

## **Briefing: poor quality of decision-making in assessing eligibility for Employment and Support Allowance**

In 2014, Camden Citizens Advice Bureaux published a report highlighting wide-ranging failures in the process for assessing eligibility for Employment and Support Allowance (ESA) that clients using our services were experiencing. We identified flaws with both the work capability assessments (WCA) which were then conducted by Atos, under contract to the Department for Work and Pensions (DWP), and with requests for mandatory reconsideration which are dealt with by the DWP itself. This report is available to download at [www.camdencabservice.org.uk/about-camden-cab/campaigns](http://www.camdencabservice.org.uk/about-camden-cab/campaigns).

Since the publication of the 2014 report Camden CAB advisors have continued to see clients who are experiencing similar issues with the quality of decision-making by WCA assessors working for providers Atos, and now Maximus, as well as by decision makers within DWP who deal with requests for supersession of a benefit decision (made when a client's circumstances have changed) and for mandatory reconsideration of a decision (made when the client believes the wrong decision has been reached, as the stage prior to appeal).

The impact of this poor decision-making for our clients can be devastating. It causes undue and avoidable stress, worry and financial hardship for this vulnerable group of people, who are already living with significant levels of ill health and disability, and experiencing cuts to other services on which they rely, such as social care and housing benefit.

The existing health problems our clients experience may be exacerbated by the difficulties they experience in claiming ESA. One recent national study highlighted the link between disability assessments and adverse mental health outcomes: each additional 10 000 people reassessed using the WCA process was associated with an additional 6 suicides, 2700 cases of reported mental health problems, and the prescribing of an additional 7020 antidepressant items<sup>1</sup>.

Furthermore, failure to reach the correct decision in the first place means that public resources are being used inefficiently at a time when all public services are facing increasing resource constraints and cutbacks. Poor decision-making by WCA providers leads to a higher volume of mandatory reconsiderations for DWP, and where such requests are also dealt with inappropriately this translates to a higher volume of appeals going to tribunal. It is worth also considering the impact for other services supporting vulnerable people: not only demand for advice services such as CAB, but also, for example, for other public services such as health, where GPs are investing time in writing medical evidence which assessors subsequently fail to take into account, and these GPs will be left to pick up the pieces for clients whose condition is worsened through the pressure of applying for ESA.

Recent statistics suggest that nationally quality of decision making has not improved since our 2014 report, and may in fact have deteriorated further. Government figures for April – June 2015 showed that 35% of receipts by the Social Security and Child Support (SSCS) Tribunal related to Employment Support Allowance (a 55% increase for the same period in 2014/15)<sup>2</sup>. In more than half (58%) of ESA cases cleared in this period the original decision was revised in favour of the claimant. For the same quarter in 2014/15 this figure was 51%, suggesting that quality of decision-making has deteriorated further in this time.

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<sup>1</sup> <http://jech.bmj.com/content/early/2015/10/26/jech-2015-206209>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/459787/tribunals-and-gender-recognition-bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/459787/tribunals-and-gender-recognition-bulletin.pdf)

Citizen's Advice own national statistics for October to December 2015<sup>3</sup> show that while the overall volume of queries we received from clients relating to ESA was 6% lower than for the same period in 2014, queries relating to WCA assessments in fact increased (by 10% for the paper-based assessment and by 14% for the face-to-face assessment). Queries relating to challenging an ESA decision were up by 7% and for queries relating to appeals the increase was 10%. This again suggests that clients continue to experience significant issues with the WCA process, and to seek support to challenge poor decision-making.

The following case studies have been prepared by Camden Citizen's Advice Bureaux to illustrate the poor decision-making in assessing eligibility for ESA that we continue to see within our local service, and the devastating impact that this is having for vulnerable Camden residents.

### **Case study 1**

Our client is 60 years old and has chronic lower back pain, arthritis and depression. She was a carer for her son, who had a severe and life-limiting condition, until he died and also has a disabled daughter who is now living in residential care. This has contributed to her own physical and mental health problems.

When the client attended our service she was barely able to walk, even using support. She reported that she is unable to raise her arms above her head as result of her arthritis, meaning she has difficulties in washing and dressing. She has fibroids which cause her pain, lack of sleep and continence problems. Her mental health is poor: she has difficulties with concentration and memory, shies away from interaction with others and is easily irritable.

