

information

www.meassociation.org.uk

Ten important things you should know about ESA and the Work Capability Assessment

1) Feedback to the MEA during the past year indicates that people with ME/CFS are finding it very difficult to qualify for Employment and Support Allowance (ESA). This is the relatively new long-term sickness benefit for people who are unable to work. ESA has replaced Incapacity Benefit (ICB) for all new sickness benefit claims.

2) The situation is likely to become even more difficult following legislation to bring in a set of revised Work Capability Assessment (WCA) descriptors – a key part of the complicated medical assessment procedure for ESA. In addition, this legislation removed some of the original descriptors (eg the one on cognitive dysfunction – problems with short-term working memory and concentration) that were very relevant to people with ME/CFS. This legislation came into force on 28 March 2011. More information on the new WCA descriptors can be found at: www.meassociation.org.uk/?p=4534 (>> pdf of Statutory Instrument)

3) The numbers of people involved are likely to rise sharply now that the process of reassessing people who are currently claiming ICB to see if they are eligible for ESA has commenced. The DWP are aiming to review

10,000 ICB claimants per week from now on.

4) The WCA descriptors consist of a list of questions relating to various aspects of disability and ill health along with point-scoring answers. The MEA believes that the current set of descriptors are not a fair or effective way of assessing capability for work in people who have long-term fluctuating medical conditions such as ME/CFS. Our reasons for coming to this conclusion can be found in our very detailed submission to Professor Harrington's review of the WCA that was carried out last year: www.meassociation.org.uk/?p=1639 The MEA is currently helping to produce a report that will contain recommendations on how the descriptors can be made fair and effective for people with fluctuating conditions. The report is due to be handed over to Professor Harrington at the end of April.

5) So if you are applying for ESA, or appealing against a refusal to grant ESA, it is very important to give careful consideration to the way you answer the WCA descriptor questions.

6) During a House of Lords debate, which sought to annul the new legislation, a number of useful contributions were made which relate to people with ME/

CFS and other fluctuating conditions. Lord Freud (government minister) made the following important statement which is very relevant to people with fluctuating conditions:

“The internal review consulted a range of experts and groups and, as I described just now, tried to reach consensus. Significant concerns were expressed by the groups around the descriptors. I will not go into those because I am short of time, but I can respond to the noble Countess, Lady Mar, on fluctuating conditions. **It must be possible for all the descriptors to be completed reliably, repeatedly and safely, otherwise the individual is considered unable to complete the activity.**”

A Hansard transcript of the debate can be found on the MEA website: www.meassociation.org.uk/?p=5180

7) There is a high rate of success on appeal – somewhere around 50% of DWP decisions are overturned. So anyone who believes they have not been treated fairly should consider going to appeal. And you remain in the ESA assessment phase while waiting for the appeal to take place.

Continued overleaf

8) The chances of success at appeal are often increased by appearing in person and providing good supportive medical evidence from health professionals who are involved in your care.

9) Other useful information on the DWP appeal procedures can be found in a presentation given by Dr Jane Rayner (Chief Medical Member of Social Security tribunals) to the Forward ME Group at their meeting on 26 January 2011. The minutes of this meeting can be found here: www.meassociation.org.uk/?p=4569

10) The MEA has a fully comprehensive list of leaflets covering all aspects of the benefits system – including applications and appeals.

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