

# Universal Credit: The Work Capability Assessment Toolkit

Information Guide 7: For Residents and Advisers

[www.wolverhampton.gov.uk](http://www.wolverhampton.gov.uk)

17<sup>th</sup> April 2024

## 1. Introduction

This Information Guide is aimed at people who are applying for Universal Credit who have a physical and/or mental condition which may affect their ability to work.

Universal Credit is a benefit administered by the Department for Work and Pensions (DWP). Its purpose is to provide financial support to people of '**working age**' who have no income or a limited income. A person will be considered to be of 'working age' if they are aged 16 or over but under the 'Qualifying Age for Pension Credit' (QAPC). The expectation is that once a person reaches the QAPC they may claim Pension Credit instead of Universal Credit. In the case of mixed age couples both members are now expected to apply for Universal Credit until both have attained the QAPC.

People may apply for Universal Credit if, for example, they have no income or a limited income perhaps because they are without paid employment or the wages they get are low.

People who claim Universal Credit are expected to have a 'claimant commitment' which outlines their 'work-related requirements' - what is expected of them as part of their ongoing entitlement to Universal Credit.

This can involve an undertaking to:

- engage in 'Work-focused Interviews' with a Job Centre Work Coach for the purposes of identifying barriers to work
- engage in 'Work-related Activity' designed to enhance their employment prospects and get them 'job ready'
- look for work up to 35 hours per week
- be available to start work immediately or at short notice.

If someone fails without '**good reason**' to meet these conditions, then they may be refused Universal Credit altogether or sanctioned, resulting in a reduced amount of Universal Credit being awarded to them during a particular period.



The actual detail of what can be expected of someone is outlined in our Information Guide 3: The Claimant Commitment.

ESA Meaning: Where we refer to New Style ESA, we mean New Style Employment and Support Allowance and where we refer to Income-related ESA we mean Income-related Employment and Support Allowance.

If a person has a physical and/or mental condition which may affect their ability to work, then they may be assessed under the **Work Capability Assessment** to see if they have (or may be treated as having):

- **'limited capability for work'** in which case they would only be expected to engage in Work-focused Interviews and undertake Work-related Activity as a condition of their on-going Universal Credit entitlement. They would not be expected to look for work or to make themselves available for work; or
- **'limited capability for work' and 'limited capability for work-related activity'** in which case they should be excused from all aspects of the work-related requirements regime as part of their on-going entitlement to Universal Credit.

In simple terms, if a person has poor physical or mental health and they can successfully navigate the Work Capability Assessment then they may not have to work or look for work as a condition of their entitlement to Universal Credit.



Moreover, it is important that those who experience poor health ensure that they are assessed under the **Work Capability Assessment** not only for this reason. It is important because those who may be assessed as having (or may be treated as having) 'limited capability for work' and 'limited capability for work-related activity' receive a greater amount of Universal Credit.

They will be eligible to the 'limited capability for work-related activity element' which could be worth up to £416.19 per month in extra Universal Credit - normally awarded three months after the start of the person's claim or immediately if the person may be considered terminally ill. Prior to **3<sup>rd</sup> April 2017** those who were assessed as having 'limited capability for work' (but not 'limited capability for work-related activity') were also awarded extra Universal Credit albeit a smaller amount. They were awarded the 'limited capability for work element' worth up to an extra £156.11 per month. However, this amount is now normally only paid to people who made a claim for Universal Credit before 3<sup>rd</sup> April 2017.

Please see our Information Guide 1: Universal Credit and Fact Sheet 3: Benefits and Older People for more information on who is able to apply for Universal Credit and who may apply for Pension Credit.



**Note 1:** If a person considers themselves as being too sick to work then (whether they are entitled to Universal Credit or not) they should see if they have entitlement to **New Style ESA** (which replaced Contributory Employment and Support Allowance). This is a contribution-based benefit for people of 'working age' who by reason of poor physical or mental health may be assessed as having (or being treated as having) 'limited capability for work' or 'limited capability for work-related activity' under the Work Capability Assessment. Entitlement to this benefit depends on the person having worked and having paid (or being credited with) sufficient NI contributions. It is also a non-means-tested benefit so a person can normally qualify for this benefit irrespective of what other income or savings they (or their partner) have. The point here is that it is broadly the same Work Capability Assessment that is used in determining whether a person has 'limited capability for work' or 'limited capability for work' and 'limited capability for work-related activity' for New Style ESA as it is for Universal Credit.

So much so, that whatever the outcome of the Work Capability Assessment for New Style ESA it may be used for the purposes of a claim for Universal Credit and vice versa.

Therefore, the information contained in this Information Guide about the operation of the Work Capability Assessment may be taken as applying equally in the case of New Style ESA.

Where different provisions apply between Universal Credit and New Style ESA then we have highlighted the differences in this Information Guide. What is also important to know is that whilst in places the Work Capability Assessment for Income-related ESA and Contributed ESA are identical there are nonetheless some differences so you may need to seek further information and advice in these cases.

## 2. The Work Capability Assessment ...

The Work Capability Assessment is the tool used to establish whether a person has (or may be treated as having):

- **'limited capability for work'** in which case they would be placed into the **'work preparation group'** and expected to undertake 'work-focused Interviews' (designed to look at barriers to work) and 'work-related activity' (designed to get them 'job ready'). They would also not be expected to look for work or be available for work; or
- **'limited capability to work' and 'limited capability for work-related activity'** in which case they would be placed into the **'no work-related requirement group'** and not expected to participate in 'work-focused interviews' or 'work-related activity'. Equally, neither would they be expected to look for work or be available for work.

