

CONTINUING ENTITLEMENT TO IS: PERSONS INCAPABLE OF WORK

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INTRODUCTION

- 1 This memo gives guidance on continuing entitlement to IS on or after 27.10.08 where the award would be made "on the grounds of disability". See DMG 45204 – 45205 for the meaning of "IS on the grounds of disability"¹.

1 ESA (Trans Provs) Regs, reg 1(4)

- 2 The memo replaces paragraphs 2 – 3 of Memo DMG 12/09 in cases where entitlement to IS is based on receipt of SSP. That guidance is **cancelled** with immediate effect.
- 3 This memo should be read with DMG 20082 et seq which gives guidance on when entitlement to IS for lone parents can be terminated from 24.11.08.

BACKGROUND

- 4 The intention is that people claiming benefit on or after 27.10.08 because they are unable to work due to a physical or mental health condition should claim ESA. **New** claims for IB, SDA or IS on the grounds of disability made for a period on or after 27.10.08 are treated as a claim for ESA subject to linking rules¹. See DMG 45201 et seq for further guidance.

1 ESA (Trans Provs) Regs, reg 2

- 5 However, a person who
1. is entitled to IS, for example because they are a lone parent or in receipt of SSP **and**
 2. provides evidence of IfW on or after 27.10.08 and can be treated as incapable of work

remains entitled to IS and is not required to claim ESA.

- 6 This is because no **new** claim for either IS or IB is required for an award of IS to continue where the claimant moves from one prescribed category of person to another¹.

1 CIS/3781/02

- 7 A person who is entitled to IS on the grounds of disability has an existing award¹, and cannot claim ESA². See DMG 45204 for guidance on the meaning of “existing award”.

1 WR Act 07, Sch 4 para 11; 2 ESA (Trans Provs) Regs, reg 3(1)

SECRETARY OF STATE’S DUTY

- 8 DMs are reminded that where a person ceases to fall into a prescribed category of person, the Secretary of State is under a duty to consider whether they fall into another prescribed category - see DMG 20081. The DM cannot supersede and terminate entitlement to IS unless it is established that the claimant does not satisfy any other condition of entitlement to IS¹.

1 R(IS) 10/05

- 9 This duty applies even though new claims to IS “on the grounds of disability” on or after 27.10.08 are treated as claims to ESA¹ – see DMG 45201 et seq. A person already entitled to IS, for example because they are a lone parent, cannot be required

to make a claim for ESA where they have a physical or mental health condition or disability, and could continue to be entitled to IS. But see paragraphs 14 - 16 if they wish to give up their IS award and claim ESA.

1 ESA (Trans Provs) Regs, reg 2(1)

- 10 The normal rules for establishing whether a person is incapable of work continue to apply¹. See DMG Ch 13 for guidance on IfW, and DMG 20134 – 20138 for guidance on the IS conditions of entitlement for persons incapable of work.

1 SS CB Act 92, Pt XIII; IS (Gen) Regs, Sch 1B para 7

Example 1

Rhys receives SSP from his employer, and has been entitled to IS for himself and his partner since January 2009. His SSP is about to end on 23.7.09, and he sends in a claim for IB as well as his latest medical certificate. Before considering the IB claim, the IB DM determines that Rhys is treated as incapable of work pending application of the PCA, and the IS DM determines that IS entitlement can continue. As Rhys now has an existing award, the IB claim is not treated as a claim for ESA. The IB claim results in an award of IB, which is taken into account as income for the purposes of the IS award. The decision awarding IS is superseded to take account of the change in income.

Example 2

Jane is a lone parent with three children who has been entitled to IS as a lone parent since May 2001. The award includes applicable amounts for the children, and the family premium. Her youngest child will reach the age of 12 on 3.9.09. She sends in a medical certificate from her GP which states that she has been unfit for work since 6.12.08. The IB DM determines that Jane is treated as incapable of work from 6.12.08 pending application of the PCA. The IS DM determines that IS entitlement can continue, including the applicable amounts for the children, and the family premium. No supersession decision is required as the amount of IS awarded is not changed. The awarding decision will be superseded to award the disability premium from 6.12.09 if Jane is still entitled to IS as a person who is incapable of work.

SUSPENSION

- 11 Where a person's entitlement to IS is in doubt because they are no longer within one prescribed category of person, and it has not been established whether they fall within another, for example because a determination about whether they are, or are treated as, incapable of work has not yet been made, payment of the award may be

suspended¹. See DMG 04810 et seq for guidance on suspension, and DMG 04800 et seq for guidance on hardship.

1 SS CS (D&A) Regs, reg 16(3)(a)

- 12 In practice suspension will only need to be considered where the claimant cannot be treated as incapable of work, for example because they state that they are incapable of work but have not supplied medical evidence. In such cases the PCA has to be applied immediately¹.

1 CIS/3781/02

NOTIONAL INCOME

- 13 DMs are reminded that, although a claimant cannot be required to claim IB in order to establish whether they are a person incapable of work, the question of whether the claimant has notional income should be considered¹. See DMG 28593 et seq for guidance on notional income.

