uncertainties along the way. And we do not in any way guarantee that using this guide will mean that you will be awarded ESA or UC. That will depend on your health issues and how they affect you.

But we can say with certainty that if you follow the information in this guide you will provide the most accurate possible evidence about your entitlement to benefit. And you will avoid all of the deliberate, or merely incompetent, pitfalls we have identified which will undoubtedly lead to many thousands of less well-informed claimants missing out on a benefit they are entitled to.

Good luck!

Steve Donnison and Holiday Whitehead (barrister)

How to explain problems with: 2. Standing and sitting

What this activity is about

This activity looks at your ability to:

- move from one seated position to another, such as when moving from a wheelchair to a toilet;
- stand;
- sit.

The descriptors: what the law says you score points for

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 points**

(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

(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. **9 points**

(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 points**

(d) None of the above apply. **0 points**

Support group alert

You will qualify for the support group if it is accepted that 2(a) applies:

(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

PIP alert

If you are already getting, or applying for PIP, your claim may be based in part on the PIP activity of 'Washing and bathing'.

Although not the same as this WCA activity, there is some overlap between the two. So, take great care to give accurate evidence here, because a medical report for the WCA can be used to make a decision on a claim for PIP, or look again at an existing award of PIP.

Ticking the boxes – standing and sitting

Please tick this box if you can stand and sit without any difficulty.

Only tick this box if you're sure none of the descriptors apply to you.

Remember! If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: 'How to show you score points even if you can actually do an activity' above.

Can you move from one seat to another right next to it without help from someone else?

- No
- Yes
- It varies

If you tick 'No', you are assessing yourself as scoring 15 points and also as being eligible for the support group.

If you tick 'Yes' you may still be eligible for a lower scoring descriptor.

If you tick 'It varies', you will need to give full details in the 'Use this space' box. Your ability should be based on what you can manage for the majority of the time.

This descriptor relates to such things as being able to transfer from a wheelchair to an ordinary chair or to a toilet or a bed, for example. Health professionals are told that 'this descriptor reflects a severe restriction of lower and upper limb function.'

Health professionals are also told that 'the use of simple aids such as sticks/ transfer boards can be taken into consideration' but hoists should not be.

A system for completing the 'Use this space' box

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical condition according to the WCA Handbook:

- Getting on and off the toilet unaided, without the assistance of another person
- The use of public transport in the absence of a companion
- The use of an adapted car by a wheelchair dependant person
- Getting in and out of a car; and
- Getting out of chairs or off the bed
- Aids used such as a board or hoist

Sample answer

My multiple sclerosis has caused loss of strength in my legs to the degree that I am now mainly restricted to my wheelchair. I also suffer with tremors in my arms that prevent me from supporting my weight. Therefore, I require physical help to move from my wheelchair to bed, into the car or getting on and off the toilet. When I am not in my wheelchair I still need help to rise from sitting.

While you are standing or sitting (or a combination of the two) how long can you stay in one place and be pain free without help from another person,

This does not mean standing completely still. It includes being able to change position.

- Less than 30 minutes
- 30 minutes to one hour
- More than one hour
- It varies

You score 9 points if you can't do this activity for more than 30 minutes and 6 points if you can't do it for more than an hour. If this is the case, make sure you give the correct length of time in the 'Use this space' box.

Warning – both standing and sitting!

The law was changed in January 2013, so that it's the length of time you can either stand or sit, or do a combination of both, in order to remain at a work station that is taken into account.

We would, however, still argue that the health professional would also need to collect evidence about your ability to rise from sitting to standing without help if they are going to assess a combination of both activities, something which they are not instructed to do. If you are unable to rise from sitting to standing, you may want to consider giving details in the 'Use this space' box.

A system for completing the 'Use this space' box - standing

The legal test is your ability to stand without help from another person even if free to move around.

The WCA Handbook states that:

'When standing, a person would not be expected to need to stand absolutely still, but would have freedom to move around at the workstation or shift position whilst standing.'

