

THE INADEQUACIES OF THE WORK CAPABILITY ASSESSMENT AND APPEALS PROCESS.

1. Introduction to ESA and the Work Capability Assessment and Appeals Process

This paper concerns ESA and the Work Capability Assessment process. ESA is financial support for around 2 million people who are unable to work because of illness or disability. Those who apply for ESA have to first fill out a questionnaire (ESA50) to explain why they have limited capability to work. They then usually have a Work Capability Assessment (WAC) to see if they are eligible for the benefit. Those who are eligible are then placed in 1 of 2 groups:

- The work-related activity group (WRAG), where the client has regular interviews with an adviser and has to complete certain agreed tasks or they will be sanctioned. Those in the WRAG group currently get £28.75 more per week than people receiving JSA who are aged 25 or over, who currently get £72.40 per week.
- The support group, where the client does not need to have interviews or follow an agreed programme for finding work. This group is able to claim up to £108.15 a week.

If the client is refused ESA, or put in the WRAG group when they believe they should be in the support group, they can appeal. Since October 2013 this has involved sending an appeal for Mandatory Reconsideration to DWP. During the process of Mandatory Reconsideration the client can only claim the benefit for which they have been deemed eligible. This can lead to major financial hardship problems which are further aggravated by clients not being able to meet the conditions of the WRAG group or JSA and being sanctioned and by some clients feeling they cannot apply for JSA because they are not capable of work. Furthermore other benefits are stopped when ESA is denied and these other benefits take time and cost to re-establish.

If the Mandatory Reconsideration confirms the original decision the client can appeal. At this stage they go back to receiving ESA at the application rate which is the same rate as JSA. They then gather evidence for the tribunal where the case is heard. If the decision is in their favour they receive arrears from the date of the original application.

After six months from the original decision the client can start a fresh application for ESA. Often the whole appeal process takes longer than six months. If their circumstances change they can go for new decision (called supersession). However in its response to the DWP Select Committee report on ESA and the Work Capability Assessment the Government has stated that from spring 2015 it wishes to reduce repeat claims:

“We would still need to consider the repeat claim but while we are considering it, and pending any appeal against our refusal of that claim, no ESA would be paid although JSA could be claimed.”¹

2. This research base and key findings and recommendations of this paper

This paper is based on two pieces of analysis of our clients by Camden Citizen Advice Bureaux Services.

- An analysis of all the clients with ESA related queries during the period April 2013- July 2014
- An analysis of ESA appeal tribunal cases handled by the special Camden CAB tribunal team in the period from 2012 to August 2014 (based on Tribunal dates).

Camden CAB evidence shows that the Work Capability Assessment process is deeply flawed. We have evidence that the current system is working particularly badly for those with mental health problems. Almost half the people going through this system have a mental health problem as their primary condition and when those with two or more psychiatric or physical illnesses are included the number rises to two thirds². The anxiety the process causes can result in deterioration in the mental health. It also wastes considerable government funds by dealing with people inappropriately. 74% of the appeals taken to tribunal are successful These are cases where the applicant wanted to appeal and Camden CAB do not filter out those where success is doubtful so the success rate shows the failure of the original classification process. Our evidence also shows that the Mandatory Reconsideration process serves to cut funding to those in need by removing their entitlement to ESA until an appeal is lodged. The result is severe impoverishment. We are recommending:

1. ESA50 should be simplified. Clients need to be protected from high charges from health professionals for medical evidence. Clients with mental health issues should be seen by mental health professionals or dealt with through paper based assessment with information from psychologists rather than relying on a form.
2. The Work Capability Assessment is not fit for purpose. The assessments currently being done by ATOS are not satisfactory and we see no evidence that the change of contractor to Maximus will improve the system since no real reform is being implemented.
3. Mandatory Reconsideration should be replaced by a single process that re-assesses the claim at the stage the appeal is lodged to see if can be resolved without a tribunal. The client should be kept on the assessment rate of ESA during this process. This will save money in administrative costs and JSA is no higher than the assessment rate of ESA. Similarly those involve in a supersession appeal should be on the assessment rate of ESA.
4. There are still significant improvements that could be made to the client’s journey through the ESA process.