When a person applies for Universal Credit, they will be asked whether they suffer from a physical or mental health condition that may prevent or limits their ability to work.



If the person answers 'YES' to that question and they, in effect, remain unable to work for 4 weeks then they should be referred for a Work Capability Assessment on the 29<sup>th</sup> day of their claim.

However, there are some circumstances in which a person will be referred for a Work Capability Assessment from the first day of their claim. This should happen when the person is:

- terminally ill (see Section 8. Treated as Having LCW and LCWRA page 11)
- pregnant and there is a serious risk of damage to their health (or to the health of their unborn child) were they to not refrain from work or work-related activity
- receiving (or is about to receive) treatment for cancer by way of chemotherapy or radiotherapy
- recovering from treatment for cancer by way of chemotherapy or radiotherapy
- receiving treatment such as dialysis, plasmapheresis or total parenteral nutrition for gross impairment of enteric function
- recovering from treatment such as dialysis, plasmapheresis or total parenteral nutrition for gross impairment of enteric function
- in hospital or a similar institution
- prevented from working by law.

If the person has already applied for Universal Credit / is already getting Universal Credit when they become unable to work then they need to report this to their Job Centre Work Coach directly or let them know by placing an entry on their journal.

A person can 'self-certify' themselves as being unable to work for the first seven days. After this period, they will need to evidence their inability to work by submitting sick notes (known as 'Med3 Fit Note') from their doctor.

What 'work-related requirements' are expected of someone who claims to be unable to work / have limited capability for work whilst they are waiting for the outcome of their Work Capability Assessment will depend upon the person's Job Centre Work Coach. However, a Work Coach should not expect a person to undertake 'work-related requirements' which are unreasonable for them to do so given their physical or mental health limitations.

Moreover, the rules provide that a person should not be expected to look for work as part of their 'work-related requirements' for up to 14 days where they have self-certified themselves as being too sick to work / submitted sick notes to this effect. Whilst this particular provision may ordinarily only be applied twice within any 12-month period please note that both the 14-day period / twice in 12-month limit may be extended if it is considered that in light of the person's health problems it would be unreasonable to expect them to look for work.

If a person fails the Work Capability Assessment, then what they are expected to undertake as part of their Claimant Commitment should reflect what is reasonable to expect them to do given their physical and / or mental health.

### 3. The UC50 Form...

Anyone who is applying for Universal Credit and stating that their poor physical or mental health affects their ability to work or undertake work-related activity should be assessed under the Work Capability Assessment. They should then be sent a UC50 questionnaire to complete.



The UC50 questionnaire gives the person an opportunity to provide details of their physical / mental (treatments and medication) and explain how this impacts on their ability to undertake prescribed activities as contained within the 'limited capability to work' and 'limited capability for work-related activity' assessments.

It is important that the UC50 questionnaire is completed as accurately and as fully as possible. This is because (in most cases) the person will have to undergo a 'face-to-face assessment' with a Healthcare Professional who will have regard to the information contained in the form when conducting the assessment. It is also important that the UC50 questionnaire is completed well because a Decision Maker at the DWP will eventually refer to the information contained in the form when making the decision on 'limited capability for work' and 'limited capability for work-related activity'.



Furthermore, if the person needs to appeal against the outcome of their Work Capability Assessment, then the appeal tribunal (known as a First-tier Tribunal and consisting of a legally qualified Judge and a medically qualified Doctor)) will have regard to the information provided in the UC50 questionnaire together with any other information and evidence submitted.





**Note 2:** The DWP has certain ‘safeguarding’ protocols in place surrounding the returning of the UC50 questionnaire. These protocols enable them to disregard the requirement for the completion of the UC50 questionnaire in cases involving ‘vulnerable’ people (e.g. people with a serious mental health condition or severe cognitive impairment). In such cases if a form is not returned, they can simply refer the case for a face-to-face assessment with a Healthcare professional.

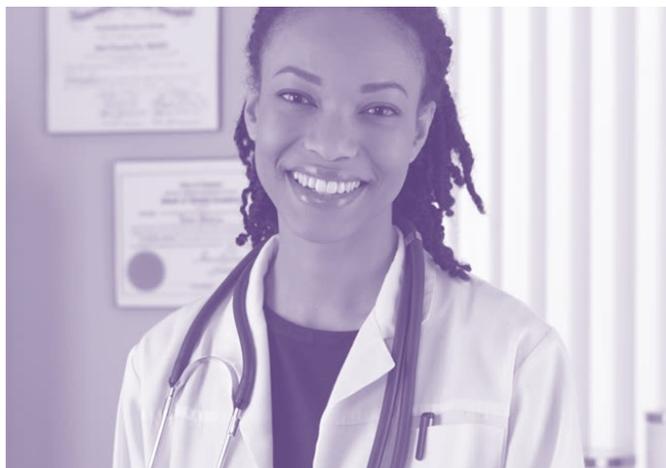
**New Style ESA:** If a person is applying for New Style ESA, then the information outlined above regarding the requirement to complete a questionnaire surrounding their physical and mental limitations applies equally. The only difference is that in the case of New Style ESA the form that needs to be completed is called an ESA50 questionnaire.

## 4. The Face-to-Face Assessment

Once the UC50 questionnaire has been completed and returned, the DWP will:

- make a decision on a person’s ‘limited capability for work’ and ‘limited capability for work-related activity’ based upon the available information; or
- make arrangements for the person to attend a ‘face-to-face assessment’ with a Healthcare Professional.

In the vast majority of cases a person will be required to undergo a face-to-face assessment with a Healthcare Professional.



