

Technical factsheet T9 – Appeals

This factsheet explains how the appeals process works under Employment and Support Allowance (ESA) and the changes that have been made.

■ What changes have been made to the appeals process?

There are no changes to the appeal process with the introduction of ESA. If a claim for ESA is refused at the outset the customer will have a right of appeal to an independent tribunal. If ESA is awarded but the customer subsequently does not satisfy the Work Capability Assessment (WCA) (i.e. the customer does not have Limited Capability for Work (LCW)) ESA will terminate. As with Incapacity Benefit (IB) the customer will have a right of appeal. In both instances the time limits and manner of appealing remain the same as for IB.

■ Can ESA be paid whilst the customer is appealing?

Yes. Customers who do not satisfy the WCA (i.e. do not have LCW) and appeal the decision terminating their ESA, will be able to claim ESA at the assessment phase rate until the decision of the appeal tribunal is made. Previously, customers making an appeal would either be expected to claim Jobseekers Allowance (JSA) or Income Support (IS) at a reduced rate during the appeal process.

Example 1

A customer is notified that they do not have Limited Capability for Work but appeals against the decision. Provided the appeal is made within one month of the ending of entitlement, the assessment phase rate of ESA will be put into payment until the appeal is decided.

■ Are there any new grounds for appeal in ESA?

Yes. First, unlike IB, where satisfying the Personal Capability Assessment (PCA) simply meant that IB continued at the same rate, in ESA if the customer has LCW the rate of ESA will increase. However, the new rate will not be the same for all customers. It will be determined by the group into which the customer is placed. The new ground for appeal appears at this point. There are two groups: the Work Related Activity Group (WRAG) and the Support Group (SG). As ESA is paid at a higher rate in the support group appeals will be received from those placed in the WRAG who think they should be in the SG.

Second, an appeal can be made where ESA is reduced because a sanction is imposed for failing to attend a WFHRA or WFI. The change here is that the right of appeal is against the decision reducing ESA as opposed to that under IB where the appeal is against the decision made on the actual failure to attend.

Disclaimer

This leaflet is only a guide and does not cover every circumstance. We have done our best to make sure that the information in this leaflet is correct as of December 2008. It is possible that some of the information is over simplified, or may become inaccurate over time, for example because of changes to the law. Names in the examples have been used for illustrative purposes only. The rates mentioned in these factsheets are applicable to December 2008 and may change thereafter.