

# Benefits Bulletin

## Disabled Students and Universal Credit Supplement

8<sup>th</sup> September 2020

Issue **3.1** [2020]

### 1. Introduction

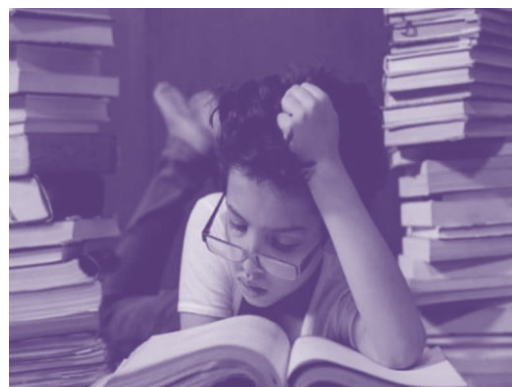
This is a supplement to the [Benefits Bulletin 3: Disabled Students and Universal Credit \(REVISED 31<sup>st</sup> August 2020\)](#). It has been produced to make clearer the situations in which disabled students may apply for Universal Credit. However, we accept that given the way the rules operate, the rights of some disabled students may still remain unclear or ambiguous. In these situations, further information and advice may be needed.

In Benefits Bulletin 3: Disabled Students and Universal Credit we brought news of the rule change ([Statutory Instrument 2020 No. 827](#)) from **5<sup>th</sup> August 2020** which was designed to prevent disabled students from applying for Universal Credit unless they:

- were getting Personal Independence Payment (Disability Living Allowance or Attendance Allowance); and
- already had in place a 'limited capability for work' determination as part of an existing Universal Credit (or Employment and Support Allowance) claim before they embarked on their course of education.

We explained that it was the view of the Department for Work and Pensions (DWP) that the rule change confirmed the original policy objective that Universal Credit would provide some financial support to enable those with 'limited capability for work' to be encouraged to enter full-time education as a means of improving their job prospects, the viewpoint being that someone already in education did not need that encouragement.

The problem is that many disabled students seek to apply for Universal Credit as they enter education or as a result of the onset of a health condition (or deterioration of an existing condition) during their education.



By '**disabled student**' we mean a person in education or person who is about to embark on a course of education who has a physical or mental health condition.

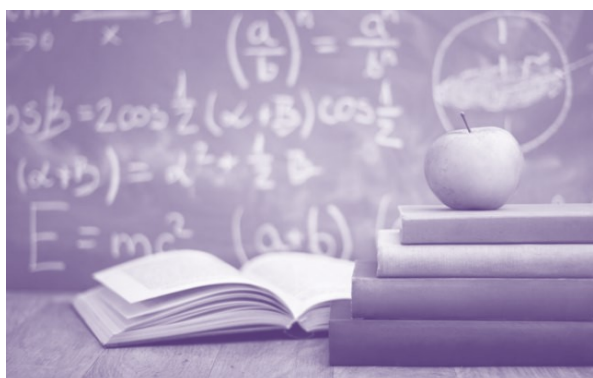
**New DWP Guidance:** Since Benefits Bulletin 3: Disabled Students and Universal Credit was issued, the Department for Work and Pensions (DWP) has provided guidance (see [ADM 16/20](#)) to its Decision Makers on the new rules. However, the guidance is not entirely helpful. This is because it merely restates the new rules and gives two straightforward examples highlighting the circumstances in which a disabled student may be able to apply for Universal Credit and another in which they will not be able to apply for Universal Credit.

## 2. How best to Proceed?

The best way to see if a particular disabled student is able to apply for Universal Credit whilst studying is to confirm:

- 1. The nature of the course they are doing:** Is the person undertaking a course of 'non-advanced education' or 'advanced education' or are they attending some form of training or traineeship?
- 2. How old they are:** A person must be aged at least 16 before they can apply for Universal Credit. Further, when it comes to people being in education, different rules apply depending on a person's age.

