Department for Work & Pensions

Ministerial Correspondence
Caxton House
Tothill Street
LONDON
SW1H 9DA

0207 340 4000

www.dwp.gov.uk

ministers@dwp.gsi.gov.uk

Caroline Lucas MP

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Dear Caroline

3rd March 2014

Thank you for your letter of 18 February about the appeals process for Employment and Support Allowance (ESA) and Early Day Motion 620.

I think it is important that the Mandatory Reconsideration (MR) reform is given some context. Prior to its introduction, a claimant could ask for a decision to be reconsidered by a decision maker. In practice, however, many people chose not to do so and made an immediate appeal. This meant that a claimant who had been found fit for work could continue to claim ESA rather than claim Jobseeker's Allowance (JSA).

This approach was time-consuming and costly for the tax payer. The process could be lengthy and very stressful for claimants and their families. It also differed to the arrangements for all other social security benefits where, if someone appealed a decision, no benefit was paid pending the appeal being heard.

MR is a reform which we believe benefits claimants. It enables the Department to provide a clear explanation of the decision. It allows the claimant to further present their case, including providing new evidence. And, crucially, it allows the Department to change decisions at the earliest opportunity. At the end of the process, claimants are better placed to make an informed decision on appealing to HM Courts and Tribunals Service, taking the outcome of the reconsideration application into account.

We want to get decisions right first time but where the decision is not right we want to be able to change it as soon as possible. We genuinely believe that MR is a change which will deliver timely, proportionate, and

effective justice for claimants and thereby make the process for disputing a decision fairer and more efficient.

There is no time limit on how long the MR process can take. It is important that decision makers ensure that the decision has been fully reviewed and that the claimant has been given the chance to provide any additional information or evidence. Applying a time limit to this process would not be right. Each case will be considered individually and while some may take days others, where new evidence is to be provided, will necessarily take longer. We are monitoring the process closely to ensure that cases are not delayed unnecessarily.

The Department made 1.8 million decisions on ESA claims started between October 2008 and March 2013, following an initial Work Capability Assessment. 980,000 (around 54 per cent) were found Fit for Work. Of those that went to appeal, the Tribunal confirmed the original decision in 63 per cent of appeals heard. The proportion of decisions overturned was around 13 per cent of the total "fit for work" decisions made. We are determined to bring that down as to do so will benefit claimants, the Department and the taxpayer alike.

The reasons why Tribunals overturn Departmental decisions are many and varied. However, it is not necessarily because the original decision was wrong. For example, in some cases, claimants present new written evidence at the hearing or they provide oral evidence. Our objective is that such matters can be addressed as far possible as part of the MR process; this will provide opportunity for a discussion, and for claimants to tell us if there is additional evidence that should be taken into account.

I would stress that any claimant who has had an ESA award terminated will be eligible to claim JSA and they are told of this in the decision notice they receive when ESA is terminated. The question we are then asked is: How can an ex-ESA claimant, particularly one who is disputing his ESA decision, qualify for JSA when he or she is not fit for work? Of course, to the ESA decision maker these claimants are fit for work and that decision is, in law, final unless overturned following a dispute. Accordingly, as soon as ESA ends the option to claim JSA arises.

When an ex-ESA claimant makes a claim for JSA they will be asked to attend a new jobseeker's interview to check whether they meet the conditions of entitlement (i.e. they are available for, and actively seeking employment and agree a Jobseeker's Agreement/Claimant Commitment).

However, an agreement would be tailored and managed to reflect the claimant's health conditions. Employment advisers are trained and experienced in dealing with incapacity. They receive specialist training from disability employment managers and occupational psychologists. So, as with all claimants, while the initial discussion will be around finding work, those presenting health problems will be treated accordingly. Their Jobseeker's Agreement/Claimant Commitment will reflect this. Of course, if the MR is unsuccessful and the claimant is adamant that ESA and not JSA is the right benefit for them then they will no doubt appeal but, until that point is reached, they can claim and be entitled to JSA.

Finally, to pay ESA during the MR stage would fundamentally compromise one of our key decision-making reforms. We want to enter into a dialogue with claimants so that we can get to the heart of their dispute at the earliest opportunity and change decisions where that is appropriate. We do not want a situation where, for example, relevant evidence which would have a made a difference to the decision is not considered until a tribunal hearing. There is also an issue of fairness; if ESA were to be paid to former claimants during the MR stage it would not be fair to those claiming other benefits, or to the taxpayer.

Regards

MP

Mike Penning MP
Minister of State for Disabled People