Despite all of these difficulties, our client had been awarded no points and was found capable of work at her ESA assessment. We supported her to request a mandatory reconsideration, but the decision was upheld by the Department for Work and Pensions. The client then appealed the decision, and the tribunal awarded her ESA and placed her in the support group, recognising that her multiple difficulties in fact meant she was not able to work.

### **Case study 2**

Our client suffers from post traumatic stress disorder (PTSD) and experiences cognitive and functional difficulties as well as physical health problems affecting his mobility, ability to use hands, and his sleep. He had been in receipt of ESA, but at his most recent work capability assessment he had been found fit for work.

Following his initial assessment, the client supplied medical letters and details of his stress clinic assessment and appointments, which contained a very clear description of his symptoms and background, as part of his request for a mandatory reconsideration. Despite this, his request for reconsideration was unsuccessful and the client was forced to appeal.

In the meantime, the client's housing benefit and council tax reductions had stopped, and he had gone into arrears with his rent. While he had been advised to claim Jobseekers Allowance (JSA) while his ESA had stopped, the client had difficulties with this process, meaning he had no money to live on. Fortunately in the meantime his application for Personal Independence Payment (PIP) was successful, however, this is a benefit intended to help with the additional costs of living with a health condition or disability: it is not an income replacement benefit. Details of the PIP award were submitted as part of the client's ESA appeal.

At appeal, the tribunal awarded our client ESA, and placed him in the support group: entirely reversing the original assessor's decision that he was 'fit for work'.

### **Case study 3**

Our client provided very full evidence of the deterioration in her health, including a clear letter from her GP to support her request for a supersession decision to move her from the work-related activity group to the support group for ESA. She was subsequently told to apply for a new assessment using the ESA50 form. Following this new assessment the client was indeed placed in the support group.

Requiring the client to go through the process of making a new application for ESA, rather than simply reaching a supersession decision where there was strong medical evidence of the client's change in circumstances seems highly wasteful of DWP resources as well as of both the client's time and the time of her GP who provided the medical evidence; not to mention the additional stress placed on the client throughout this period.

### **Case study 4**

Our client has severe spinal problems, is in a lot of pain and takes very large doses of painkillers to help him manage this. He submitted a request for a supersession decision moving him from the work related activity group (WRAG) to the support group for ESA. While his request was eventually granted, it took around 5 months to process. This long delay left our client feeling very anxious about situation, and that if he were to fail to comply with meet the requirements placed on claimants in the WRAG group when he was so ill this would lead to him being sanctioned.

### **Case study 5**

Our client has serious physical and mental health problems, as well as issues with drug and alcohol misuse, and was finding it extremely difficult to cope with day-to-day life. He originally contacted the bureau to ask for help with rearranging hospital appointments which he had missed due to his difficulties in managing his daily living. When we spoke to them, his medical team reported that they had been very concerned about these missed appointments because the severity of our client's condition means that he requires close monitoring.

During the course of our client's appointment, he was unable to tell our advisor what was happening with his benefits, so we arranged a follow up appointment to discuss this. On further examination it emerged that our client had been placed in the work related activity group for ESA, requiring him to attend the Job Centre regularly. In an effort to comply with this requirement our client had been missing medical appointments and failing to rest as advised by his medical team: further compounding his already severe health problems. We supported our client to submit a request for mandatory reconsideration so that he would be placed in the support group. While our client was eventually placed in the support group following this request, the poor original decision had a significant impact on his physical and mental health, which could have been avoided if a better decision had been reached in the first place.

### **Case study 6**

Our client is around 60 years old and has serious physical and mental health problems. She had been in the work related activity group for ESA, but her health had deteriorated and both she and her Job Centre Plus advisor felt she should now be in the support group. Our client reported that the thought of going on training courses or to interviews was making her feel very ill and she felt she could not cope. As a result of her health problems she is also quick to anger and can become aggressive: another reason she was unlikely to be able to manage in a work environment.

Our client required medical evidence from her GP to show that her health had deteriorated, but was unable to afford a report, which would cost £30. We were able to secure funding from a local charitable trust to cover the cost of a medical report, and this was submitted along with her request for a supersession decision.

Despite the investment of resources by our client, Citizen's Advice, the charitable trust and our client's GP in order to provide the necessary medical evidence, the request for a supersession was refused, and it was only after we then requested a mandatory reconsideration of the decision that the client was placed in the support group.