The precise meaning of 'move around' is not clear. We would argue that it means not standing stock still but not being able to walk up and down to relieve discomfort either. If you do need to move around then give as much detail as possible and, if you are not happy with the result of your claim, appeal.

What CHDA health professionals are told

CHDA health professionals are told that standing can be achieved with the use of aids but that:

'When standing, the person must be capable of some activity at the workstation, therefore someone who can only stand with the aid of 2 sticks would not be considered capable of "standing" in this context as they could not perform any useful function at the workstation.'

If you need to use sticks to stand for any length of time, then give details. If you need to hold a stick with one hand and have limited or no use of the other hand then we would argue that, following the logic of the WCA Handbook, you are not able to stand at a workstation because you will not have the use of either hand to 'perform any useful function at the workstation'.

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Standing to do household chores such as washing up or cooking.
- Standing at queues in supermarkets or waiting for public transport.
- Standing and waiting when collecting a child from school.
- Standing to watch sporting activities.

If you have said that your standing ability varies, give details in this box.

Assumption alert!

If you say you go shopping or catch buses, the health professional may assume you can stand in queues for 30 minutes or more. So, if you sit on walls or there are seats at the bus stops you use, say so. Likewise, if you go shopping with someone else and they stand in the queue while you sit down, or you lean heavily on your shopping trolley while queuing, you need to tell the health professional this. If you stand for a short time without apparent difficulty during the examination, the health professional may assume that you are able to do so for much longer. So, if it hurts, say so and try to make a note of how long you actually stand for uninterrupted during the examination.

A system for completing the 'Use this space' box - sitting

–For the purposes of this test, you will be assessed on the length of time you could sit in an 'adjustable' chair if this would allow you to sit for longer.

The WCA Handbook states that:

'Inability to remain seated in comfort is only very rarely due to disabilities other than those involving the lumbar spine, hip joints and related musculature. Reported limitations for reasons other than these require thorough exploration and strongly supported evidence. Often, a suitably adjusted chair will overcome many of these issues.'

If you have a different problem, such as painful fistulas, provide as much detail as you can and, if possible, supporting medical evidence.

The WCA Handbook also claims that:

'Sitting need not be entirely comfortable. The duration of sitting is limited by the need to move from the chair because the degree of discomfort makes it impossible to continue sitting and therefore any activity being undertaken in a seated position would have to cease.'

However, the 'degree of discomfort' provision actually comes from the legislation from the previous WCA. The legislators made the choice not to include this phrase in the current regulations. If you need to appeal a decision in relation to sitting, you may wish to make the possible misdirection of the health professional one of your grounds for a mandatory reconsideration or appeal.

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- Watching television (for how long at a time and type of chair).
- Other leisure or social activities, e.g. listening to the radio, using a computer, sitting in a friend's house, pub or restaurant, cinema, reading, knitting.
- Sitting at meal times (which may involve sitting in an upright chair with no arms).
- Time spent travelling in cars or buses.

Sample answer

Following a fall and resultant injury to my coccyx I now find sitting down for long periods of time extremely uncomfortable. The symptoms of this injury have worsened over time so that I can no longer drive unless it is a very short journey. If I have to travel any distance as a passenger I request that we stop every 20 minutes at most so that I can get up and relieve the pressure. Unfortunately, even though I cannot stay sat down for very long, when I stand up the pain is excruciating. Sitting on soft surfaces aggravates the condition, so if I want to watch television I have to either lie down or sit on a dining chair rather than the sofa. This is still uncomfortable but means that I can stay sitting for about 20 minutes, rather than the 10 minutes or so that I could stay on the sofa. I eat meals quickly or get up half way through and move around.

If you have a medical

The health professional may ask you about the issues listed in the Use this space box above.

They may observe how you sit at the medical: if you sit still without obvious discomfort for say 10 minutes, the health professional may say that you could clearly have sat for much longer. They may also observe how long you stand for when asked to do so during the examination and make assumptions about how much longer you could stand.