
Mandatory reconsideration in employment and support allowance

13 June 2014

Summary

Cutting off people's employment and support allowance (ESA) benefits while DWP give a second opinion on their claim is adding an unnecessary administrative burden, causing stress and leaving some people with no income for a significant period of time.

When this new stage called mandatory reconsideration (MR) was introduced DWP said it should take on average two weeks, but Citizens Advice regularly see people waiting 6 weeks without a decision, and without payment of ESA. Some CAB advisors have reported not seeing a single client getting their MR back in two weeks.

During this period people are meant to be able to job seekers allowance (JSA) but we are seeing many who are finding this impossible.

Citizens Advice policy recommendation: Continue to pay people ESA at the assessment rate during the mandatory reconsideration phase. This would prevent unnecessary hardship and allow DWP the time to get additional evidence they need. It would also save £162 in administration costs for every claimant who claims jobseekers allowance (JSA) and goes onto appeal. We have had almost 8,000 signatures on our petition supporting this proposal www.change.org/fitforwork

Background on ESA

Last year the CAB service helped more people with Employment and Support Allowance (ESA) problems than any other issue. We have helped people with over 1.5 million problems with ESA since it was introduced. The Minister's evidence at the recent Select Committee hearing that over 700,000 people awaiting an assessment shows this is still a major issue. That is why we are running a campaign to make ESA fit for work. www.citizensadvice.org.uk/fitforwork

Our key recommendations to help make ESA Fit for work are:

- More emphasis should be put on medical evidence from the health and social care professional who knows you best, and it must be provided free of charge to the claimant.
- The new contract to replace Atos needs significant improvements to ensure high quality of assessments and service to claimants, with the ability to fine the providers if they fail.
- The Government should pay people ESA at the assessment rate during mandatory reconsideration.

Adding an extra hoop to jump through

Prior to the introduction of mandatory reconsideration (MR) (in October 2013) if you were unhappy with the result of your ESA application you could appeal to DWP who would first reconsider the decision. If they didn't change their mind they would send your appeal to the Courts and Tribunal Service. During this time you would continue to receive ESA at the assessment rate of around £71. Of those who go to appeal around 48% are successful.

Now if you are unhappy with your ESA decision you need to ask DWP for a reconsideration first and if they don't change their mind, you have to ask for a mandatory reconsideration either by phone or in writing. If the reconsidered decision is the same as the original decision, the claimant must attach the reconsideration decision letter from DWP and apply directly to the Courts and Tribunal Service if they wish to appeal. Both the application for the MR and the application for the appeal come with a 30 day deadline, if you miss this deadline you may not be able to qualify.

As a decision was always reconsidered before an appeal the two main differences are that now it is the responsibility of the claimant to ask for their decision to be reviewed twice rather than once and that while they wait for a MR they will not be paid ESA at the assessment rate, as that only restarts when they appeal.

People being left with no money

ESA claimants are being told that during MR they need to apply for JSA, as they have been found fit for work. To allow this Jobcentre Plus staff are meant to take account of a claimant's condition and reduce their conditionality accordingly. We are finding that this is not working in practice. For example

Jack¹ was helped by Woking CAB when he was stuck between his Jobcentre who told him he was not fit for work and therefore ineligible to claim JSA because he had a note from his doctor and the DWP assessor who said he was no longer able to claim ESA as he had been found fit for work.

A woman in Watford with depression and severe mental health issues was only given 6 points and refused ESA. She asked for her decision to be reconsidered and was sent to her local Jobcentre to apply for JSA while she waited. However her Jobcentre advisor told her that she would find it too difficult to attend interviews because of her mental health and therefore could not qualify for JSA. This left her caught between two parts of DWP with no money at all; one told her she was too fit for ESA and another telling her she was too unwell for JSA

Martin was reassessed for ESA and was given 0 points. His case went for reconsideration, and during this time, his benefits were stopped, including Housing Benefit and Council Tax Benefit. Martin was initially told the reconsidered decision would take 14 days but it took 5 weeks. During this period he tried to claim JSA but was told he couldn't do so because he was unfit for work.

People struggling to sign claimant commitments

¹ Names changed to protect confidentiality BEF-053832-M4V4M4

Other clients like Joe, who had a serious injury after an accident working as a builder, have reported to his local CAB that signing a JSA claimant commitment made him feel like a liar. Having to wait over two months for his mandatory reconsideration he felt he had no choice but to agree to a claimant commitment which he knew he would not be able to fulfil just so he had some money coming in. He risked being sanctioned for failing to meet the requirements but felt he had no choice.

The extra cost to taxpayers

The amount paid to the claimant during the reconsideration period is the same whether they are on the assessment rate of ESA or JSA. So asking people to claim JSA instead of ESA doesn't save the government money during mandatory reconsideration. In fact, we calculate that due to switching between different benefits during this time, it costs the department £162.76 per case in JSA administration costs. This doesn't include any costs which may occur when closing and reopening ESA.

Delaying medical evidence

Some claimants are being put off sending additional medical evidence because it will take too long and they can't afford to wait for it with no money coming in. They will then try to get the additional evidence when they appeal because at that point they will receive ESA at assessment rate.

In their own words

Citizens Advice launched a blog to help people share their stories about their own experience of claiming Employment and Support Allowance.

<https://blogs.citizensadvice.org.uk/blog/topics/fit-for-work/>

Lillian's Story 11 June 2014

I asked for a mandatory reconsideration 6 weeks ago. I was on ESA. I actually phoned the office where I sent my appeal and they couldn't tell me how long I would have to wait. In the meantime I am claiming JSA as I live alone and have no other income. This means I have to sign on with all that entails. I also owe a large amount of money on my credit card and try to keep my heating off as much as possible. Obviously my savings are gone. I have now had an answer to my request for a Mandatory Reconsideration and been refused. I have an appointment today at the CAB for help in taking my appeal to a Tribunal. I also have an appointment at the Jobcentre and am terrified that I will be sanctioned as I haven't applied for any jobs. The advisor I am due to see is very unpleasant. I plan to go back on ESA when and if my appeal is accepted, so I will be spared this torture... I feel like giving up sometimes.

Jill's story 8 May 2014

I have just been told that I can no longer claim ESA and have been told I have to claim JSA. How can this be right? I cannot make interviews because of my illness – it's a joke. I am putting an appeal in but in the meantime I have to say I'm fit for work for the JSA.

Contact

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