



Benefits and Work
Guides you can trust

The Best Possible

Employment & Support Allowance and Universal Credit Claims On Physical & Mental Health Grounds

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Authors: Steve Donnison & Holiday Whitehead

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SAMPLE PAGES

Introduction - why this guide is so big

Dear Reader,

The first thing you're likely to notice about this guide is its sheer size.

We realise that when you already have to cope with a serious health condition or disability, discovering you need a publication of this size just to make a claim for a single benefit isn't good news.

Unfortunately, Employment and Support Allowance (ESA) includes the worst and most complex assessment procedure for a benefit that we have ever encountered. To make matters even more confusing, another benefit called Universal Credit (UC) is now being 'rolled out', as the government puts it. Some people will need to claim UC instead, or even as well as, ESA.

All this means our guide has to help you make sense of things that take a great deal of explaining. Fortunately, we don't need to worry too much about the differences between ESA and UC in this guide. This is because although there are many differences between the two benefits, the way they assess how your health conditions or disabilities affect you is exactly the same.

At the heart of the assessment procedure is something called the **work capability assessment**, which includes two medical tests.

These tests were designed by dubiously constituted committees, tried out on a statistically insignificant number of claimants, reworked to make them harder to pass and then hastily written up into almost incomprehensible legislation.

In 2011 the test was revised to make it shorter and even harder to pass, if not simpler to understand.

In 2013 it was revised again to make it still harder to pass for most people.

The questionnaire you have to fill in is misleading and, at times, different from the actual legal tests. The guidance given to health professionals carrying out the medicals is, in our view, at some points equally questionable.

So, this guide is designed to allow you to make an effective claim in spite of the system set up by the Department for Work and Pensions (DWP).

Our method is a slow, repetitive and painstaking one with quite a few uncertainties along the way. And we do not in any way guarantee that using this guide will mean that you will be awarded ESA or UC. That will depend on your health issues and how they affect you.

But we can say with certainty that if you follow the information in this guide, you will provide the most accurate possible evidence about your entitlement to benefit. And you will avoid all of the deliberate, or merely incompetent, pitfalls we have identified which will undoubtedly lead to many thousands of less well-informed claimants missing out on a benefit they are entitled to.

Good luck!

Steve Donnison and Holiday Whitehead (barrister)

How to explain problems with: 6. Communicating – speaking, writing and typing

What this activity is about

This activity is about being able to communicate with other people verbally or by writing or using a keyboard.

The descriptors: what the law says you score points for

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

- (a) Cannot convey a simple message, such as the presence of a hazard. **15 points**
- (b) Has significant difficulty conveying a simple message to strangers. **15 points**
- (c) Has some difficulty conveying a simple message to strangers. **6 points**
- (d) None of the above apply. **0 points**

Support group alert

If 6(a) is accepted as applying to you, you will be placed in the support group.

PIP alert

If you are already getting, or applying for PIP, your claim may be based in part on the PIP activity of 'Communicating verbally'.

Although not the same as this WCA activity, there is some overlap between the two. So, take great care to give accurate evidence here, because a medical report for the WCA can be used to make a decision on a claim for PIP, or look again at an existing award of PIP.

Ticking the boxes

Please tick this box if you can communicate with other people without any difficulty. Only tick this box if you're sure none of the descriptors apply to you.

Remember! If this activity causes you severe discomfort, pain, breathlessness or extreme fatigue or if you could do it once but not repeatedly or if your ability varies then you may count as not being able to do it. See the section on: 'How to show you score points even if you can actually do an activity' above.

Can you communicate a simple message to other people such as the presence of something dangerous?

This can be by speaking, writing, typing or any other means but without the help of another person?

- No
- Yes
- It varies

If you tick 'No' you are assessing yourself as scoring 15 points and as being eligible for the support group.

If you tick 'Yes' you are not assessing yourself as scoring points for this whole activity even though there are two lower scoring descriptors – see 'Warning – degree of difficulty!' below.

If you tick 'It varies', you will need to give full details in the 'Use this space' box. Your ability should be assessed based on what you can manage for the majority of the time.

Warning – strangers!

The form doesn't make it clear that you score points for difficulties you have communicating with strangers. So, even if you are able to communicate with people you know well, that doesn't prevent you scoring points.

