



**disability**  
**nottinghamshire**

## **ESA APPEAL GUIDE**

### **1. Introduction**

This guide is intended for use by claimants who are claiming Employment Support Allowance (ESA) and have received an unfavourable decision. It is designed for use by claimants who intend to pursue their appeal on their own.

The purpose of this guide is to assist you to appeal and to help you to understand the steps involved in pursuing an appeal to an oral hearing with an Appeal Tribunal. The guide will help you to understand how the Tribunal will consider your application and the steps which you will need to take in order to convince an Appeal Tribunal that your claim is justified.

Remember, once a decision has been made by the DWP, **it is up to you to prove that you are entitled to the benefit or allowance.**

There are 2 decision making stages for Employment and Support Allowance

- The first decision is whether you are unfit for work, the Department for Work and Pensions use the 'limited capacity for work' assessment. Using this assessment you have to score a total of 15 points from adding the number of points across the 17 activities in the assessment.
- If you pass the first test, you will either be placed in the 'work related activity group' or the 'support group'. This is assessed by testing if you have 'limited capacity for work related activity'.
  - If you are placed in the 'work related activity group' you will not be required to apply for work or undertake any medical treatment, you will however have to attend a series of 'work focussed interviews'. These are designed to keep you in touch with the Jobcentre and to assist you find work if you feel able. If you are placed in this group you will only receive benefit based on your national insurance contribution history for the first 365 days of your claim, after this you will receive benefit based on your household's income.
  - If you are placed in the 'support group' you will not have to attend work focussed interviews. You will also receive benefit based on your national insurance contribution history for the period of your award.

You are able to challenge both the decision finding you fit for work or the decision placing you in the 'work related activity group'. But if you lodge a challenge, both decisions are looked at by the decision maker and tribunal, **this means that if you**

**are appealing the decision to place you in the 'work related activity group' it is possible that you could be found fit for work.**

## **2. What to do after you receive the decision**

After you have had an unfavourable decision, you must first request a 'mandatory reconsideration' from the office that issued the decision. You have **one month** from the date of the decision letter to submit the request for mandatory reconsideration. A different decision maker will look at the original decision; if they feel that the original decision was incorrect they will change it. If they do not change the original decision they will issue a 'mandatory reconsideration notice'.

### **Claiming Jobseekers Allowance**

Whilst you are waiting for the mandatory reconsideration to take place you may have to claim Jobseekers Allowance to maintain your income. Whilst claiming Jobseekers Allowance, you will be required to comply with the requirements of Jobseekers Allowance, but you can place certain limitations on your availability for work based on your health condition.

You can restrict your availability for work on the grounds of your health condition in the following ways,

- Rate of pay
- Number of hours you are available to work
- Travel time to a place of work
- Type of work

If you place restrictions on your availability for work that are not connected to your health condition, you must show that you have a reasonable prospect of securing employment.

If the Jobcentre does not think that the restrictions you impose are reasonable in light of your health condition, you may have to show you have reasonable prospects of securing employment.

If the Jobcentre decide that you do not have reasonable prospects of securing employment you will be refused Jobseekers Allowance. If you do not comply with the requirements of your Jobseekers agreement you may have your benefit stopped for a period – this is known as a sanction.

If you lodge an appeal following your mandatory reconsideration, you can request that your ESA is put back into payment. You will only be paid contributory ESA for the first 365 days of your claim, if it has already expired or expires during your appeal your contributory ESA will stop.

If you are not eligible for contributory ESA, you can request that you are assessed for ESA based on your income.

### **3. Submitting an appeal**

To lodge an appeal you should complete the HM Courts and Tribunals Service form SSCS1. We have enclosed a copy of this form with this appeal pack if we have given you a printed copy. If you have downloaded this guide you can follow the links below.

You should enter your grounds of appeal in section 5. Try to link your grounds of appeal to your health condition and the criteria for an award of ESA i.e.

I wish to appeal because I have arthritis affecting my hands, wrists and knees; I experience difficulty with walking and using my hands due to stiffness and pain.

