

HAVE YOU BEEN REFUSED EMPLOYMENT & SUPPORT ALLOWANCE AND WANT TO APPEAL?

This leaflet is guidance on how to re-claim Employment & Support Allowance (ESA) whilst you appeal a decision that says you are fit for work (technically, a decision which says that you do not have 'limited capability for work').

For the scenario where your ESA stops when the DWP says you have failed to attend an assessment, see our leaflet Pb86.

The **FIRST STAGE** of challenging an ESA decision is called a *mandatory reconsideration*. It is an internal review carried out by the DWP. You won't be paid ESA while you wait for a mandatory reconsideration decision, but you can claim Jobseekers Allowance [JSA] if you wish, and if you can meet the JSA rules. **If you live in a Universal Credit 'full' or 'digital' service' area you must read the separate section (A) overleaf.**

SECOND STAGE: after the mandatory reconsideration, the DWP will issue a new ESA decision. If you are still unhappy with this new decision you can then appeal direct to the independent Tribunal Service.

- See **(B)** overleaf if this is not the first time that you have appealed an ESA decision that said you were not unfit for work.

At *this* stage you can choose to go back onto (basic rate) ESA while waiting for a date for the appeal hearing. You can also ask for arrears of ESA to cover the mandatory reconsideration period, if you have sick/'fit' notes to cover that period (reduced by any JSA you received in the meantime).

To receive ESA while appealing, follow these *three* steps:

STEP 1: FILL IN AN APPEAL FORM [SSCS1] AND SEND IT IN STRAIGHTAWAY

- After a couple of weeks the Tribunal Service will acknowledge your appeal in writing, with a Tribunal Service reference number on it.

THEN

STEP 2: NOTIFY THE DWP OFFICE WHO PAYS YOU THAT YOU ARE APPEALING THE DECISION

- Give them the Tribunal Service reference number as proof of appealing.

AND

STEP 3: MAKE SURE YOU HAVE A CURRENT SICK/'FIT' NOTE

- If your sick ('fit') note runs out while you are waiting for the appeal date, you must renew it;
- Your GP can continue to issue a sick/'fit' note as long as s/he still believes you to be unfit for work, despite the DWP letter to the GP suggesting otherwise.

- If you have sick/'fit' notes to cover the mandatory reconsideration period, ask for backdated ESA too.

By following steps **1, 2 & 3** you will usually continue to be paid basic ESA until the hearing –**but** note the following:

- a. ESA won't be paid until the DWP has registered your appeal on their system (which can take a couple of weeks);
- b. If you are only entitled to *Contributory* ESA, payment will stop after a year whether or not your appeal has been heard, unless you are put into the ESA Support Group.

If your appeal is successful, you will be reimbursed any ESA arrears you are then owed. If your appeal is unsuccessful, you do NOT have to repay any benefit. You can then claim JSA/Universal Credit if you wish.

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(A) UNIVERSAL CREDIT: 'FULL' OR 'DIGITAL' SERVICE AREA

Universal Credit (UC) is replacing income-related ESA over the next couple of years.

At present it is only in force for ESA claimants in the areas covered by Rugby and Stratford upon Avon Jobcentres (referred to as 'full' or 'digital' UC Service).

Through 2017/18 Universal Credit will be introduced area by area – visit the gov.uk website to see when your area is affected.

If you live in A FULL or DIGITAL Service area and receive income-related ESA, you need to get advice before attempting to claim JSA during the **first stage** of the reconsideration process. This is because you will be moved automatically onto Universal Credit instead, which could mean:

- (1) you will NOT go back onto ESA even if you win the reconsideration (or indeed any subsequent independent appeal);
- (2) as UC also replaces Housing Benefit & Child Tax Credit, your claim for these will stop and will become part of your Universal Credit claim, which is paid in **one single payment, paid monthly** and **paid in arrears**;
- (3) any eligible rent rebate will be paid to you, not your landlord; and
- (4) some disabled people will receive less UC than income-related ESA

If you can manage without claiming UC until you are at the second stage of challenging an ESA decision you can go back onto ESA whilst appealing to an independent tribunal without being moved to UC, and may be entitled to arrears of ESA to cover the initial 'reconsideration' period as well.

(B) NOT THE FIRST TIME YOU HAVE APPEALED?

You can only re-claim ESA during the period you are waiting for the tribunal to be arranged if this is your **first time** appealing. If you have previously challenged an ESA decision which found you fit for work, and if you lost the subsequent tribunal, you **cannot** receive ESA pending your next appeal.

You should get advice on alternative benefits to claim while you wait for the tribunal date, bearing in mind **(A)** above.

If you won your previous appeal you **can** get ESA pending the appeal date.

ADVICE AND ASSISTANCE

Contact your local advice agency [below] who can see if you are eligible for any other help, and to see whether you can be referred to Warwickshire Welfare Rights for representation at the appeal.

CITIZENS ADVICE

Switchboard number for ALL CAs: 0344 855 2322 (10pm – 2pm)

Rugby 1st Floor, Chestnut House, North Street, Rugby, CV21 2AQ

North Warwickshire The Parish Rooms, Welcome Street, Atherstone, CV9 1DU

Bedworth & Nuneaton Old Market Tavern, 25 Congreve Walk, Bedworth, CV12 8LX
(to book appointment in Nuneaton call 024 7635 1049)

Warwick District 10 Hamilton Terrace, Leamington Spa, CV32 4LY

Stratford-upon-Avon 25 Meer St, Stratford-upon-Avon, CV37 6QB

For Carers:

Warwickshire Carer Wellbeing Service

9 Lawford Road, Rugby, CV21 2DZ Tel: 024 7610 1040

e-mail: carerssupport@carerstrusthofe.org.uk

For those aged 55+ there is **Age UK** (details online/in telephone book)

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