

EMPLOYMENT AND SUPPORT ALLOWANCE

SUPPORT GROUP APPEALS GUIDE **Updated 28/10/2013**

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WHO IS THIS GUIDE FOR?

This guide is for you if you have passed a recent medical, but you have been put in the 'work related activity group' and you feel that you meet the requirement for the support group.

WHAT THIS GUIDE IS ABOUT

This guide takes you through the process of challenging a decision in relation to your Employment Support Allowance (ESA).

By following the simple steps you will be able to request a '**mandatory reconsideration**', obtain supporting medical evidence and submit this evidence to the DWP for a reconsideration of your claim to receive the support group component. And to then proceed with an appeal hearing if there is a negative reconsideration outcome.

WARNING BY CHALLENGING THE DECISION THE EXISTING AWARD IS RECONSIDERED AGAIN AND YOU COULD LOSE WHAT YOU CURRENTLY HAVE. IF IN DOUBT YOU SHOULD SEEK ADVICE FROM AN ADVISER BEFORE SUBMITTING AN APPEAL.

MANDATORY RECONSIDERATION BEFORE APPEAL

For decisions made from 28 October 2013 you can only **appeal** after you have asked the DWP to reconsider their decision. This is called a 'mandatory reconsideration' and is a compulsory step before making an appeal.

On making the request for a mandatory reconsideration the DWP will look at the decision you disagree with again. If the mandatory reconsideration is unsuccessful you will the need to complete a further form called an SSC 1 to register your appeal.

HOW TO REQUEST A MANDATORY RECONSIDERATION

STEP 1

If you decide to request a mandatory reconsideration it is important that you do so within **one month** of the date on the decision letter. Late requests may be refused so don't delay if you are waiting for evidence. Enclosed in this pack is a mandatory reconsideration request form for you to complete and send to the office that made the decision.

COMPLETING THE MANDATORY RECONSIDERATION FORM

You will need to complete the form including your details in section 1 and whether you have a representative at section 3 (if not at this stage leave it blank). You will then be asked in section 4 what benefit you wish to be reconsidered. In this case it will be Employment Support Allowance and the date of the decision is on the top of the DWP decision letter.

You will then need to complete the box in section 6 asking for reasons why you disagree with the decision. Below are some examples of what to write in this section. You can add more specific details if you wish.

Example 1:

I wish to appeal against the decision that I do not meet the criteria for the support group. I consider that the decision maker did not take full account of the severity of my condition or the way that it affects my everyday activities and bodily functions. And the substantial risk that my illness/ disabilities cause. (You can give more specific details)

Example 2:

I wish to appeal against the decision to only put me in the work related activity group of ESA. I feel that I would be putting myself and others at risk and this has not been considered

At section 8 you sign and date the form

At section 9 it confirms whether you will or will not be sending further medical evidence (eg doctor or consultant report or medical records) with the reconsideration form. If you already have supporting medical evidence ring the relevant wording and send it with the form. If you have to ask for supporting medical evidence which will be supplied at a later date you can ring the 'I will not' wording to prevent the mandatory reconsideration being delayed. You will still be able to submit this later at an appeal.

REQUESTING FURTHER EVIDENCE

STEP 2

Enclosed in this guide is 'blank letter 1' for you to request supporting evidence. This should be sent along with the support group medical questionnaire to either your GP or someone who is aware of your medical problems and how they affect you; this could be a consultant, social worker, therapist or a carer.

Example letter 1 included for your information

SUBMITTING FURTHER EVIDENCE

STEP 3

If you are submitting supporting medical evidence it is advisable to include this along with the mandatory reconsideration form to try to get the decision changed. If you do not have medical evidence or you have to request further medical evidence you can provide this later if you proceed to appeal.