I believe I meet the following criteria for an award of ESA.

1 – I cannot walk more than 50m on level ground without stopping due to pain in my knees and I am unable to self propel a wheelchair due to the arthritis in my hands.

2 – I cannot pick up and move a one litre carton full of liquid due to pain in my hands

Your SSCS1 should be received by the Tribunals Service within one month of the date of the mandatory reconsideration. If it is likely to be longer than one month since the date of the mandatory reconsideration, you should explain why it is late at the end of section 5 where it asks if your appeal is in time.

You can choose an appeal that is decided after you attend a Tribunal or you can opt for a hearing on the papers. You indicate your choice for this in Section 6. It is better to opt to attend a hearing as a Tribunal is able to observe you and ask you questions. Whilst a hearing on the papers is often quicker, these appeals are less likely to be successful.

You can download an electronic version of this form that you are able to complete on a computer by following this link

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/sscs1-eng.pdf>

Notes to accompany the form are available here

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/sscs1a-eng.pdf>

You should send your completed and signed SSCS1 with your mandatory reconsideration notice to the address that is printed on the final page of SSCS1.

### **4. Evidence**

The submission of additional evidence is an important element of proving your entitlement to the allowance you are claiming. You should try to obtain additional evidence from as many potential sources as possible. For example your GP,

Consultant, Physiotherapist, Social Worker or other professional with whom you have had contact with.

A GP or specialist you see may refuse to write a letter or charge you for writing a letter. It is worth considering asking your GP practice for copies of letters from physiotherapists, specialists etc that your GP has received. Requests of this nature are rarely refused.

Alternately you can request a full copy of your GP records under data protection legislation, there is usually a charge for this, but it cannot be refused.

Any additional evidence which you may get should be considered carefully to establish whether the information provided by the writer is supportive of your case. The decision whether or not to submit it is yours.

A Tribunal can only make a decision on the basis of the evidence placed before it. It can request additional medical evidence but there is no obligation for the Tribunal to. It is important, therefore, that the evidence you gather should be as comprehensive and relevant as possible.

Some of the written evidence which the Tribunal will consider is as follows:

- Your original ESA questionnaire (ESA50 form).
- The medical assessment report completed by the doctor or Health Care professional appointed by the DWP.
- Reports requested by the DWP from any other medical source i.e. a G.P, Consultant or Specialist you may have seen recently.
- Reports from other professionals, medical or otherwise, who may be familiar with how your medical condition affects you.

In addition to the above, the Tribunal will also take into account how you respond to Tribunal members.

The Tribunal is an independent body but it has to work strictly within the rules which govern the benefit or allowance it is considering. It has to consider your situation at the date the benefit department made their decision. They will not normally take into account any deterioration or improvement of your condition since that date. This, therefore, means that you should answer questions relating to how your health affected you at the date of the original decision and not as they are now.

You should remember that the Tribunal is not a Court of Law but is there to look at the facts of your case, so your oral evidence needs to be as detailed as you can make it. You need to be very specific about how your medical problems affect you.

## **5. The Tribunal**

You will in due course receive a letter from the Tribunal Service which tells you the date and time of your hearing. You will be sent a map of its location.

When you get to the Tribunal building you will be directed into the waiting room. A clerk will come and take your details and ask if you have any additional evidence to submit. If you have any last minute evidence, you should bring three copies and give two to the clerk for the Tribunal. The clerk will also ask if you have any

travelling expenses. You may claim public transport fares incurred or car expenses will be paid for the mileage you have done to get to the Tribunal.

Taxi fares will only be paid if they have been previously authorised. To request authorisation, you need to phone the Tribunal Service office prior to the date of your hearing.

You will then be directed into the Tribunal room.

## **6. The Hearing**

There are only two persons on the appeal panel for an ESA appeal. A Judge who is legally qualified and a doctor. The function of the Judge is to ensure that all of the legal requirements relating to the Tribunal and the benefit are complied with.