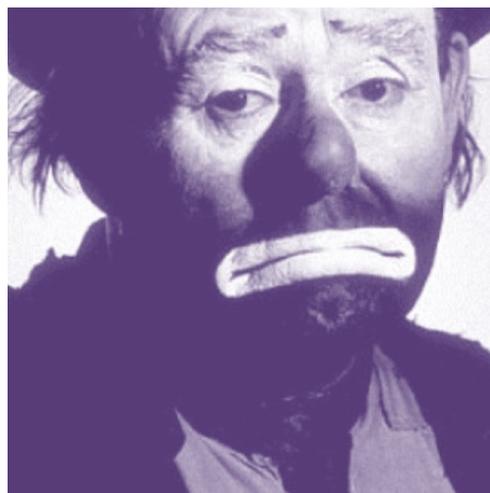
A Healthcare Professional means: A registered medical practitioner, registered nurse or occupational therapist or physiotherapist.

All the Work Capability Assessment face-to-face assessments for people living in Wolverhampton are undertaken by a company called **MAXIMUS** ([Centre for Health and Disability Assessments](#)) at one of their Medical Centres or, if needed (e.g. because a person is unable to travel), at the person’s own home.

**MAXIMUS Telephone: 0800 288 8777**

If a person is unable to travel or too anxious to do so, then they should contact MAXIMUS and ask if arrangements could be made for them to be assessed at home, over the telephone or perhaps at a later date when they are feeling better.

Whilst during the Coronavirus pandemic many face-to-face assessments are being arranged to take place over the telephone, if someone were to specifically to ask for this or for a home assessment then they would normally be asked to provide medical evidence from their doctor confirming why this is necessary / why they an assessment could not take place at a Medical Centre.



If a person fails to attend (without ‘**good reason**’) or attends but fails to participate in the face-to-face assessment (without ‘**good reason**’) then the DWP would make a decision that they should be treated as though they do not have ‘limited capability for work’ and ‘limited capability for work-related activity’.

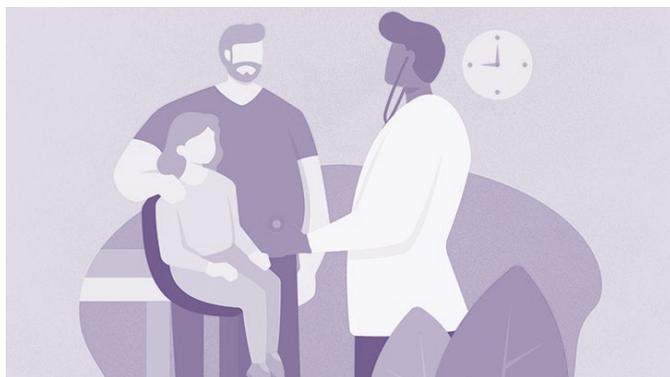
In such cases the person should consider challenging the decision if they think they had a good reason for not attending / not taking part in the face-to-face assessment. They can do so by contacting the DWP (by phone or letter) and seeking a Mandatory Reconsideration against that decision. If, following the Mandatory Reconsideration, the DWP refuses to change the decision in question then the person should consider making an appeal against the decision.

The purpose of the face-to-face assessment is to allow a Healthcare Professional to examine the person and prepare a UC85 report outlining their own views on the person's abilities and limitations in relation to the 'limited capability for work' and 'limited capability for work-related activity' assessments.

At the face-to-face assessment, the Healthcare Professional should take into account what the person has said about their physical and/or mental limitations and how it affects them in the UC50 questionnaire, what the person tells them during the assessment and their appearance and behaviour during the assessment.

The Healthcare Professional should enquire into the person's medication and how their ill-health and disability affect them in a typical week.

The Healthcare Professional should also ask about any fluctuations in a person's abilities due to them having good and bad days.



A person may bring a companion (e.g. a carer, relative or friend) with them to the face-to-face assessment.

It may be advantageous to do this if it would enable the person to make the journey to the MAXIMUS Medical Centre or make them feel more at ease during the examination. It may prove particularly valuable if such a companion is able to give useful information about the person's physical and / or mental health and how it affects them. In cases involving a person with a mental health condition, cognitive impairment or learning disability, the role of a companion could be very important. Any actual physical examination would not normally be done in the presence of the companion. However, if the claimant consents, and if it appears a reasonable request, then the companion should be allowed to be present.

If a person is not sufficiently fluent in English, meaning they would need an interpreter at their face-to-face assessment, then this should be pointed out to MAXIMUS. It could be that all the person needs to do is take a friend or family member with them to interpret on their behalf. If this is not possible then they should ask MAXIMUS to provide an interpreter or to arrange (if possible) for the face-to-face assessment to be carried out by a Healthcare Professional who speaks the same language as they do. A face-to-face assessment should not be conducted if an interpreter is needed but one is not present.



When completed, the UC85 report will go to the DWP and be used (together with the information the person has provided in their UC50 and any other medical evidence) to decide if the person has 'limited capability for work' and 'limited capability for work-related activity'.

## 5. Decision Making...

Once the DWP has both the completed UC50 questionnaire and UC85 report, a Decision Maker will decide whether the claimant meets the conditions set out in the 'limited capability for work' and 'limited capability for work-related activity' provisions.

The Decision Maker should make an independent decision based upon all the information and evidence made available. However, in practice, it is unusual for the DWP to go against findings in UC85 report. This is far less so when the matter is being considered by an appeal tribunal (known as a First-tier Tribunal and consisting of a legally qualified Judge and a medically qualified Doctor).

