

ESA TRANSITIONAL ISSUES

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INTRODUCTION

- 1 This memo gives guidance on claims for
 1. ESA from people who were previously entitled to IB but were disallowed following a determination that they are, or are treated as, capable of work
 2. ESA(Y) from people who are in receipt of NI credits because they are incapable of work.

ESA CLAIM FOLLOWING IFW DETERMINATION

- 2 **[See memo DMG 12/09]** Where a claim for ESA is made within six months of a determination that the claimant
 1. is not incapable of work following a PCA **or**
 2. is treated as capable of work because they failed to
 - 2.1 return a questionnaire **or**
 - 2.2 attend for or submit to medical examination

the DM should consider whether the ESA claim should be treated as a claim for IB where it links¹ (see DMG 45201 - 45216). If it does not link, the fact that the DM made a determination that the claimant is capable, or is treated as capable, of work within the previous six months is not relevant to the ESA claim.

1 ESA (Trans Provs) Regs, reg 2(2)

- 3 A claimant can be treated as having LCW pending the WCA unless the DM has determined within six months of the claim that they do not have, or should not be treated as having, LCW (see DMG 42203)¹. DMs should note that the law relating to IfW² does not determine whether a person has LCW.

1 ESA Regs, reg 30(2)(b); 2 SS CB Act 92, Part XIII

ESA(Y) AND QUALIFYING PERIOD

- 4 There is no provision allowing periods of IfW to be treated as periods of LCW. DMs should consider whether the ESA(Y) claim should be treated as a claim for IB - see DMG Ch 45.
- 5 People claiming ESA(Y) who are already IB credits only cases cannot satisfy the 196 day qualifying rule through IB credits. The 196 day rule can only be satisfied if the claimant
1. had LCW throughout that period¹ **or**
 2. is treated as having LCW throughout that period because they are entitled to SSP².

See DMG 41047 - 41048.

1 WR Act 07, Sch 1 para 4(1)(d); 2 ESA Regs, reg 33(1)

ANNOTATIONS

Please annotate the number of this memo (Memo DMG 48/08) against the following DMG paragraphs:

41046 heading, 42203, 45201 main heading.

CONTACTS

- 6 If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: December 2008