1 IS (Gen) Regs, reg 42(2)

RELINQUISHMENT

- 14 A claimant entitled to IS may choose to give up the award in order to claim another benefit such as ESA instead. See DMG 04120 et seq for guidance on relinquishment of benefit. DMs should note in particular the guidance at DMG 04122 about ensuring the claimant is aware of the consequences of giving up entitlement to a benefit.
- 15 A claimant who has already been awarded IS on the grounds of disability cannot relinquish their IS award and claim ESA where the ESA claim is made within the linking period in DMG 45214 3.. This is because a claim for ESA is treated as a claim for IS, where such a claim would result in an existing award¹.

1 ESA (Trans Provs) Regs, reg 3(2)

- 16 A claimant who is awarded IS as a lone parent, and who wishes to claim ESA, would need to give up their IS award before claiming ESA. If they subsequently lost entitlement to ESA, for example where they were found not to have LCW, they may not be able to claim IS as a lone parent depending on the age of their youngest child.

Example

Karl has been entitled to IS as a lone parent since 3.6.08 after leaving work to look after his daughter. She will reach the age of 12 on 2.10.09. Karl's award of IS takes into account maintenance. He gives up his award of IS in order to claim ESA(Cont) from 21.11.08, which gives him a higher rate of benefit. On 14.7.09 after application of the WCA the ESA DM determines that Karl does not have LCW, and terminates his award of ESA. Karl is awarded ESA after he makes an appeal. His appeal is heard on 22.10.09, and is disallowed. Karl can no longer claim IS as a lone parent, as his daughter is now 12.

CLAIM FOR IB OR ESA FROM IS BENEFICIARY

17 Where

1. a claimant is entitled to IS, for example because they are a lone parent or in receipt of SSP **and**
2. that entitlement is due to end **and**
3. the claimant submits a claim for
 - 3.1 IB including evidence of IfW **or**
 - 3.2 ESA including evidence of LCW

the IB or ESA claim should not be determined until a determination has been made about whether the claimant is incapable of work under specified legislation¹ for the purposes of IS conditions of entitlement. See DMG 20135 – 20138 for further guidance.

1 SS CB Act 92, Pt XIA; IS (Gen) Regs, Sch 1B para 7(a)-(c)

- 18 If the claimant remains entitled to IS on the grounds that they are a person incapable of work, the IB claim remains an IB claim and is not treated as a claim for ESA¹. An ESA claim is precluded where the claimant has an existing award². See DMG 45204 for guidance on the meaning of existing award, and DMG 45214 – 45216 for guidance on claims from people who have an existing award.

1 WR Act 07 Sch 4 para 11; ESA (Trans Provs) Regs, reg 2(2)(e); 2 reg 3(1)

WORK-FOCUSED INTERVIEWS

- 19 DMG 05600 et seq gives guidance on the requirement for lone parents to attend final year quarterly interviews. DMs are reminded that this requirement does not apply where the claimant falls within more than one prescribed category of person – see DMG 05602. Instead the normal requirements to take part in a WFI apply. This guidance also applies where the claimant moves from one prescribed category of person to another. See DMG 05005 et seq for guidance on WFIs for lone parents, and DMG 05305 et seq for guidance on WFIs under the Jobcentre Plus scheme.

Example 1

In example 1 at paragraph 10 above, Rhys is required to take part in a WFI under the Jobcentre Plus 2002 scheme¹. He is not required to take part in a WFI under the IB Pathways to Work scheme 2008, because he is not a relevant claimant² (see DMG 05710 – 05712). That remains the case where he continues to be incapable of work and entitled to IS after his entitlement to SSP ends.

1 SS (JPI) Regs 02; 2 SS (IBWFI) Regs 08, reg 3(1)

Example 2

In example 2 at paragraph 10 above, Jane was required to take part in a WFI at quarterly intervals under the Lone Parent Obligations scheme¹. From the date that the IB DM makes the determination that she is treated as incapable of work, she is required to take part in a WFI at six monthly intervals². This is because, although she is no longer within the lone parent prescribed category of person, she is still a lone parent and entitled to IS. See DMG 05011 for the meaning of “lone parent”³. She is not required to take part in a WFI under the IB Pathways to Work scheme 2008, because she is not a relevant claimant⁴ (see DMG 05710 – 05712).

1 SS (Wfi for lone parents) Regs, reg 2ZA(1); 2 reg 2(4); 3 reg 1(4); IS (Gen) Regs, reg 2(1)

4 SS (IBWFI) Regs 08, reg 3(1)

PREVIOUS CASES

- 20 Further guidance on decision making for claimants whose awards of IS were terminated, and who were required to claim ESA instead, will be given at a later date.

ANNOTATIONS

Please annotate the number of this memo (30/09) against the following:

DMG paragraphs 05600 heading, 20082 heading, 20134 heading, 45201 heading,
Memo DMG 12/09 para 2 heading.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds](#).

DMA Leeds: August 2009