If it is the view of the Healthcare Professional that undertakes the Work Capability Assessment that the person meets the test (i.e. they have 'limited capability for work' / 'limited capability for work-related activity') then they will provide advice to the DWP on when the person should be reassessed. normally advise on how long the award should last - how long before the person's case should be reassessed. Much will depend on the nature of a person's condition and how it impacts on their functional ability and scope for natural improvement or improvement with treatment. All in all, the normal suggested period of reassessment for people assessed as having 'limited capability for work' (but not 'limited capability for work-related activity') could range from quite a short period up to 2 years.

However, people who have been assessed as having both 'limited capability for work' and 'limited capability for work-related activity' the advised period is 3 years. Moreover, according to DWP Guidance (see this [LINK](#)) those in the latter group (i.e. those assessed as having 'limited capability for work-related activity') and who have a severe and lifelong disability / illness or health condition and who are unlikely to ever be able to move into work may be exempt from further assessments.



If the decision goes against the claimant, then they can seek to challenge it by way of asking (by phone or in writing) for a Mandatory Reconsideration.

If the outcome of the Mandatory Reconsideration is unsuccessful, then the claimant may appeal. See Section 6. Appeal Rights below.

## 6. Appeal Rights...

If it is the decision of the DWP that the person fails the Work Capability Assessment (i.e. they are assessed as not having 'limited capability for work' or 'limited capability for work-related activity' or both) then they can challenge the decision. They can do this by:

- contacting the DWP and asking (by phone or in writing) for a **Mandatory Reconsideration** of the decision. This will get the DWP to look at the decision again. If they remain dissatisfied with the outcome of the Mandatory Reconsideration, then they may ask for an appeal.
- making an application to **Appeal** against the decision of the DWP straightaway without going through the **Mandatory Reconsideration** stage first.

A person can use the DWP [CRMR1 form](#) to ask for a **Mandatory Reconsideration**.

Previously if a person was challenging a decision that they did not have 'limited capability for work' they had to go through the Mandatory Reconsideration process first. However, since *Connor v SSWP* (High Court) it has been accepted that they may skip this part of the process and go straight to the appeal stage.

A person may ask for an **Appeal** using the [SCSS1 Appeal Form](#) or alternatively they can appeal online using this [LINK](#).



For more information about challenging DWP decisions, please refer to our Information Guides 13. Disputes and Appeals and 14. Going to Appeal: First-tier Tribunals. Please act quickly as there are strict time limits for making a Mandatory Reconsideration and/or appeal.



When a case goes to appeal, the appeal tribunal (known as a First-tier Tribunal and consisting of a legally qualified Judge and a medically qualified Doctor) may only consider the person's situation at the time of the decision against which the appeal has been made. Therefore, if the person's physical or mental health has deteriorated since the date on which they submitted their appeal request, or they have since contracted some new ill-health condition, then they should seek advice.

They should consider seeking a fresh Work Capability Assessment - one based upon their new circumstances. Any DWP decision on a new assessment would carry a fresh right of appeal.

**Note 3:** If it is ultimately determined that a person does not have 'limited capability for work' / 'limited capability for work-related activity' then they will not be able to ask for a fresh Work Capability Assessment unless either:

- their existing physical / mental health has significantly deteriorated; or
- they have contracted or developed a new physical or mental health condition

since they were found not have 'limited capability for work' / 'limited capability for work-related activity'.

**Note 4:** If someone is getting **New Style ESA** (or its predecessor Contributory ESA) and it has been assessed for that benefit that they have 'limited capability for work' / 'limited capability for work-related activity' then they should automatically be treated as though they have 'limited capability for work' / 'limited capability for work-related activity' for the purposes of any Universal Credit claim.

**Note 5:** If a person is transferring from **Income-related ESA** and it has been assessed that they have 'limited capability for work' / 'limited capability for work-related activity' then they should be treated as though they have 'limited capability for work' / 'limited capability for work-related activity' for the purposes of any Universal Credit claim.



## 7. The Assessment of LCW and LCWRA

The actual process of assessing whether a person has '**limited capability for work**' involves assessing a person's physical and mental health (including their cognitive and intellectual) capabilities within the range of the following, so called, 'Activity' areas:

## Part 1: Physical Activity Areas

1. mobilising
2. standing and sitting
3. reaching
4. picking-up and moving objects
5. manual dexterity
6. making self-understood
7. understanding communication
8. navigating and maintaining safety
9. loss of control of bowel/bladder
10. loss of consciousness

## Part 2: Mental Activity Areas

11. learning tasks
12. awareness of everyday hazards
13. initiating and completing personal actions
14. coping with change
15. getting about
16. coping with social engagement
17. appropriateness of behaviour

Within each 'Activity' area there are a number of individual point scoring, so called, 'Descriptors' each of which set out a particular physical or mental undertaking.

**Limited Capability for Work:** A person will be assessed as having 'limited capability for work' if they are able to score **15 points** or more under either Part 1: Physical Activity or Part 2: Mental Activity parts of the assessment. If they are unable to do so, then they will still be considered to have 'limited capability for work' if their combined Part 1: Physical Activity or Part 2: Mental Activity score is greater than 15 points.

Whilst points scored from different 'Descriptors' within an individual 'Activity' area may not be added together, the highest score from within each separate Activity area are added to the highest point scores from other Activity areas.

**Example One:** Andrew is physically disabled. He scores 9 points under Mobilising (Part 1: Activity 1) and 9 points under Reaching (Part 1: Activity 3).

His total score is 18 points. Therefore, he will be assessed as having 'limited capability for work'. This is because his total score is greater than the 15-point threshold needed.