¹ DWP (2014) *Government Response to the House of Commons Work and Pensions Select Committee’s Report on Employment and Support Allowance and Work Capability Assessment, First Report of Session 2014–15*, p8.

² Dr Paul Litchfield (2014) *An Independent Review of the Work Capability Assessment – year five*, p2.

5. The ESA rate must not be cut further. Those on ESA are already struggling to make ends meet.

3. Evidence of analysis of all ESA enquires from April 2013-July 2014

Camden Citizens Advice Bureaux Service provides support to well over 10,000 clients in the London Borough of Camden each year. From April 2013-July 2014, we saw 2998 people with ESA queries. This is a major workload for Camden CAB. Until recently there was an organisation called Disability in Camden (DISC) with whom we shared this workload. They will have helped many people in addition to those we have seen. Unfortunately DISC went into liquidation in April 2014 and we are now seeing an increasing workload.

Table 1: ESA clients assisted by Camden CAB April 2013-July2014.

Total clients seen with ESA queries	2998
Eligibility entitlement calculation	426
Assistance with ESA50	191
Number of complaints and poor administration queries	76
Payment issues	69
Appeals	756
Challenging a decision (not appeals)	64
Help with supersession	65
Incorrect group allocation	51
Sanctions and hardship loans and no money while waiting for reconsideration	38

3.1 ESA50 and medical evidence

The ESA50 remains a very long complex form and most clients need assistance in filling it out and this absorbs considerable resources from specialist advisers. Each client we help with an ESA50 requires on average over two hours support. The descriptors are somewhat arbitrary (e.g. 'Can you go up or down two steps without help from another person, if there is a rail to hold on to?' This does not tell you if the person can go up a flight of steps which will be the most common situation encountered). The way the questions are framed generates repeated responses. The form is most inadequate in relation to mental illness. We believe it could be simplified and draw answers that reflect more clearly the everyday struggle the client has to complete necessary tasks. The form also does not make it clear that medical evidence is required. It states:

"It is important that you give us as much information as possible as this helps us to deal with your claim. If you have any medical information from your doctor, consultant or health care professional, or any other information which you wish us

to see, please send us a copy with this questionnaire. **You do not have to see your GP or health care professional to ask for a specially written report.** You may be charged if you do this”.

The reality is that medical evidence is usually necessary and much time would be saved on appeals if up-to-date medical evidence were supplied. However, GPs charging for medical evidence is a real problem. In our analysis of appeal tribunals we have found that GPs cooperated in some way in 94% of cases but a few do refuse support. Some GPs charge and there was one case of a client being charged £80. These charges can create great difficulty. The DWP Select Committee review recommended (Recommendation 4) that DWP decision-makers (DMs) proactively seek additional evidence, from both health and social care professionals, rather than placing the onus to do this on claimants (although claimants should retain the right to submit evidence with their ESA50 if they wish to do so) but the Government has not accepted this recommendation.

CASE 1

Client was on Income Support since the late 1990s. When he was transferred onto ESA he was asked to go for a Work Capability Assessment and awarded zero points. In mid-2013 he was told he was not eligible for ESA and his benefit was stopped.

The client had many health issues and was under-going further examination for his illness. He had lumbar spinal stenosis, bleeding of the bowel and depression. His GP charged him £50.00 for the medical report that Camden CAB requested for the appeals tribunal. The client was not able to pay this amount having been struggling with reduced benefits for several months. In February 2014, the client received a decision notice giving him 27 points and restoring his ESA in the Work Related Group. This decision meant that the client gained £6144.65, based on the back-dated component element of ESA which was not paid while waiting for tribunal, and 1 year's worth of the ESA with the component instead of JSA.

Camden CAB believes that ESA50 should be simplified and that GPs should support their patients appropriately and not impose charges that create financial hardship. A person with mental health problems should not have to fill in ESA 50, but instead should be interviewed by a fully qualified mental health professional who can sensitively assess their claim. The mental health professional can then assess, on an appropriate scale rather than a set of descriptors, whether the client can realistically apply for and hold down a job, taking into account the client's employment history and discriminatory attitudes of many employers in relation to mental health.