The function of the doctor is to advise on medical matters concerning your claim. A medical examination will not be carried out but a Tribunal can take into account observations of you at the Tribunal.

You will be advised that the panel is an independent body and you may be asked if there is any statement you wish to make about your case before proceeding further.

The ESA Tribunal is concerned only with the tests prescribed in the two assessments as laid down in the regulations. A copy of these descriptors is contained in the pack of papers sent to you for your appeal and is enclosed with this pack.

The panel will have the same set of documents that you have and the members will have familiarised themselves with your case beforehand.

As you will probably be aware, the award of ESA is dependant on the number of points awarded. To qualify for the benefit, you need to have 15 points. To be placed in the support group, you need to meet any of the criteria in the 'limited capacity for work related activity' assessment.

The usual procedure is for the doctor to ask you questions about your medical history and what medications you are taking. One thing to remember is that the Tribunal are looking at your situation as it was at the time the decision was made, they cannot take into account any change in your condition since that date. You must, therefore, bear this in mind when giving your answers.

The Tribunal will be looking at the answers you gave on the ESA Questionnaire form and the report prepared after your medical examination. If there are discrepancies between what you claim were your difficulties and what the examining doctor has concluded about your abilities, then you need to be able to explain the reasons why.

The 'limited capability for work' assessment is split into 2 parts, 'physical disabilities' & 'Mental, cognitive and intellectual function assessment'.

The Tribunal can only take into account the physical difficulties you have in undertaking the task in the physical disabilities part. Likewise the Tribunal can only consider your mental, cognitive and intellectual function for the second part.

They must however consider whether you are able to complete a task at all and if you are able to repeat it. If you are able to do the task once but then you have

difficulty in repeating it, then, dependant on the degree of difficulty, you might be considered as not being able to fulfil the task.

It is, however, up to you to prove your disability so it is in your interests to give as much information and be as explicit as you can in answer to questions you are asked.

This also applies to any claim that you are making with regard to being eligible for the benefit under the mental disabilities descriptors – you should make the Tribunal aware of the problems you have with and give detailed information as to how this affects your daily life and relationships with other people.

When the Tribunal have finished their questions, you will usually be given the opportunity to make any additional comments about your claim which you think appropriate. You can use this as an opportunity to mention facts about your physical or mental difficulties which have not been covered by the questions or to reiterate points which you think are important.

The Judge will then ask you to leave the room and return to the waiting room whilst they deliberate and make the decision. You will normally be given the decision of the Tribunal on the day.

Rarely, the Tribunal will not make the decision immediately but make it later and notify you by post.

## **7. Finally**

This guide is intended only to cover the main points of Appeal and Tribunal procedures. We cannot guarantee that your Tribunal will follow exactly the same pattern, as individual Judges may run their hearings slightly differently.

If you do come across any major variation to the model of the Tribunal procedures, as set out in this guide, or find that any of the information is incorrect for any reason, we would like to hear about it.

Like anyone else, we can all learn from experience and any input from clients can only help to improve our service.

The following pages list the criteria for ESA.

**Assessment of limited capability for work** – you need to score a total of 15 points to be found unfit for work.

**Assessment of limited capability for work related activity** – If you meet any of these descriptors you should be placed in the support group. If you do not meet any of these you will be placed in the work related activity group.

# ASSESSMENT OF LIMITED CAPABILITY FOR WORK

## Physical Disabilities

Descriptors	Points
<b>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.</b>	
(a)Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; <i>or</i> (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
(b)Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
(c)Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; <i>or</i> (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
(d)Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; <i>or</i> (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
(e)None of the above apply.	0
<b>2. Standing and sitting.</b>	
(a)Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
(b)Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); <i>or</i> (ii) sitting (even in an adjustable chair)for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion; <i>or</i> (iii)a combination of (i) and (ii),	9
(c)Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); <i>or</i> (ii) sitting (even in an adjustable chair)for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion; <i>or</i> (iii)a combination of (i) and (ii),	6
(d)None of the above apply	0