**Example Two:** Habib has a physical disability. He scores 9 points and 6 points under Picking up and moving objects (Part 1: Activity 4). Habib cannot add his scores together because they belong to the same Activity area. His total score can only be 9 points in total. Therefore, Habib will be assessed as not having 'limited capability for work'. This is because his total score is less than the 15-point threshold needed.

**Example Three:** Gillian has a mental disability. She scores 6 points under Making herself understood (Part 2: Activity 6), 6 points under Social engagement (Part 2: Activity 16) and 6 points under Behaviour (Part 2: Activity 17). Her total score is 18 points. Therefore, she will be assessed as having 'limited capability for work'. This is because her total score is greater than the 15-point threshold needed.

**Example Four:** Fatima has a physical and mental disability. She scores 9 points under Manual dexterity (Part 1: Activity 5) and 9 points under Getting about (Part 2: Activity 15). She can combine her scoring from Part 1 and Part 2. Therefore, her total score is 18 points. She will be assessed as having 'limited capability for work'. This is because her combined total score is greater than the 15-point threshold needed.

See **Appendix 1** for full details of the actual 'limited capability for work' Activity areas and individual Descriptors which can apply.

The actual process of assessing whether a person has '**limited capability for work-related Activity**' involves assessing a person's physical and mental health (including their cognitive and intellectual) capabilities within the range of a number of different 'Activity' areas. Whilst these areas are essentially the same as those which govern the assessment of 'limited capability for work' (as outlined on page 9) there are some key differences.

The assessment of 'limited capability for work-related activity' has no provision relating to Navigating and maintaining safety, Loss of consciousness or Getting about. However, it does include an assessment of a person's ability to Convey food or drink and chewing and swallowing. Moreover, whether a person is assessed as having 'limited capability for work-related activity' does not rely on a point scoring system. A person will be assessed as having 'limited capability for work-related activity' if they can show that anyone of the Descriptor statements in any particular Activity area applies to them.

See **Appendix 2** for full details of the actual 'limited capability for work-focused activity' Activity areas and individual Descriptors.

**Aids and Appliances:** An individual's ability to undertake a particular descriptor should be assessed as though they were using or wearing any aids or appliances (or prosthesis) which they would normally wear or use or could reasonably be expected to wear or use.



**Pain/Fatigue and Safety:** Issues of pain (including dizziness, nausea and breathlessness) and fatigue / tiredness should be considered, and a person should be treated as though they are unable to perform a Descriptor if they cannot do so without too much discomfort.

Any risk to health in the performing of a Descriptor should also be taken into account. If the risk is sufficiently serious, then the person should be treated as though they cannot undertake the Descriptor in question.

**Most of the Time:** The expectation is that a person should be able to undertake the aspects of a particular Descriptor most of the time.

This means that if a person is unable to undertake a Descriptor with a reasonable degree of regularity, then they should be treated as though they are unable to perform that particular Descriptor. The severity of a person's condition, the frequency of good and bad days and the unpredictability of any bad days will all be relevant factors.

## 8. Treated as Having LCW and LCWRA

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In some situations, a person may be treated as though they have 'limited capability for work' or 'limited capability for work-related activity' even if they are unable to score 15 points under Appendix 1 and / or do not meet any of the conditions set out in Appendix 2.

A person may be treated as having '**limited capability for work**' in the following situations:

**1. Hospital Treatment:** They are either:

- a) undergoing medical or other treatment as an in-patient in hospital; or
- b) recovering from such treatment.

In the case of (b) it must be accepted that the person should be treated as having 'limited capability for work' in light of the recovery.



**2. Terminally ill:** They are terminally ill - meaning they suffer from a progressive disease and their death in consequence of that disease can reasonably be expected within 12 months (6 months prior to 4.4.2022).

**3. Cancer Treatment:** They are:

- a) receiving a treatment for cancer by way of chemotherapy or radiotherapy; or

- b) likely to receive a treatment for cancer by way of chemotherapy or radiotherapy within six months; or
- c) recovering from a treatment for cancer by way of chemotherapy or radiotherapy

and it is considered that in all the circumstances of the case (including any side effects of any treatment) it would be reasonable that they should be treated as having 'limited capability for work'.

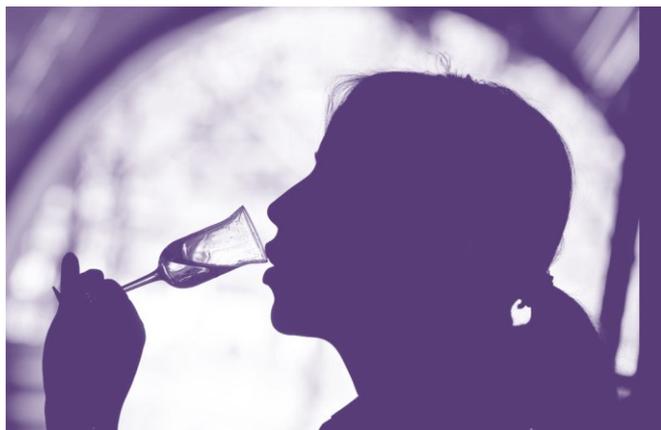


**4. Pregnant:** They are pregnant and there would be a 'serious risk' to their health or the health of their unborn child if they did not refrain from working.

**5. Renal Failure:** They are receiving:

- a) regular weekly treatment by way of haemodialysis for chronic renal failure; or
- b) treatment by way of plasmapheresis; or
- c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

A person may also be treated as having 'limited capability for work' during any week in which they have a day of recovery from any of the above treatments.