3.2 The Work Capability Assessment

The backlog of assessments is currently running at more than 600,000³

We have numerous cases where clients have been awarded zero points despite having serious health issues which affect their ability to work. The clients see this as belittling their serious health problems and come to us feeling extremely upset and maltreated.

The case studies show a lack of understanding of depression and mental illness

CASE 2

Client is male aged 50-60. He received zero points at his work capability assessment. He was diagnosed with cancer of thyroid and underwent surgery. His voice is still affected by the operation and he has difficulty speaking. He also suffers from back pain and pains in his knees which makes walking, going up and down stairs, bending and kneeling difficult. Due to his depression, he has difficulty sleeping at night which interferes with his ability to cope with daytime activities. He doesn't like interacting with people and prefers to be on his own. CAB assisted with drafting a Mandatory Reconsideration letter.

CASE 3

Client is female aged 40-50. She has scored 0 points in ATOS assessment. She was diagnosed with depression and anxiety about 20 years ago and has been on medication since that time for her illness. She gets intensely agitated, angry and from time to time gets the desire to harm herself and other people. When she gets episodes of anger she needs to be in her own space to calm down because she can become very volatile. She is persistently sad, emotional, anxious which makes it difficult to function properly and consequently she constantly gets feelings of helplessness and worthlessness. She has no interest or pleasure in hobbies, socialising, and spends most of the time home alone. She suffers from insomnia, and takes medication to sleep and continuously gets thoughts of death, suicide or suicide attempts. She takes about 8 different types of medication to subdue her condition but some of the medication is very strong and has side effects which make it even more difficult to hold down a job. Some of the medication makes her irritable, restless, agitated, confused and it is almost impossible for her to concentrate. CAB assisted with drafting a Mandatory Reconsideration letter

The lack of understanding of specific mental health issues is demonstrated through the case studies below:

CASE 4: The impact of a metal plate in the brain

³ <http://www.theguardian.com/society/2014/oct/30/cuts-employment-support-allowance-papers-jobseekers-allowance>

Client is a male aged 60-65. Client applied for ESA but was placed in the work related activity group (WRAG). He asked for mandatory reconsideration to be placed in the support group, but was turned down. In 1970, he suffered an accident at work. He fell off from a hotel roof at work and was in coma for 9 weeks in intensive care. Since then, the client has had a metal plate installed in his skull and he has been suffering from blackouts, memory loss, mental impairment and blurred vision. He also suffers from severe headaches, confusion, fits, arthritis in both knees, stomach hernia, mental health issues, attempted suicide, retrograde amnesia and loss of ability to memorise information. At the moment he is taking various medications for his conditions. The client's appeal has been lodged and the client is waiting for a response.

CASE 5: The impact of a bullet lodged in the brain

Client is a female aged 30-40. She was seen with a friend who came to help her. Following a WCA where she was awarded 0 points, she has received a decision letter finding her capable of work. She has type 1 diabetes and has a bullet lodged in her brain. She says that she has problems with her back, constant headaches and is forgetful. This forgetfulness, together with the fact she felt she needed someone to come here with her to help her, should be sufficient to show good cause for a late Mandatory Reconsideration which was submitted. Four weeks later she was told the decision had not been changed, so proceeded to appeal.

CASE 6: The impact of paranoid psychosis and paranoid personality disorder

Client is a male aged 50-60. He has a decision letter saying that as a result of his WCA he is not eligible for ESA. His housing benefit had been stopped. He had a previous successful appeal re ESA - which states that he suffers with paranoid psychosis and paranoid personality disorder. Mandatory Reconsideration letter sent to DWP and telephoned Camden Council re housing benefit. Client put back on ESA and housing benefit and two months later letter from the DWP stating that client has been placed in the support group for 36 months.

CASE 7: The impact of HIV on mental health

Client is male aged 40-50. Client scored 0 points on a WCA and told he would not receive ESA. He was upset and said he rang JCP and asked them to reconsider the decision. Client has bladder problems and mental health issues and is HIV positive. CAB helped with Mandatory Reconsideration but this was turned down Client is also upset that medical letters in the appeal bundle are old letters and should not have been taken into account. CAB helping him to obtain new medical evidence for appeal.