If you have to wait to receive a completed questionnaire back until after you have appealed, you will then need to forward this along with 'blank letter 2 (p6) to Her Majesty's Courts and Tribunal Service (HMCTS) instead of the reconsideration section. If you are downloading this form from another area you will need to contact the office who made the original decision to request appropriate freepost envelopes. If possible try to keep a copy for your own records.

Example letter 2 included for your information (p7).

AWAITING THE MANDATORY RECONSIDERATION DECISION

STEP 4

You will need to wait for a mandatory reconsideration notification form from the Department of Work and Pensions (DWP).

- If you have not heard within 4 weeks you may need to contact the ESA section for an update by calling 0845 608 85 25.

As previously mentioned you cannot continue to appeal until the mandatory reconsideration has been completed and you have received the notification form.

PROGRESSING TO APPEAL

If the decision remains unchanged after the mandatory reconsideration and you want to proceed to a full appeal tribunal hearing you will then need to complete the new SSC1 appeal form (enclosed). Send this directly to HM Courts & Tribunal Service, SS&CS Appeals, ASC, PO Box 14620, Birmingham, B16 6FR within a month of the date on the decision letter and attach the mandatory reconsideration notice that you received.

- It would be advisable to re-contact the Welfare Rights Service, Benefits Advice Line on 0116 454 5570 (Mon, Tues,Thu, 1-4pm) for further advice at this stage.

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Dear

RE: _____

Recently I had a medical in connection with my benefits. The DWP has deemed me as unable to work at present but .I feel that the true extent of my condition has not been considered and I feel my problems would meet the criteria for the support group. Therefore I wish to challenge their decision.

I would like to ask if you are in a position to help in this matter by completing the enclosed form that asks specific questions related to the support group

Many people with mental health difficulties and physical problems are placed in the incorrect group as they struggle to provide relevant medical evidence.

I would like to thank you for all your help in this matter.

I look forward to hearing from you.

Yours faithfully

Mrs Jane Smith
0116 123 4567

EXAMPLE LETTER ONE

15/08/2009

Dr Spock
Dr Spock's Surgery
Enterprise Road
Leicester, LE1 1CC

Dear Dr Spock

RE: Mrs Jane Smith, 44 Picnic Road Leicester LE1 1BB
Dob. 01/01/1945, Nino. NN 11 22 33 44 X

Recently I had a medical in connection with my benefits. The DWP has deemed me as unable to work at present but I feel that the true extent of my condition has not been considered and I feel my problems would meet the criteria for the support group. Therefore I wish to challenge their decision.

I would like to ask if you are in a position to help in this matter by completing the enclosed form that asks specific questions related to the support group

Many people with mental health difficulties and physical problems are placed in the incorrect group as they struggle to provide relevant medical evidence.

I would like to thank you for all your help in this matter.
I look forward to hearing from you.

Yours faithfully

Yours faithfully

Jane Smith

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HMCTS

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Dear Sirs

RE: _____

My name is and I have recently submitted an appeal to be placed in the ESA Support Group

Please find enclosed a medical questionnaire completed by professionals involved in my care. Please could you reconsider the decision as the medical evidence provided disputes the decision and supports my challenge to be placed in the support group.

I look forward to hearing from you

Yours faithfully

.....

Mrs Jane Smith
0116 123 4567

EXAMPLE LETTER 2

ESA Appeal

07/09/2009

Appeals Officer
Jobcentre Plus
Wellington Street
Leicester, LE1 111

Dear Sirs

RE: Medical Evidence for Mrs Jane Smith, NN 11 22 33 44 XX

My name is Jane Smith and I have recently submitted a request to be put in the ESA Support Group

Please find enclosed a medical questionnaire completed by professionals involved in my care. Please could you reconsider the decision as the medical evidence provided disputes the decision and supports my challenge to be placed in the support group.

I look forward to hearing from you

Yours faithfully

Jane Smith

Employment & Support Allowance Support Group (updated 1/5/13)

Questionnaire as to whether a person has a Limited Capability for Work related activity.