The next step is to determine whether given the course they are doing and their age, they will be considered to be '**RECEIVING EDUCATION**'. See 3. Receiving Education and Exceptions.



If they are not considered to be 'receiving education', then they should be able to apply for Universal Credit. If they will be considered to be 'receiving education' then they will only be able to apply for Universal Credit if they fall into one of the '**EXCEPTIONS**' categories. See 3. Receiving Education and Exceptions.

However, as pointed out in Benefits Bulletin 3: Disabled Students and Universal Credit, if the disabled student is not able to apply for Universal Credit, but they may be considered to be a 'qualifying young person' (see Note 4 on page 5) then their parents may be able to get (continue to get) Child Benefit and extra Universal Credit or Child Tax Credit for them if they are claiming these benefits.



## 3. Receiving Education and Exceptions?

A disabled student may not apply for Universal Credit if they may be considered to be '**RECEIVING EDUCATION**' unless one of the **EXCEPTIONS** apply to them.

**RECEIVING EDUCATION:** A disabled student will be considered to be 'receiving education' for Universal Credit purposes if they:

- **1A** are undertaking a full-time course of 'advanced education'; or
- **1B** are undertaking a full-time course of study or training for which a loan or grant is provided for their maintenance; or

- **1C** count as a ‘qualifying young person’ because they are aged under 19 (or aged 19 up to and including 31<sup>st</sup> August after their 19<sup>th</sup> birthday) and they are undertaking a course of ‘non-advanced education’ or a course of ‘approved training’ (See also Note 5 on page 5 about disabled students undertaking ‘relevant training’).

A disabled student who:

- is NOT undertaking a course of ‘advanced education’ (or a course for which a loan or grant is provided for their maintenance); or
- is NOT a ‘qualifying young person’ because they are aged under 19 (or aged 19 up to and including 31<sup>st</sup> August after their 19<sup>th</sup> birthday) and they are undertaking a course of ‘non-advanced education’ or a course of ‘approved training’ (See also Note 5 on page 6 about disabled students undertaking ‘relevant training’)

will nonetheless be treated as ‘receiving education’ if they are undertaking a course of study or training that is deemed not to be compatible with the ‘work-related requirements’ (See Note 6 on page 5) imposed upon them by the DWP as part of their Universal Credit claim.



**EXCEPTIONS:** Following the new rule change the disabled students who may be considered to be ‘receiving education’ who are nonetheless able to apply for Universal Credit are disabled students who:

- **2A** receive Personal Independence Payment, Disability Living Allowance or Attendance Allowance and have (or may be treated as having) ‘limited capability for work’ under the Universal Credit rules or

Employment and Support Allowance rules; and that determination was made:

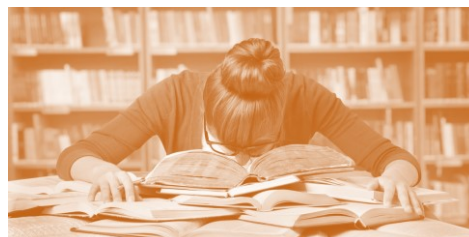
(i) on or before the date on which the disabled student applied for Universal Credit; or

(ii) if the disabled student was receiving education on the date they applied for Universal Credit; or

(iii) on the date on which the disabled student started receiving education, where they started receiving education after they had applied for Universal Credit.

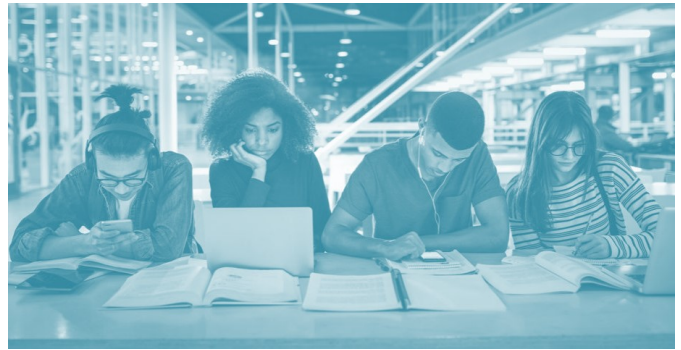
- **2B** are aged under 21 (or aged 21 providing they turned 21 during their course) and undertaking a course of study or training which is not ‘advanced education’ and who may be considered to be ‘without parental support’ (See Note 7 on page 6)
- **2C** have a child
- **2D** are single foster parents
- **2E** are over pension age but their partner is not
- **2F** are a member of a couple and either their partner is not a person ‘receiving education’, or their partner is a person who is ‘receiving education’ but they are able to apply for Universal Credit.