<b>3. Reaching</b>	
(a)Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
(b)Cannot raise either arm to top of head as if to put on a hat.	9
(c)Cannot raise either arm above head height as if to reach for something.	6
(d)None of the above apply.	0
<b>4. Picking up and moving or transferring by the use of the upper body and arms.</b>	
(a)Cannot pick up and move a 0.5 litre carton full of liquid.	15
(b)Cannot pick up and move a one litre carton full of liquid.	9
(c)Cannot transfer a light but bulky object such as an empty cardboard box.	6
(d)None of the above apply.	0
<b>5. Manual dexterity.</b>	
(a)Cannot either: (i) press a button, such as a telephone keypad; or (ii) turn the pages of a book with either hand.	15
(b)Cannot pick up a £1 coin or equivalent with either hand.	15
(c)Cannot use a pen or pencil to make a meaningful mark.	9
(d)Cannot single-handedly use a suitable keyboard or mouse.	9
(e)None of the above apply.	0
<b>6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used, unaided by another person.</b>	
(a)Cannot convey a simple message, such as the presence of a hazard.	15
(b)Has significant difficulty conveying a simple message to strangers.	15
(c)Has some difficulty conveying a simple message to strangers.	6
(d)None of the above apply.	0
<b>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 reasonably be, used, unaided by another person.</b>	
(a)Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
(b)Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
(c)Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
(d)None of the above apply.	0

<b>8. Navigation and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be, used.</b>	
(a)Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
(b)Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
(c)Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
(d)None of the above apply.	0
<b>9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or 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.</b>	
(a)At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.	15
(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
(c)None of the above apply.	0
<b>10. Consciousness during waking moments.</b>	
(a)At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
(b)At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
(c)None of the above apply.	0

## Mental, cognitive and intellectual function assessment

<b>11. Learning tasks.</b>	
(a)Cannot learn how to complete a simple task, such as setting an alarm clock.	15
(b)Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
(c)Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
(d)None of the above apply.	0
<b>12. Awareness of everyday hazards (such as boiling water or sharp objects).</b>	
(a)Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.	15
(b)Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that they frequently require supervision to maintain safety.	9
(c)Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they occasionally require supervision to maintain safety.	6
(d)None of the above apply.	0
<b>13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).</b>	
(a)Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
(b)Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9
(c)Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
(d)None of the above apply.	0

<b>14. Coping with change.</b>	
(a)Cannot cope with any change to the extent that day to day life cannot be managed.	15
(b)Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
(c)Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
(d)None of the above apply.	0
<b>15. Getting about.</b>	
(a)Cannot get to any place outside the claimant's home with which the claimant is familiar.	15
(b)Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
(c)Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
(d)None of the above apply.	0
<b>16. Coping with social engagement due to cognitive impairment or mental disorder.</b>	
(a)Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
(b)Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.	9
(c)Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	6
(d)None of the above apply.	0
<b>17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.</b>	
(a)Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
(b)Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
(c)Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
(d)None of the above apply.	0

## ASSESSMENT OF LIMITED CAPABILITY FOR WORK RELATED 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.**

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.

### **2. Transferring from one seated position to another.**

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

### **3. Reaching.**

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

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

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

### **5. Manual dexterity.**

Cannot either:

- (a) press a button, such as a telephone keypad; or
- (b) turn the pages of a book with either hand.

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

Cannot convey a simple message, such as the presence of a hazard.

### **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 reasonably be, used, unaided by another person.

### **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.**

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.

**9. Learning tasks.**

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

**10. Awareness of hazard.**

Reduced awareness of everyday hazards, 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 they require supervision for the majority of the time to maintain safety.

**11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).**

Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

**12. Coping with change.**

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

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

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

**14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.**

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

**15. Conveying food or drink to the mouth.**

(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;

(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, 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 claimant's physical presence; or

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

(i) physical assistance from someone else; or

(ii) regular prompting given by someone else in the claimant's presence.

**16. Chewing or swallowing food or drink.**

(a) Cannot chew or swallow food or drink;

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

- (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's 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.