Name _____

Address _____

DoB _____

NINo _____

Please confirm current diagnosis.....

.....

Current medication.....

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Schedule 3
Assessment of whether a claimant has a limited capability
for work-related activity

Activity 1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be worn or used
Descriptors
1. Cannot either:
a) Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or
b) Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

Please select one or both of the above and give reasons for your choice:

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Activity 2 Transferring from one seated position to another.
2. Cannot move between one seated position and another seated position next to one another without receiving physical assistance from another person

Please select if appropriate and give reasons for your choice:

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Activity 3 Reaching
3. Cannot raise either arm as if to put something in the top pocket of a coat or jacket

Please select if appropriate and give reasons for your choice:

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Activity 4. Picking up and moving or transferring by the use of upper body and arms(excluding standing, sitting, bending or Kneeling and all other activities specified in this activity)

4. Cannot pick up and move a 0.5 litre carton full of liquid.

Please select if appropriate and give reasons for your choice:

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Activity 5. Manual dexterity

5 Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand

Please select if appropriate and give reasons for your choice:

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Activity 6 Making self-understood through speaking, writing, typing or other means which are normally, or could be reasonably used unaided by another person

6. Cannot understand a simple message, such the presence of a hazard.

Please select if appropriate and give reasons for your choice

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Activity 7. Understanding communication by: (i) Verbal means (such as hearing or lip reading) alone; (ii) non-verbal means (such as reading 16 point print or Braille)alone; or (iii) a combination of (i) and (ii) using any aid that is normally or could be used unaided by another person.

7. Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment.

Please select if appropriate and give reasons for your choice:

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Activity 8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel, and/ or voiding of the bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used.

8. At least once a week experiences
(a) Loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.

Please select if appropriate and give reasons for your choice:
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Activity 9 Learning Tasks

9. Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.

Please select if appropriate and give reasons for your choice:
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Activity 10 Awareness of Hazard

10. Reduced awareness of everyday hazard's, due to cognitive impairment or mental disorder, leads to a significant risk of:
(a) injury to self or others; or
(b) Damage to property or possessions, such that the claimant requires supervision for the majority of the time to maintain safety.

Please select if appropriate and give reasons for your choice:
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Activity 11 Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching task).

11. Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions

Please select if appropriate and give reasons for your choice:

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Activity 12 Coping with change

12. Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that the day to day life cannot be managed.

Please select if appropriate and give reasons for your choice:

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Activity 13 Coping with social engagement, due to cognitive impairment or mental disorder.

13. Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by claimant.

Please select if appropriate and give reasons for your choice:

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Activity 14 Appropriateness of behaviour with other people due to cognitive impairment or mental disorder

14. Has, on a daily basis uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any work place.

Please select if appropriate and give reasons for your choice:

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Activity 15 Conveying food or drink to the mouth

15. (a) Cannot convey food or drink to the claimant's own mouth receiving physical assistance from someone else;

(b) Cannot convey food or drink to the claimants own mouth without repeatedly stopping or experiencing breathlessness or severe discomfort;

(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimants presence; or

(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimants mouth without receiving:

- (i) physical assistance from someone else; or
- (ii) Regular prompting given by someone else in the claimant's presence.

Please select one or more of the above and give reasons for your choice:

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Activity 16 Chewing or Swallowing food or drink.

16

- (a) Cannot chew or swallow food or drink;

- (b) Cannot chew or swallow food or drink without repeatedly stopping or experiencing breathlessness or severe discomfort;

- (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimants presence; or

- (d) Owing to a severe disorder of mood or behaviour, fails to:
 - (i) Chew or swallow food or drink; or

 - (ii) Chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

Please select one or more of the above and give reasons for your choice:

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Is the person suffering from a physical or mental disablement that would cause a substantial risk to the health of themselves or any other person if they were found capable of work related activity?

YES/NO

If YES please outline what you think the risk is

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Any further comments

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Signed

Date

Profession

Official Stamp