Therefore, in the case of **2A** the disabled student must be getting Personal Independence Payment (or Disability Living Allowance or Attendance Allowance) and an award of Universal Credit or Employment and Support Allowance (including an Employment and Support Allowance Credits only award - See page 4) in place with a determination confirming that they have a ‘limited capability for work’ (or that they may be treated as having ‘limited capability for work’) before they embark on their course of education or training.





**New Style ESA Credits Only:** When a person gets New Style ESA (or Contributory ESA or Income-related ESA), they will be awarded a 'NI Credit' for each week they qualify. If a person is unable to qualify for New Style ESA because they do not meet the basic qualifying conditions, they may nonetheless make a 'Credits only' claim - to get the NI Credit. When made, the person will be assessed under the Work Capability Assessment to see if they have (or may be treated as having) 'limited capability for work'. For each week they have 'limited capability for work' they will get a NI Credit which may help them towards qualifying for contributory-based benefit at some point in the future. It is this assessment of 'limited capability for work' which can help a disabled student qualify for Universal Credit. Then should the disabled student be awarded Universal Credit, their Credits only claim would end but they would continue to get a NI Credit through their Universal Credit claim.



If, as will be the situation in many cases, the disabled student has not made a claim for Universal Credit and does not already have a determination confirming that they have a 'limited capability for work' (or that they may be treated as having 'limited capability for work') in place by the time they are in education or training then it appears that one way of getting around the rules is for them to apply for New Style ESA (including a Credits only award) and once it has been confirmed that they have 'limited capability for work' (or that they may be treated as having 'limited capability for work'), make the application for Universal Credit.

If the disabled student is getting Personal Independence Payment (or Disability Living Allowance or Attendance Allowance) and Universal Credit is in payment but without a determination confirming that they have a 'limited capability for work' (or that they may be treated as having 'limited capability for work') then they should ask the DWP to assess them under the Work Capability Assessment for 'limited capability for work'. They must then make sure that the determination confirming that they have 'limited capability for work' (or that they may be treated as having 'limited capability for work') is in place before they embark on their course of education or training.



Remember that a disabled student who is in education or training should NOT be considered to be 'receiving education' if none of the circumstances in **1A**, or **1B**, or **1C**. (on page 2 and 3) apply and the course may be considered to be compatible with their Work-related Requirements. See Note 6 on page 5. This could be a strategy to pursue, for example, in the case of a disabled student who is aged 20 or over and attending a course of study or training which is 'non-advanced education'. In the absence of a 'limited capability for work' determination you could seek to argue that the disabled student is entitled to Universal Credit because the course they are doing is not incompatible with their Work-related Requirements because it is in keeping with improving their job prospects.



Finally, as pointed out in Benefits Bulletin 3: Disabled Students and Universal Credit, a disabled student could, in conjunction with any of the above, apply for Universal Credit and challenge any decision that they do not qualify (i.e. because they did not have a 'limited capability for work' determination before they embarked on their studies) on grounds of discrimination and with reference to the ongoing High Court challenge.

