

Employment and Support Allowance: Appeal Outcomes

12 September 2012

Introduction

This statistical release presents the outcomes of initial functional assessments and appeals heard on Employment and Support Allowance (ESA) fit for work decisions. The data is broken down by (i) region and (ii) International Classification of Diseases (2010) (ICD10) Condition Groups. The figures are derived from administrative data held by the Department for Work and Pensions and assessment data provided by Atos Healthcare. This analysis presents information on new claims for ESA only. It does not contain incapacity benefits reassessments to determine eligibility for ESA.

Background

A key part of the ESA regime is the WCA process, which is used to assess capability for work and eligibility for benefit. Within this the service contractor, Atos Healthcare, carries out any face to face assessment. They then make a recommendation for each claimant to a DWP decision maker who makes a decision on the claim. There are three possible outcomes:

Claimants can be found fit for work. In this case their claim:

- closes and the claimant can move to Jobseeker's Allowance (JSA); or
- remains open following receipt of a challenge against the decision (either a reconsideration by DWP, or an appeal to Her Majesty's Courts and Tribunal Service (HMCTS)). If redress is sought, the pre-assessment rates remain until closure;

Claimants can be found to have limited capability for work. In this instance they are allowed the benefit and placed in the Work Related Activity Group (WRAG). Those in this group are not expected to work, but are provided with help and support to prepare for work where possible. They receive a higher payment than those on JSA. Claimants can also appeal the decision to be put in the WRAG instead of the Support Group (SG); and

Claimants can be found to have limited capability for work and in addition, limited capability for work related activity. In this situation, claimants are allowed the benefit and placed in the SG. Claimants in this group have the most severe functional impairments and so are provided with unconditional support and receive a higher premium than those in the WRAG.

Both WRAG and SG claims run until the initial or latest 'prognosis period' ends, which is usually, but not always, a standard length of time such as 3, 6, 12, 18 or 24 months based on the individual claimant's health and then have a repeat assessment.

All ESA decisions are followed by a one calendar month period (starting the day after that on the decision notice) during which a claimant may dispute the decision on their claim. During this period, the claimant may ask for a decision to be revised for any reason or they can appeal the decision. This can be extended for up to a further year if special circumstances prevented the claimant from acting in the usual dispute period or, in the case of appeals, if it is in the interests of justice to hear the appeal and it has a reasonable chance of success.

An appeal is a request for an independent tribunal to examine a decision and replace it with a new one if they find it to be incorrect. Claimants can appeal against nearly all ESA decisions during the dispute period. For appeals against Fit for Work decisions, the appellant can still receive the basic allowance of ESA until the appeal is heard, but will not get either of the components. If the appeal is successful, the appellant receives the appropriate component and payment is backdated to the date of the original decision.

On receiving an appeal, DWP should look again at their decision to see if it can be revised in favour of the appellant, taking into account the evidence that they already have, together with the grounds for appeal and any additional evidence supplied. If the decision is not revised, Jobcentre plus must collect all the evidence they have in connection with the decision and write a formal submission to HMCTS explaining how the decision was reached. The appellant must then decide whether to have an oral hearing or let the tribunal decide by using paper evidence only.

If the appeal is relating to a Fit for Work or Work-Related Activity Group decision, the tribunal will be heard by a lawyer and a doctor. They will consider any evidence and establish the facts of the question under appeal, before applying the relevant law to make a decision. They will also question the appellant about the facts of their case. Whilst the tribunal can only look at the facts as they were on the date that the decision being appealed was made, evidence from an earlier or later period can be used to infer what the facts were likely to have been during the period in question. If the appeal is not successful, the appellant may be able to challenge the tribunal's decision.

Results

Appeal Rates by Region

Table 1, in the associated spreadsheets, presents the outcomes of initial functional assessments and outcomes of appeals heard on Fit for Work decisions for initial ESA claims that started between October 2008 and May 2011, including actions on these claims up to May 2012. The data is broken down by region and also shows the percentages of both successful and unsuccessful appeals in each region. Please note that completed appeals information only includes appeals that have been heard and decided upon. Claims where an appeal has been lodged but not yet been heard

and decided by the Tribunal are not included. In addition, appeals against other decisions (e.g. WRAG placements) are not included.

Appeal Rates by ICD10 Condition Group

Table 2, in the associated spreadsheets, presents the outcomes of initial functional assessments and outcomes of appeals heard on Fit for Work decisions for initial ESA claims that started between October 2008 and May 2011, including actions on these claims up to May 2012. The data is broken down by ICD10 Condition Group and also shows the percentages of both successful and unsuccessful appeals in each group. Please note that completed appeals information only includes appeals that have been heard and decided upon. Claims where an appeal has been lodged but not yet been heard and decided upon are not included. In addition, appeals against other decisions (e.g. WRAG placements) are not included.

Annex

This analysis was produced in relation to these Parliamentary Questions (PQ):

- **PQ/12/108745 - Mark Reckless (Rochester and Strood):** To ask the Secretary of State for Work and Pensions, what proportion of Atos work capability assessments for employment and support allowance were appealed against in each region in the latest period for which figures are available; and what proportion of those appeals were successful.
- **PQ/12/113328 - Stephen Gilbert (St Austell and Newquay):** To ask the Secretary of State for Work and Pensions, how many appeals there have been against work capability assessment decisions for each impairment category since April 2011; what proportion of work capability assessment decisions this represents for each impairment category; and how many of the appeals in each impairment category were successful.

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12 September 2012