**6. Drug / Alcohol Rehabilitation:** They are either:

- a) attending a residential programme of rehabilitation for the treatment for drug or alcohol dependency; or
- b) recovering from such treatment.

In the case of (b) it must be accepted that the person should be treated as having 'limited capability for work' in light of the recovery.

**7. Life-threatening Disease:** They are suffering from a life-threatening disease which is uncontrollable or uncontrolled.

**8. Notice Not to Work:** They have been given official notice not to work or to refrain from work because they have an infectious disease or contamination or are suspected of being in contact with someone so infected or contaminated.

For the purposes of **Universal Credit** (but not New Style ESA), a person may also be treated as having 'limited capability for work' if they have reached **State Pension Age** and are entitled to either Disability Living Allowance or Personal Independence Payment.

A person may be held to have (or treated as having) 'limited capability for work' for Universal Credit purposes if they have already been assessed as having (or treated as having) 'limited capability for work' for New Style ESA (and vice versa).

If a person has transferred from Income-related ESA to Universal Credit (for example under 'natural migration' or 'managed migration'), then for Universal Credit purposes they should automatically be treated as though they have 'limited capability for work' providing they had already been assessed as having 'limited capability for work' for Income-related ESA.

**Note 6:** For the purposes of **New Style ESA** (but not Universal Credit) a person may also be treated as having 'limited capability for work' whilst they are getting Statutory Sick Pay from their employer.

**Note 7:** For the purposes of **New Style ESA** (but not Universal Credit) a person may also be treated as having 'limited capability for work' if they are pregnant (or they have recently given birth) and are entitled to Maternity Allowance.



A person may equally be treated as having 'limited capability for work' for the purposes of **New Style ESA** (but not Universal Credit) if they are pregnant and they are not entitled to Maternity Allowance or Statutory Maternity Pay. In this case the person must be within six weeks of the expected date of confinement or they must have given birth within the last two weeks.

**Note 8:** For the purposes of **New Style ESA** (but not Universal Credit) a person may be treated as having 'limited capability for work' if they satisfy any of the Descriptors in Activity 15 or Activity 16 of Appendix 2 which pertains to the test for 'limited capability for work-related activity' because they have problems conveying food/drink or with chewing or swallowing food/drink.

**Note 9:** For the purposes of **New Style ESA** (but not Universal Credit) a person may also be treated as having 'limited capability for work' whilst they are waiting to be assessed under the Work Capability Assessment or they are awaiting the outcome of an appeal concerning whether or not they have (or should be treated as having) 'limited capability for work'. In both situations the person must have submitted a current Med3 Fit Note to the DWP covering the relevant period.



**Note 10:** Please be aware that the special measures put in place for New Style ESA which enabled a person to be treated as having 'limited capability for work' during a period in which:

- they (or their child) had Covid-19
- they were recovering from the effects of Covid-19
- they (or their child) were self-isolating because they had been in contact with someone who might have COVID-19
- they had been advised to self-isolate before going into hospital for surgery
- they were required to quarantine because they had returned from a red or amber list country

no longer apply. These special measures were removed from 24<sup>th</sup> March 2022 and so no longer apply.

Please be aware that special arrangements are presently in place designed to ensure that face-to-face assessments can take place safely in light of the Covid-19 pandemic. People attending a face-to-face assessment with MAXIMUS might find it helpful / reassuring to study the information on this [LINK](#) before they attend their assessment.

**Note 11:** The **New Style ESA** special measure outlined in Note 10 did not apply to Universal Credit cases.

A person may be treated as having '**limited capability for work-related activity**' in the following situations:

- 1. Terminally ill:** They are terminally ill - meaning they suffer from a progressive disease and their death in consequence of that disease can reasonably be expected within 12 months (6 months prior to 4.4.2022)
- 2. Cancer Treatment:** They are:
  - a) receiving a treatment for cancer by way of chemotherapy or radiotherapy; or

- b) likely to receive a treatment for cancer by way of chemotherapy or radiotherapy within six months; or
- c) recovering from a treatment for cancer by way of chemotherapy or radiotherapy

and it is considered that in all the circumstances of the case (including any side effects of any treatment) it would be reasonable that they should be treated as having 'limited capability for work-related activity'

**3. Pregnant:** They are pregnant and there would be a 'serious risk' to their health or the health of their unborn child if they did not refrain from work-related activity.

For the purposes of **Universal Credit** (but not New Style ESA), a person may also be treated as having 'limited capability for work-related activity' if they have reached **State Pension Age** and are entitled to either Attendance Allowance, Disability Living Allowance (highest rate care component) or Personal Independence Payment (enhanced rate daily living component).



A person may be held to have (or treated as having) 'limited capability for work-related activity' for Universal Credit purposes if they have already been assessed as having (or treated as having) 'limited capability for work-related activity' for New Style ESA (and vice versa).

If a person has transferred from Income-related ESA to Universal Credit (for example under 'natural migration' or managed migration'), then for Universal Credit purposes they should automatically be treated as though they have 'limited capability for work-related activity' providing they had already been assessed as having 'limited capability for work-related activity' for Income-related ESA.

## 9. Substantial Risk to Health

If it has been held that a person does not have (and may not be treated as having) 'limited capability for work' and / or 'limited capability for work-related activity' under the normal provisions, then the following 'exceptional circumstance' provisions may help.

These allow a person to be treated as having 'limited capability for work' and / or treated as having 'limited capability for work-related activity' if, as a result of being found fit for work / fit to undertake work-related activity, there would be a 'substantial risk' (meaning: a risk that should not sensibly be ignored) to health.