#### **Treated as Having LCW: Med3 Fit Note**

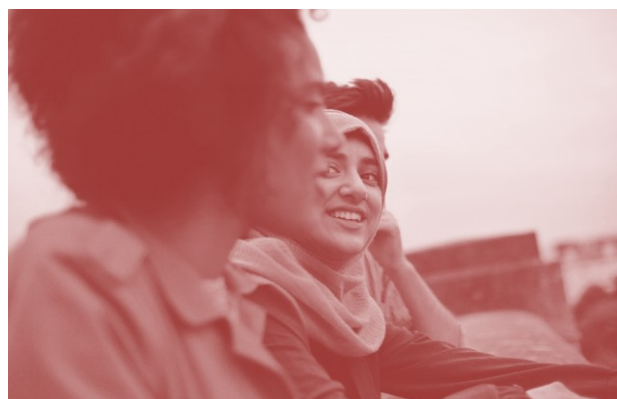
We are aware that some people are advising disabled students caught in the above situation to make a claim for New Style ESA and at the same time to submit Med3 Fit Notes from their GP on the basis that this will enable them to be 'treated' as having 'limited capability for work'. However, this advice is flawed. It was possible under the rules of Income-related ESA and Contributory ESA to be 'treated' as having 'limited capability for work' on this basis. However, there is no equivalent provision under New Style ESA (or Universal Credit).



**Note 1:** 'Advanced Education' means a course of study leading to a postgraduate degree (or comparable qualification), a first degree (or comparable qualification) a diploma of higher education or a higher national diploma or any other course which is at a standard above advanced GNVQ (or equivalent).

**Note 2:** 'Non-advanced Education' means a course below the level of Advanced Education (see Note 1 above) and not above GCSE / A level standard.

**Note 3:** 'Approved Training' means training provided by the DWP under [Section 2\(1\) of the Employment and Training Act 1973](#) designed to assist unemployed people to obtain suitable employment.



**Note 4:** A 'qualifying young person' is a person aged under 19 (or aged 19 up to and including 31<sup>st</sup> August after their 19<sup>th</sup> birthday) who is undertaking a course of 'non-advanced education' or a course of 'approved training'.

**Note 5:** A 'qualifying young person' who is participating in a 'relevant training scheme' will not be deemed to be 'receiving education'. A 'relevant training scheme' means a 'traineeship' or a course or scheme which comprises of education or training that is designed to assist the person to gain the skills needed to obtain paid employment or more or better paid employment. It also includes a course or scheme attended at the request of the DWP as a 'work preparation requirement' or 'voluntary work preparation'.

**Note 6:** A 'Work-related Requirement' is a requirement that can be imposed as part of a person's Universal Credit conditionality. It can involve the requirement to engage in Work-focused Interviews and the requirement to engage in Work-related Activity (e.g. attend a short training course or work experience programme) to improve their job prospects. It can also include the requirement to look for work and to be available for work. Those who are deemed to have 'limited capability for work' are normally only expected to undertake Work-focused Interviews and Work-related Activity. However, when a person is considered to be 'receiving education', they are not normally expected to undertake any Work-related Requirements.

**Note 7:** A disabled student should be considered to be 'Without Parental Support' if they:

- have no parents (or persons acting in place of their parents); or
- live away from their parents (or persons acting in place of their parents) because they are estranged from them; or
- live away from their parents (or persons acting in place of their parents) because if they were to live with them then there would be a serious risk to their physical or mental health and/or safety.

A person will also be considered to be 'without parental support' if they are living away from their parents (or persons acting in place of their parents) and their parents (or persons acting in place of their parents) are unable to support them because they are ill or disabled, in prison or not allowed to enter the country due to immigration rules.



**Further Information and Advice:** If you need further information or advice on how best to proceed (or what the options are) in any particular case then do get in touch with the Specialist Support Team. You can email them at [wrs@wolverhampton.gov.uk](mailto:wrs@wolverhampton.gov.uk) or ring them on (01902) 555351. The Specialist Support Team will not only be willing to provide advice in such cases but will also be prepared to represent disabled students in relation to their entitlement to Universal Credit following the introduction of the new rules.

Welfare Rights Service  
Specialist Support Team  
City of Wolverhampton Council  
[WRS@wolverhampton.gov.uk](mailto:WRS@wolverhampton.gov.uk)