CASE 8: The impact of anxiety

Client is female aged 60-61. Bureau helped client to complete an ESA50 in 2013. Client is anxious and has attempted suicide and was in a very bad state. Adviser emphasised in the

ESA50 that client is extremely anxious about attending a medical as not only is she very anxious about everything but also she believed her poor performance at previous medicals had led to her being placed in the wrong group. Unfortunately Client's GP has changed and she has no consultant's report. Three months later CAB phoned DWP - they had not heard - they gave ATOS phone number. CAB phoned ATOS. They confirmed that form had been received and that there was a backlog and could give no indication when it would be dealt with. A month later the client was called for a work based interview at Jobcentre Plus. CAB phone JCP who explained that the letter needed to be amended as it does not explain this is a voluntary invitation to come and see if they can support her finding work. Failure to go would not affect benefit. CAB explained client could not cope with an interview and explained suicidal tendencies. Jobcentre Plus agreed to delete this appointment and take no further action. Spring 2014 CAB phoned client and she had still not heard from ATOS but is getting full amount of ESA.

We also have cases, like that below, where the client does not want to put her mental health issues on the ESA50 form. This is not uncommon but a sympathetic mental health professional would be able to gather a much better understanding of the problems through an interview.

CASE 9

Client is female aged 50-60. She has previously won ESA appeal and successfully got through WCA last year but has now been awarded nil points. She has a lot of pain and restricted movement and depression. She has very difficult family circumstances and she says she is depressed but does not want to take anti-depressants. CAB assisted in completing a mandatory reconsideration for the client but she did not want to mention her mental health issues and ESA was still refused and she was still given 0 points. She wanted to appeal but before this was submitted she fell and either as a result (or it was discovered as a result) her uterus had 'fallen' and her incontinence problems are worse and she has a medical certificate saying she is unfit for work for three months. She had been to JCP and they had told her to start new ESA claim. She is now in receipt of ESA and her old claim is still in appeal and CAB has assisted with completing an ESA50 regarding her fresh claim

Many of our clients are very anxious about going to an assessment centre and home interviews or paper based assessments should be offered to clients with mental health problems. If a client has been in the ESA support group for several years with acute anxiety it should be possible to just ask for an update from the GP rather than engaging the client in an annual review. Reviews are sometimes carried out within months, there is not a standard annual review period, which just causes unnecessary stress. We used to find that a client had just gone through the process when it started all over again. This has improved slightly but we still have cases of clients filling out an ESA50 form in November and being

requested to fill out another in January. This is an issue picked up by the DWP Select Committee which argued in Recommendation 6 that reassessments are occurring too frequently, particularly for claimants with progressive conditions and ones which are unlikely to change. The government's current position is that reassessment for those with severe incapacity from degenerative brain disorders should be every five years while for other a minimum period of six months between a successful appeal decision and the issue of a review notice is all that is required. The system wastes public resources and can cause unnecessary stress. Longer term decisions or more indefinite decisions should be applied where possible.

3.3 Mandatory Reconsideration and the Appeals Procedure

We have evidence that this process is working very badly and would like to see the Mandatory Reconsideration process scrapped and better collection of medical evidence at the ESA50 stage, better quality work capability assessments and improved decision making at the application stage. This should be followed by parallel appeal and reconsideration processes, with the client kept on the assessment rate of ESA during the process. Having two processes merely impoverishes the client and causes further delays.

The evidence we have, including some of the cases described above and case 10 and 11 below, suggests that there are many cases where there has been a mistaken assessment that is not changed by the Mandatory Reconsideration.

CASE 10

Client is male aged 40-50. He had depression from 2006, recovered in 2011 and went back to full time work. The depression returned at the end of 2013, so he left work and applied for ESA. He was awarded 6 points at his Work Capability Assessment. He asked for Mandatory Reconsideration and was turned down two months later. CAB is now helping with the appeal. He has a letter from his GP which describes him as being a danger to himself and he has been referred for a CT scan regarding fainting fits.