### Substantial Risk: Limited Capability for Work

If it is decided that a person does not have 'limited capability for work' then they may nonetheless be treated as having 'limited capability for work' under this provision if there would be a 'substantial risk' to their physical or mental health (or the physical or mental health of any other person) in consequence of the decision.

The risk to health could arise from a range of factors. It could arise from the type of work the person might be expected to undertake, the journey to and from the workplace, the mental demand / apprehension caused by the need to look for work if they were to be found not to have 'limited capability for work'.



However, this provision would not apply if the risk to health could be 'significantly reduced' by making 'reasonable adjustments' in the workplace or by taking any prescribed medication or managing their condition.

## Substantial Risk: Limited Capability for Work-related Activity

If it is decided that a person does not have 'limited capability for work-related activity' then they may nonetheless be treated as having 'limited capability for work-related activity' under this provision if there would be a 'substantial risk' to their physical or mental health (or the physical or mental health of any other person) in consequence of the decision.



The risk to health could arise from the requirement to attend Work-focused Interviews or being expected to undertake 'Work-related Activity' / the nature of the 'Work-related Activity' a person might otherwise be expected to undertake.

Schedule 9(4) Universal Credit Regulations 2013  
Regulation 25 Employment and Support Allowance Regulations 2013

**Note 12:** For **Universal Credit** purposes whilst a person can work and it still be accepted that they have 'limited capability for work' a person would be treated as **NOT** having 'limited capability for work' if they are working and they have earnings above **£722.45 per month** (2023/2024 figure) - this is the amount equal to National Minimum Wage for adults multiplied by 16 hours. However, this rule does not apply if the person:

- concerned is getting Personal Independence Payment or Disability Living Allowance or Attendance Allowance; or
- actually started to work after they were assessed as having (or treated as having) 'limited capability for work' / 'limited capability for work-related activity'.

In the latter case the DWP could seek to reassess afresh the person under the Work Capability Assessment.



Moreover, if it has been assessed that the person should be treated as though they have 'limited capability for work' / 'limited capability for work-related activity' because they are undergoing (or recovering from) a cancer treatment or under the 'substantial risk' to health provision (see 9. Substantial Risk to Health on page 14) then they may work and earn a greater amount. Do seek further information and advice as necessary.

## 10. WCA Reform...

The DWP have announced plans to substantially reform the Work Capability Assessment (WCA) as it applies to Universal Credit and Employment and Support Allowance claimants and then to scrap it altogether for Universal Credit purposes replacing it with a new 'health and disability functional assessment' that is aligned to Personal Independence Payment.

The intention is to first amend the WCA by:

- removing the 'mobilising' activity from the 'limited capability for work-related activity' but not the 'limited capability for work' assessment; and
- reducing the points score in the 'getting about' descriptors within the 'limited capability for work' assessment.

At the same time the 'substantial risk' clause of the 'limited capability for work-related activity' (not the 'limited capability for work') would also be redesigned to align it with what has been described as the 'original intention' of only applying in exceptional circumstances yet still protecting and safeguarding the most vulnerable, including those in crisis and those with active psychotic illness.

It is understood that the intention is to introduce these amendments from 2025 to both existing and new claimants of Universal Credit and Employment and Support Allowance.

The plan is then from 2026 is to scrap the WCA for Universal Credit whilst replacing the existing Universal Credit 'limited capability for work-related activity element' (worth £416.19 per month) with a new 'health element' (worth the same amount) that would be dependent upon a person's entitlement to Personal Independence Payment.

Please see [Benefits Bulletin: WCA Reform Issue 8 \[2023\]](#) (dated 12<sup>th</sup> December 2023) for more details.

## 11. Information Guides and Fact Sheets

The Welfare Rights Service produces the following Information Guides and Fact Sheets on Social Security benefits and welfare reform.

### Benefits Information Guides:

1. Universal Credit
2. Universal Credit - Claims and Payments
3. Universal Credit - The Claimant Commitment
4. Universal Credit - Sanctions and Hardship Payments
5. Universal Credit and Vulnerable People - Claims and Payments
6. Universal Credit - Manage Migration
7. Universal Credit and The Work Capability Assessment - Toolkit
8. Personal Independence Payment
9. Personal Independence Payment - Toolkit
10. Form Filling: PIP2
11. Form Filling: ESA50 / UC50
12. DWP Social Fund
13. The Spare Room Subsidy

### 14. The Benefit Cap

### 15. Disputes and Appeals

### 16. Going to Appeal: First-tier Tribunals

### Benefits Fact Sheets:

1. Benefits and Work
2. Benefits and Disabled Children
3. Benefits and Young People
4. Benefits and Older People
5. Benefits and People from Abroad
6. Private Tenants and Universal Credit
7. Volunteering and Benefits

The information in our guides and fact sheets is designed to provide details of the different benefits that may be available to people in a variety of situations including when they are in work, unable to work due to ill-health, unemployed or retired. It also seeks to inform people of the steps that may be taken should they wish to dispute a decision made surrounding their benefit entitlement.

A copy of the Information Guides and Fact Sheets may, together with other topical benefit information, be obtained from our [Social Security Benefits](#) page on the City of Wolverhampton Council website.

Please also watch out for our periodical **Benefits Bulletins** which provide news on the latest developments surrounding benefits and welfare reform. These are also available on the website.

 Telephone: (01902) 555351

 Email: [WRS@wolverhampton.gov.uk](mailto:WRS@wolverhampton.gov.uk)

Note: The details provided in this and our other Information Guides and Fact Sheets is meant to provide an overview on important and topical issues relating to Social Security benefits and welfare reform. The details should not be treated as an authoritative statement of the law. The details may be subject to change by new regulation and/or case law. Do seek further information and advice as necessary.

