

Derbyshire Welfare Rights Service

Your Employment and Support Allowance Appeal

What you can do to improve your chance of a successful appeal

This information will help you if you have lodged your appeal and notified the Department of Work and Pensions that you have instructed Derbyshire County Council's Welfare Rights Service to be your representatives.

However; appeals often take a long time to be listed for hearing and we can only nominate a worker to the case when we receive the hearing date, which may only be two weeks before the hearing. Many people want to start working on their case earlier, so to improve your chance of success, we have devised this checklist for you to work through if you would like to do so.

On receipt of your appeal papers:

After a while you will receive a bundle of papers (the appeal bundle). This should contain the following information.

1. The Decision Maker's decision with reasons
2. The date of the decision you are appealing
3. A schedule of both the 'work related activity group' or limited capability for work (LCW) descriptors and the 'support group' or 'limited capability for work-related activity' (LCWRA) descriptors (see below) - usually these are found within the first 10 or so pages of the appeal bundle
4. A copy of your ESA50 form (the form you completed detailing your problems with certain activities known as 'the descriptors')
5. A copy of the health care professional's assessment (the ESA85)
6. Any ESA85s from previous ESA medical you have attended.

On receipt of this bundle you can now start to work on your case.

Working on your case:

ESA has two groups: The work related activity group and the support group.

Which group should you be in? The work related activity group or the support group?

The majority of people are appealing to be placed in the 'work related activity group'. This group recognises that you may be able to do some work related activity (e.g. attending a computer course or pain management course) but that you are NOT capable of work.

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In order to be placed in this group you normally need to score at least 15 points from the set of descriptors. Check the appeal bundle's list of descriptors to decide which group you should be put in. The work related activity group descriptor schedule (usually labelled the LCW descriptors) has lists of activities with descriptors and points (for example: Activity One is mobilising and then the descriptors are 1a/1b/1c 1d and 1e).

When deciding which descriptors to choose please bear in mind the following.

- a) Choose only one descriptor per activity
- b) The descriptors chosen must have applied to you at the date of the decision NB: any worsening (or improvement) in your condition since the date of the decision CANNOT be taken into account by the decision maker
- c) Choose a descriptor if you weren't able to do it 'reliably, safely or with reasonable regularity'.

Once you have identified the descriptors you could not do at the time of the decision (in a reliable, safe manner or with reasonably regularity), write down the reasons why you couldn't. You will need to also check what you put in your original form. Did you identify these problems when you completed the form? If not why not? Did you say tell the health care assessor about your problems? If not why not? You will need to consider your answers to any contradictions in your statements as the tribunal will ask you about this.

You have now identified the basis of your appeal to be placed in the 'work related activity' group.

Can't identify enough descriptors to score 15 points? If so, see below about 'Exceptional Circumstances'.

Support Group?

A minority of people can be placed in the 'support group', referred to in the appeal papers as the LCWRA descriptors. This list has a much narrower group of descriptors with no points system. Only ONE descriptor needs to be identified from the LCWRA list to be placed in the support group. The support group recognises that your functions are so restricted that you are not capable of any work related activity such as attending an appointment or short course.

It may be you can easily score 15 points from the work related activity group but can't quite identify a support group descriptor. See below about 'Exceptional Circumstances'.

Get supporting evidence if you can!

It is extremely useful if you can get supporting evidence for your case. Once you have identified which descriptors applied to you at the time of the decision (with reasons), you can write up your statement and ask your own health care professionals if they are able to provide a supporting letter confirming your comments. If they are unable to do this you could consider asking to look at your medical records and request copies of any information that supports the chosen descriptors.

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There is usually a charge for supporting letters from a GP and also to view your medical records and get photocopies so please check first with your practice. There may be other sources of useful evidence such as Occupational Therapy reports, social work reports etc. If you have a specialist consultant they may also be willing to provide a report.

What now?

By now you will have identified the following:

1. Which group you feel you should have been placed in (the work related activity group or the support group)
2. Identified and answered any contradictory statements in your form or made to the healthcare professional (HCP). Also if you disagree with what the HCP wrote please make a note of this
3. Clearly chosen the most relevant descriptors with reasons that applied to you at the time of the decision
4. Hopefully you will also have managed to obtain some supporting evidence for your appeal.

Your case is now ready for the tribunal!

Please phone us to discuss first but once the adviser is satisfied you can post off your comments and the support evidence to the appeals service for inclusion in the appeal papers. Don't forget to write a covering letter including your National Insurance Number and Appeal Reference Number which will be sent to you when you get the appeal bundle.

The Decision Maker will then look at your case again. If he/she feels persuaded by the evidence, your case may even lapse and an award of benefit may be made without the need to attend a hearing.

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Exceptional Circumstances

Having trouble identifying 15 points to be placed in the work related activity group?

If you can't identify 15 points you might still be found to have limited capability for work if you have a 'specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or physical health of any person if you were found not to have a limited capability for work. The risk should be linked to the work, and any work considered should be work you could realistically do according to your education or skills (Regulation 29 of the ESA rules).

Can you easily score 15 points to be placed in the work related activity group but cannot identify a support group descriptor?

Regulation 35 of the ESA rules states that you might still be found to have limited capability for work related activity if you have a 'specific disease or bodily or mental disablement', and consequently there would be a substantial risk to the mental or physical health of any person if you were found not to have a limited capability for work related activity'.

If you cannot score sufficient points to get in the relevant group but believe either Regulation 29 or 35 apply to your case please phone us on 01629 531535 for further advice

Additional information can be found on our website, visit
www.derbyshire.gov.uk/welfarebenefits

To keep up-to-date with benefit changes in Derbyshire go to
www.derbyshire.gov.uk/benefitnews

Benefits Helpline – 01629 531535 or email
welfarebenefits@derbyshire.gov.uk

Monday, Tuesday, Thursday, Friday
11.00am – 4.00pm