CASE 11

Client is female aged 50-60. Client attended a medical assessment for ESA and received no points. She wishes to appeal this decision as she has multiple health issues, mainly insomnia and depression, and believes she is not well enough to work. A mandatory reconsideration letter was sent. In chasing the decision on this her daughter was told by JCP officer she spoke to that they are allowed to take "as long as they like". Meanwhile Client's health (depression /anxiety) has deteriorated due to the stress and she has developed a further physical health problem. GP has issued a medical certificate to confirm all this and client made a fresh claim to ESA. Two weeks after this fresh claim, the decision letter on mandatory reconsideration said there was no change in the decision (three months from

ESA being stopped). Client is appealing this decision and waiting for an assessment on the new application.

We have only been informed about a couple of cases (see below) where the decision was changed by the Mandatory Reconsideration.

CASE 12

Client is a male aged 50-60. He had a decision letter saying that as a result of his WCA he was not eligible for ESA. His housing benefit had been stopped. He had a previous successful appeal re ESA - which states that he suffers with paranoid psychosis and paranoid personality disorder. Mandatory Reconsideration letter sent to DWP and CAB telephoned Camden Council re housing benefit. Client put back on ESA and housing benefit and two months later received a letter from the DWP stating that he has been placed in the support group for 36 months.

CASE 13

Client is a female aged 40-50. She is a long-term client of ours whom we successfully helped appeal a negative ESA decision 2 years ago. She states that her condition has worsened and she now regularly attends a psychologist. She has again failed an assessment and wishes to appeal. Seven weeks later the mandatory reconsideration was successful and the decision changed and she was placed in the support group. She has been advised she will get backdated payments.

The case studies also contain several examples of people put into the WRAG group having to go for mandatory reconsideration because they cannot cope with applying for work or a job. During the Mandatory Reconsideration process for clients who have been refused ESA, they are told to register for JSA but several do not wish to do this as they believe this negates the fact that they are not capable of work. Moreover, some of those with severe disabilities and/or mental health issues feel they could not cope with the stress of signing on for JSA and seeking work up to the level of the JSA contract. Signing on for JSA, signing on again with ESA (if the appeal goes forward) and then changing the information for HB/CTR is also a very expensive, time consuming process. It costs the DWP £162.76 per case in JSA administration costs. This doesn't include any costs which may occur when closing and reopening ESA⁴. We would like the process stopped. The DWP Select Committee agree with us (Recommendation 22) but the Government has hidden behind some dubious legal issues

⁴ Citizens Advice Bureau Briefing (14 June 2014)Mandatory reconsideration in employment and support allowance.

in refusing this recommendation⁵. The legal framework could easily be change. In Northern Ireland an enhanced reconsideration procedure has been introduced:

“Enhanced reconsideration is different to mandatory reconsideration in a number of ways. The first is that a person in Northern Ireland who disputes the WCA decision can still choose to appeal. Secondly, a person who undertakes an enhanced reconsideration in Northern Ireland remains on the ESA assessment rate.”⁶

CASE 14

Client is a female aged 60-65. She was in receipt of Incapacity Benefit and attended a medical for migration onto ESA. In April 2014 she was told that she was not eligible for ESA as had been deemed not to have limited capacity for work. Her housing benefit and council tax reduction were stopped when ESA refused. Client wrote herself to DWP requesting mandatory reconsideration. Client came to CAB and telephoned DWP and was told that her letter had not been received. CAB helped client write a further letter to DWP. In mid-June telephoned DWP who said decisions were currently running at 4 to 6 weeks, so mid- July would be realistic - still no promise even of that. Discussed option for client of claiming JSA, but she will not do this as she is not prepared to sign that she is available for work. In late June, client came in saying that she received a telephone call from the DWP asking her to send her medical report to support her MR by early July. She said that her GP is really busy but she had booked a telephone consultation with the GP this week to talk about this, but after this the GP would be on leave.

Reading through the cases also shows the further delays that the Mandatory Reconsideration process has entailed. Although the decision is meant to take only four weeks most cases have taken at least six and some far longer than this (case 11 above took 3 months). There is consistent evidence of letters and fit notes being lost and letters being registered as received two weeks after they were posted. The delays waste everyone’s time in chasing the decision and cause real hardship to the clients. Decisions on Mandatory Reconsideration are now coming through faster than they did at the start of the process but we would still like to see the process scrapped.