Welfare Rights Service  
Specialist Support Team  
City of Wolverhampton Council

## Limited Capability for Work

### Part 1: Physical Disability

Activity	Descriptor	Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.	(a) Cannot unaided by another person either: <ul style="list-style-type: none"> <li>(i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or</li> <li>(ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	15
	(b) Cannot unaided by another person mount or descend two steps even with the support of a handrail.	9
	(c) Cannot unaided by another person either: <ul style="list-style-type: none"> <li>(i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or</li> <li>(ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	9
	(d) Cannot unaided by another person either: <ul style="list-style-type: none"> <li>(i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or</li> <li>(ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.</li> </ul>	6
	(e) None of the above applies.	0
Activity	Descriptor	Points
2. Standing and sitting.	(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of time, remain at a work station, either: <ul style="list-style-type: none"> <li>(i) standing unassisted by another person (even if free to move around); or</li> <li>(ii) sitting (even in and adjustable chair); or</li> <li>(iii) a combination of (i) or (ii)</li> </ul> for more than 30 minutes before needing to move away in order to avoid significant discomfort or exhaustion	9
	(c) Cannot, for the majority of the time, remain at a work station, either:	6

	(i) standing unassisted by another person (even if free to move around); or	
	(ii) sitting (even in an adjustable chair) or	
	(iii) a combination of (i) and (ii)	
	for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	
	(d) None of the above apply.	0
Activity	Descriptor	Points
3. Reaching.	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above apply.	0
Activity	Descriptor	Points
4. Picking up and moving or transferring by the use of the upper body and arms.	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0
Activity	Descriptor	Points
5. Manual dexterity.	(a) Cannot (i) press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark with either hand.	9
	(d) Cannot single-handedly use a suitable keyboard or mouse.	9
	(e) None of the above applies.	0
Activity	Descriptor	Points
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be used, unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply	0

Activity	Descriptor	Points
7. Understanding communication by (i) verbal means (such as hearing or lip reading) alone (ii) non-verbal means (such as reading 16-point print or Braille) alone or (iii) a combination of (i) and (ii) using any aid that is normally, or could reasonably be, used, unaided by another person.	(a) Cannot understand a simple message such as the location of a fire escape, due to sensory impairment.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above applies.	0

Activity	Descriptor	Points
8. Navigating and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be, used.	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0

Activity	Descriptor	Points
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally, or could reasonably be, worn or used.	(a) At least once a month experiences:  (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or  (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.	15
	(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) Neither of the above applies.	0

Activity	Descriptor	Points
10. Consciousness during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0

## Part 2: Mental (Cognitive and Intellectual) Disability

Activity	Descriptor	Points
11. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above apply.	0
Activity	Descriptor	Points
12. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant requires supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant frequently requires supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that the claimant occasionally requires supervision to maintain safety.	6
	(d) None of the above apply.	0
Activity	Descriptor	Points
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	6
	(d) None of the above apply.	0

Activity	Descriptor	Points
14. Coping with change.	(a) Cannot cope with any change to the extent that day-to-day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day-to-day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
	(d) None of the above apply.	0

Activity	Descriptor	Points
15. Getting about.	(a) Cannot get to any place outside of the claimant's home with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0

Activity	Descriptor	Points
16. Coping with social engagement due to cognitive impairment or mental disorder.	(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	9
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the claimant.	6
	(d) None of the above applies.	0

Activity	Descriptor	Points
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	0

## Limited Capability for Work-related Activity

Activity	Descriptor	YES/NO
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.	Cannot either:  (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or  (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	
2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	
3. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move a 0.5 litre carton full of liquid.	
5. Manual dexterity.	Cannot either press a button (such as a telephone keypad) or cannot turn the pages of a book with either hand.	
6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used, unaided by another person.	Cannot convey a simple message, such as the presence of a hazard.	
7. Understanding communication by (i) verbal means (such as hearing or lip reading) alone (ii) non-verbal means (such as reading 16-point print or Braille) alone or (iii) a combination of (i) and (ii) using any aid that is normally, or could reasonably be, used, unaided by another person.	Cannot understand a simple message such as the location of a fire escape due to sensory impairment.	

Activity	Descriptor	YES/NO
8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting) despite the wearing or use of any aids or adaptations which are normally, or could reasonably be, worn or used.	At least once a week experiences:  (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or  (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.	
Activity	Descriptor	YES/NO
9. Learning tasks.	Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.	
Activity	Descriptor	YES/NO
10. Awareness of hazard.	Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:  (a) injury to self or others; or  (b) damage to property or possessions  such that the claimant requires supervision for the majority of the time to maintain safety.	
Activity	Descriptor	YES/NO
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	
Activity	Descriptor	YES/NO
12. Coping with change.	Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.	
Activity	Descriptor	YES/NO
13. Coping with social engagement, due to cognitive impairment or mental disorder.	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the claimant.	
Activity	Descriptor	YES/NO
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	
Activity	Descriptor	YES/NO
15. Conveying food or drink to the mouth.	(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;  (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;	

(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or

(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:

(i) physical assistance from someone else; or

(ii) regular prompting given by someone else in the claimant's presence.

**Activity**

**Descriptor**

**YES/NO**

16. Chewing or swallowing food or drink.

(a) Cannot chew or swallow food or drink;

(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;

(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or

(d) Owing to a severe disorder of mood or behaviour, fails to:

(i) chew or swallow food or drink; or

(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

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