

**CONTINUING ENTITLEMENT TO IS: PERSONS
INCAPABLE OF WORK**

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INTRODUCTION

- 1 This memo gives guidance on how to handle cases where the claimant has had their award of IS terminated in error and who has been awarded ESA or JSA. All lone parents where an incorrect decision has been made will be contacted in early 2010 to determine if they have entitlement to IS. The memo should be read in conjunction with Memo DMG 30/09.

BACKGROUND

- 2 Please refer to DMG memo 30/09 for the background to these cases.
- 3 Some claimants have incorrectly had their awards of IS terminated when they produced medical or other evidence¹ and have been awarded ESA. Additionally, some claimants may now be in receipt of JSA or are no longer in receipt of any benefit and have produced medical or other evidence. Paragraphs 4 – 6 below give guidance on how claimants can have their IS restored. Claimants who want to retain their award to ESA or JSA can do so if they wish.

REVISION

- 4 In cases where the claimant
 1. has incorrectly had their award of IS terminated **and**
 2. has been awarded ESA or JSA **and**
 3. would otherwise have continuing entitlement to IS (see Memo DMG 30/09) **and**
 4. has asked for their IS award to be re-instated

then the DM should take the course of action outlined in Paragraph 5.

- 5 The decision to terminate IS will have been brought into effect by means of a supersession decision following a claim to ESA or JSA. The decisions to terminate IS and to award ESA or JSA should be revised for official error¹. Evidence of LCW for ESA is adequate for the purposes of IfW – see DMG Chapter 13.

1 SS CS (D&A) Regs, reg 3(5)(a)

Example 1

The claimant was in receipt of IS on the basis of being a lone parent. Her IS was paid to include 1.03.09 and was due to end on that date as she no longer fell into that prescribed category. Prior to IS ending though, the claimant had provided a medical certificate from her GP which states that she has been continually unfit for work since 1.02.09. The claimant was advised to claim ESA on termination of IS which was awarded from 2.03.09. The claimant asks for the decision to be looked at again. The DM determines that she was treated as incapable of work from 1.02.09 and revises the decisions to terminate IS and to award ESA and re-instates IS from 2.03.09. The effect of the revision is to remove the decisions terminating IS and awarding ESA.

Example 2

The claimant was entitled to IS with an applicable amount of £91.80. SSP of £79.15 was in payment and so the claimant received £12.65 IS. Upon termination of SSP they claimed IB. This was incorrectly treated as a claim for ESA and ESA was awarded at the rate of £64.30. The DM should terminate the award of ESA by means of a revision and should also revise the supersession decision to terminate the IS award so as to award the claimant IS of £91.80.

- 6 In some cases (see Example 2 above) the claimant will have received less on ESA or JSA than they would have received if they had remained on IS. If this is the case then

arrears of IS should be paid after offsetting the amount of ESA or JSA which has been paid¹. No arrears of IS will be due if the amount of ESA or JSA paid was the same as or more than the IS due.

1 SS (POR) Regs, reg 5(1)

APPEALS

- 7 It is possible that some claimants who have been incorrectly awarded ESA will have been for a WCA and have been found not to have LCW. See DMG Chapter 42 for guidance. They may have appealed this decision and will still be receiving ESA (known as a “pending appeal award”). If the claimant wishes to retain ESA and pursue the appeal then no decision needs to be given. However, in cases where the claimant contacts the Department regarding the termination of IS the DM should revise both the decision to terminate ESA and the “pending appeal award”. The ESA awarding decision will need to be revised and IS should be re-instated as in paragraph 5 above. The DM should notify the TS that the appeal has lapsed. Similarly if a claimant has appealed the IS termination action should be taken as in paragraph 5. The appeal will again lapse.

ANNOTATIONS

Please annotate the number of this memo (DMG 41/09) against DMG memo 30/09 para 20, DMG paragraphs 03256, 06160 and 42204.

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: November 2009