Most of the cases where Mandatory Reconsideration confirms the original decision go on to appeal. Camden CAB has analysed the work done on ESA appeals by CAB Kilburn/Albany Team in the period from 2012 to August 2014 (based on Tribunal dates)

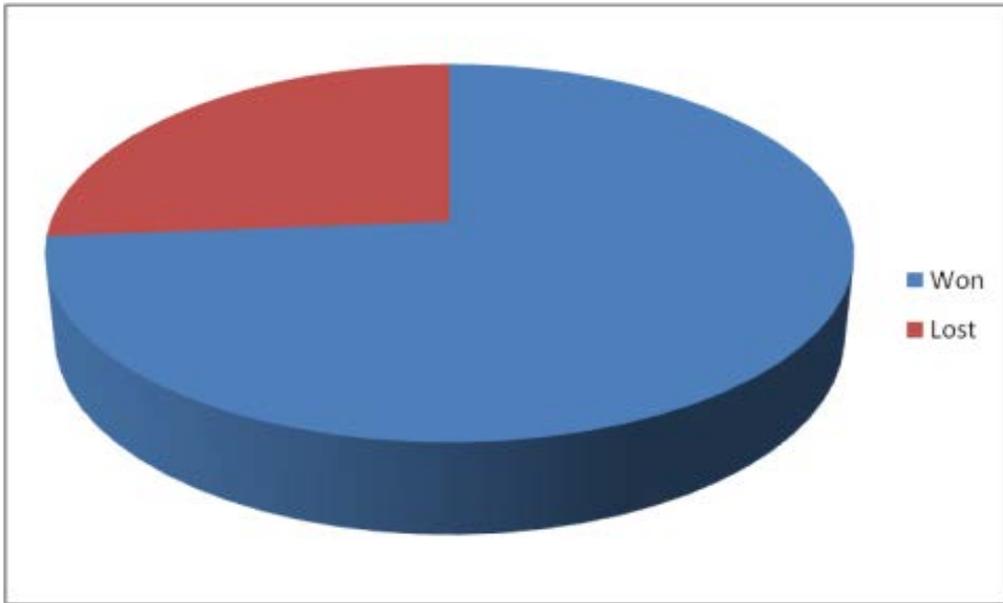
2012 – 8 cases

2013 – 60 cases

2014 – 31 cases

⁵ DWP (2014) op cit “When claimants are found fit for work, unless the decision is overturned, that decision is in law a final decision and there is no legal basis on which to continue to make any ESA payments” p20..

⁶ Dr Paul Litchfield (2014) op cit. p 73.



Total cases	99	
Successful	73	74%
Money won	£466,144 ⁷	

Such a high percentage of cases where the tribunal reverses the original decision can be seen an indictment of the poor quality of original decisions. The case studies below illustrate this further.

CASE 15

Client is a female aged 40-50. Client has been refused ESA and the decision was not overturned through the Mandatory Reconsideration process. She suffers from chronic depression, back and neck problems and coronary heart disease. One of the issues was that her GP letter, which stated that her health conditions have a severe impact on her ability to work, did not have enough weight because it was dated over a year ago and 9 months before original decision.

Client had brought in an updated letter from her GP which states that her health conditions remain and gives more detail on issues that have actually worsened since his last letter. CAB assisted with the appeal and the client received a letter from the appeals officer revising the decision so she is now in receipt of ESA.

⁷ Our standard calculation is based on the back-dated component element of ESA which is not paid while waiting for tribunal, and 1 year's worth of ESA component.

CASE 16

Client was given 6 points at WCA and refused ESA. Decision confirmed after Mandatory Reconsideration. Her main problem is asthma and this affected her ability to walk and stretching. Standing made her dizzy. Other physical problems include urinary tract problem, frequent infections requiring antibiotics. Client also suffers from depression and takes antidepressant medication. Client won her appeal and was given 21 points and was put in the Support Group. She was awarded arrears of £829.60 and being in the ESA group will mean an extra £5623.80 over the next year.