Warning – degree of difficulty!

You score 15 points if you 'cannot' convey a simple message, but you also score 15 points if you have 'significant difficulty' conveying a simple message to strangers and 6 points if you have 'some difficulty'. If you can communicate, but only with difficulty, then you may wish to write 'See Use this space' rather than ticking any of the boxes and then give details there.

A system for completing the 'Use this space' box

If you can only communicate using sign language, then that should count as being unable to communicate as most strangers would not understand sign language.

If you have difficulties with speaking but can write or type, or vice versa, then you are unlikely to score points for this activity.

So, if you have problems that affect both your speech and your hands you may score points for this activity. This could be caused by, for example, a stroke, Parkinson's Disease or Motor Neurone Disease. Or you may be unable to speak and also have a severe visual impairment which makes writing or using a keyboard very difficult.

CHDA health professionals are told that '*expressive dysphasia (inability to express ones thoughts) resulting from brain injury*' may score points, but that the ability to write or type would also have to be considered.

However, if you don't have any keyboard skills and do not use a computer or other types of keyboards, you may wish to consider pointing out that you don't 'normally use' a keyboard to communicate, so at the very least you would have 'significant difficulty'. The DWP are likely to argue that it is your physical ability to use a keyboard, rather than your knowledge of how to do so, that counts. Ultimately it would be for a tribunal to make the final decision.

In addition, you need to bear in mind that in January 2013 the law was changed so that the decision maker can take into account means that could 'reasonably' be used as well as those that you normally use. So, if there are reasons it would be unreasonable to expect you to use, for example, a keyboard, then you should consider including them in the Use this space box.

Absolutely no guidance is given in the WCA Handbook as to how to distinguish between 'has significant difficulty' and 'has some difficulty'.

At this stage, all we can advise is that you should give very detailed information about the difficulties you experience and, if you are not happy with the decision, consider requesting a mandatory reconsideration and, if necessary, appealing.

Health professionals are told that claimants with ME/CFS may say that their speech is unclear when tired and people with panic attacks may say they have difficulty making themselves understood. The WCA Handbook suggests carrying out a mental health assessment in these cases.

The Handbook also says that where people have difficulty making themselves understood when breathless this is only likely to happen when they have undertaken extra physical effort rather than most of the time. If they are breathless all the time, health professionals are told they should be considered for the support group.

It's a good idea to give information about any problems you have with the following activities, as these are ones you are likely to be asked about if you have a medical, according to the WCA Handbook:

- The ability to socialise with family and friends.
- The ability to ask for items e.g., order drinks at a bar or ask for items in a shop where self –service is not available – do they use speech or do they write a list and hand it over.
- Ability to use public transport/ taxis.
- Ability to use a telephone.
- Ability to use text/e-mail.
- Ability to deal with correspondence. Completing your ESA50 or UC50 may be used as evidence about your ability to communicate in writing, so if you received help to complete it, make sure this is stated on the form on page 22.

Sample answer

One of the difficulties that I have as a result of suffering from Parkinson's disease is that I struggle to make myself understood verbally. I have trouble controlling both the volume and speed of my speech, which results in me speaking very slowly and quietly. Often, I involuntarily repeat words and in general my sentences become a slurred jumble that people have difficulty understanding. Family and friends have become very patient and spend a lot of time ensuring they have understood me correctly. However, when in circumstances that requires me to talk to other people e.g., shops, the Jobcentre etc. it is very difficult to get across what I am trying to say. On many occasions people have become impatient which makes it even more difficult to control my speech. I no longer use the phone for all the above reasons and have family members that act on my behalf in circumstances where telephone contact is necessary.

I also struggle to write and would have great difficulty using a keyboard because of the severity of my tremors. Even if I manage to write, other people would have great difficulty reading my handwriting. I do not use a computer but it would be a very slow and laborious task for me to type any kind of message because of the difficulty of striking the correct key due to my tremors.

What CHDA health professionals are told

The CHDA health professional will ask you about the issues in the Use this space box above. They may also, for their report, describe the quality of your speech and any difficulty they have understanding you. They will also assess your hand function to decide if you would have any difficulty with writing or typing.