CASE 17

Client had first claimed Incapacity Benefit (IB) in 1997/1998 when he had stopped work due to depression and anxiety and his condition has persisted. He originally was transferred from IB to ESA in 2011 and this had taken over a year to sort and he was told that his ESA award would remain unchallenged for 2 years. A year later he was summoned for an ATOS interview after which his ESA was refused since he was awarded 0 points. His medical report summary states that "He interacted well today" and "The mental state examination was normal". Client admits he was "holding himself together" on the day, but at CAB offices he was agitated and tearful and said he was so stressed by the loss of his benefits that he has had to start taking antidepressants after a long period of managing without them, plus sleeping pills and tablets to stop him vomiting because of anxiety. He requested mandatory reconsideration but this upheld the original decision. He claimed JSA but did not manage to keep appointments relating to his work commitment and he was sanctioned for four weeks. At the appeal he was placed in the WRAG group and awarded 15 points. He will receive approximately £1000 in back payments for ESA and sanctions and the award is worth around £6515.60 in back payments and the ESA component over the next year.

CASE 18

The client was refused ESA after only getting 6 points from his initial WCA. He was unable to walk more than 200 meters; unable to sit and remain in one place for more than 15 minutes without severe back pain; and unable to pick up items larger than a one litre bottle of milk. He has additional problems with his right ear, heart and suffers from diabetes and is on medication for low blood pressure. He won his appeal and was placed in the WRAG group with 15 points. He received over £5000 in arrears and the additional ESA component over one year.

CASE 19

Client is a victim of torture with physical health problems (back problems: cannot walk more than 200 metres because of the pain and cannot lift heavy objects). He also suffered from depression and anxiety. He had been in receipt of ESA for 2 years. He had a medical assessment after which he was awarded 0 points and refused ESA. 8 months later he had

been successful in his ESA appeal. The client is now entitled to ESA with the work-related activity component and he has now scored 21 points. The award is worth £6260.45: back-dated component element of ESA which is not paid while waiting for tribunal, and 1 year's worth of ESA+ component.

The average cost of an appeal is estimated at £248; and in 2013-14 the total cost to DWP of appeals was £69.9 million⁸. A system could be devised where better evidence was gathered at the original application stage and where HMCTS looked at appeals in the early stages and dealt with any simple cases before the appeal is heard while leaving the clients on the applicant rate of ESA.

3.4 The client's journey through the ESA process.

When ESA is refused after a WAC, the information sent to clients concerns the next step in the application for ESA but does not deal with the action that needs to be taken in relation to other benefits. When ESA is refused, this impacts on housing benefit and council tax reduction. We see many clients in the Bureau who did not understand that they need to go to the Council to reinstate their benefits and who are impoverished because all their benefits have suddenly ceased. When ESA is refused there needs to be a system to ensure that housing benefit and council tax reduction are maintained. Clearer guidance is needed. Clients are also not made aware that they can request to be seen by a disability adviser at JCP and of their rights in relation to negotiating their job search commitment and how they can restrict their availability for work.

We see many clients who are not fully aware that they have been placed in the WRAG group and the expectations that will consequently be placed on them. Transitional funding means that they may receive the same payment and are unaware of the change. We think this is resulting in more cases of supersession and of ESA sanctions which are very distressing. The sanctions often stem from administrative failure. These sanctioned clients receive no benefit for four weeks or more and usually have to be given food vouchers and are under terrible stress and deprivation.

CASE 20

Client is a male in his 20s. Client has been sanctioned twice in the late summer for missing work related interviews, one shortly before he was admitted to hospital and one during his stay in hospital and it has since proved extremely difficult to get his Employment Support Allowance payments reinstated (the DWP decision maker herself said the system is 'very disjointed'). His Employment Support Allowance was resumed after the sanctions but was not backdated with the amounts whilst it was suspended. CAB wrote to Jobcentre Plus to report that the client's mental health had deteriorated since he was awarded Employment

⁸ <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30209.htm>

Support Allowance and that he should be in the Support Group and not in the Work Related Activity Group. Client continued to miss appointments and was not engaging with Jobcentre Plus and had not seen his doctors. Four months later the client brought into CAB a letter from Jobcentre Plus which stated that he has been put in Support Group

CASE 21

Client is a single mother in her 30s with long term health issues. She has suffered from a past back injury and from depression for the past 6 months brought about by personal circumstances, which brings on uncontrollable bursts of crying and an inability to cope with the demands of daily life. She relies on her teenage daughter to keep her house ticking over. She also has panic attacks which can cause heart palpitations. She claimed Employment Support Allowance and received a letter early in 2014 saying payments would start. She got one payment and then no more. Rang Jobcentre Plus and was told her sick note had expired. She sent in a new one the next day and in subsequent calls was told it had not been received. Finally, a month later they said they had the new sick note but couldn't pay her because she was under sanction for failing to attend a compliance interview when she was on Job Seekers Allowance. She went to the compliance appointment the following week and was told the sanction would be immediately lifted. When she rang Jobcentre Plus she was told the claim had been closed the day before her compliance interview because she had not returned a ESA50. Client had sent it in over a month previously. CAB rang Jobcentre Plus who confirmed the above record. The sick note had taken five weeks to be put on the system. The claim was closed because the ESA50 had not been received. Department of Work and Pensions advised that they would send out a duplicate and on page 17 the client should explain that she had good cause for late submission as the original had been properly completed and returned and for some reason not received by ATOS. The client had not been alerted to this despite frequent phone calls with Department of Work and Pensions.

CASE 22

Client is a single female in her 40s. She received an appointment in the summer for a medical assessment relating to her Employment Support Allowance. However the client had on that day an appointment with Child and Adolescent Mental Health Services (CAMHS) regarding her son having therapy relating to the death of his dad, the client's partner, for which they had been on the waiting list for eight months. She contacted the Department of Work and Pensions who told her that a new appointment had been booked regarding the medical assessment. However three weeks later the client received letter which informed her that she had been sanctioned for non-attendance and that her Employment Support Allowance claim had ceased. The client called the Department of Work and Pensions twice regarding this, but was not called back. Two weeks later the client received a letter stating that although the client had not attended the medical, they had looked at other evidence and decided that the client was fit for work. Client has appealed.

There are cases where a client has either very high anxiety or severe physical illness (or sometimes both) where a medical assessment is unnecessary and the client should be placed directly in the support group. This process is currently very long and complex. In the case below the decision took 18 months and caused considerable stress. A streamlined process where a GP could request exemption from a medical assessment and where a quick decision was made would be helpful.

CASE 23

Female client aged 50-60. She had a chronic disease that had affected her liver since the end of the 1990s. She applied for disability living allowance and after a tribunal process was awarded the middle range benefit in 2000. Subsequently her condition deteriorated and she was given the highest rate of the care element of disability living allowance and the lower rate of mobility allowance. She wanted to be exempt from medical assessment for migration from IB to ESA but there was some lack of clarity as to whether this can be asked for before a medical assessment has taken place. She was originally offered home visit January 2013. That assessment did not go ahead because it clashed with medical treatment that she was due to receive that day. She then didn't hear from ATOS or DWP. At end of 2013 Camden CAB agreed to write a letter to DWP in support of her claim to be exempt from a medical assessment for her migration from IB to ESA. She sent two doctors' letters confirming that she is too ill to work and too ill to go through assessment. It took to the end of May to get confirmation from DWP that they would pay her at the ESA support group rate indefinitely. The whole process therefore took eighteen months and the client claims it made her health worse through stress.

Conclusion

The evidence presented in this report shows that the process of getting ESA is both expensive to the tax payer and stressful to the client. It is deeply flawed with poor assessments leading to appeals, 74% of which in Camden are successful. Nationally in 2012/13 only 6.9% of "new ESA claimants" found a job against the government target of 17 per cent⁹. Over the last year job outcomes have slightly improved with 1 in 10 of more recent ESA claimants (up to the end of June 2014) having had at least three months' work within the first 12 months of joining the programme¹⁰ but this outcome is still very low. A system that worked with disabled people, rather than seeing them as 'scroungers' would save money and is likely to be more successful.

⁹ Channel Four Factcheck September 2013 <http://blogs.channel4.com/factcheck/factcheck-work-programme-improving-fails-sick-disabled/15918>

¹⁰ DWP (2014) op cit. p 27

CAMDEN CAB is a Registered Charity. We are a member of Citizens Advice and our service is provided by unpaid volunteers who are supported by a team of paid supervisors, managers and specialists. We provide FREE, CONFIDENTIAL, IMPARTIAL and INDEPENDENT advice. We have three Citizen Advice Bureaux in the Borough