

Benefits Bulletin

ESA £1.67 billion error...

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Issue **18**

What error?

The Department for Work and Pensions (DWP) has estimated that around 180,000 people could be owed arrears payments of Employment and Support Allowance (ESA) totalling £1.67 billion.

ESA is a benefit that may be claimed by people of 'working age' (aged 16 to 65) who may be considered to be too sick to work - they are assessed as having 'limited capability for work' or 'limited capability for work-related activity'. It was introduced in 2008 as a replacement benefit for Incapacity Benefit, Severe Disablement Allowance and Income Support for those whose entitlement was established on the basis that they were too sick to work.

Between 2011 and 2014 some 1.5 million existing Incapacity Benefit and Severe Disablement Allowance claimants were migrated on to Employment and Support Allowance. As part of the process most had to undergo a fresh medical and meet a new, much tougher, test of incapacity. Those that did not were expected to apply for Jobseeker's Allowance and look for work.

The migration process was not dependent upon people making a claim for the new ESA benefit.

Providing people met the new medical conditions it was up to the DWP to fully assess the individual's entitlement to the new ESA benefit.

The error occurred here. During the new claim process many people's entitlement to Employment and Support Allowance was not fully assessed. As a result, many people missed out on ESA to which they had a legal right.



What is being done?

The work that is now going on is to address the DWP's past mistakes, to pay people the arrears of benefit they are owed and to compensate people for the fact that they were deprived of extra benefit for many years.

The DWP has announced that it has 400 people whose job it is to identify those affected, with priority being given to those cases where the claimant was terminally ill. The DWP has said that those affected will get back all the money they are entitled to.



How and who?

ESA is a single benefit which has two parts to it:

- **Contributory ESA** has been paid to those who have been too sick to work but who actually worked at some stage and paid sufficient National Insurance contributions. Entitlement was not means-tested; therefore the claimant could have a partner who worked and/or substantial savings and still qualify.
- **Income-related ESA** has been paid to those who have been too sick to work but who have been considered to have a low income and limited savings.

The error that is now being addressed is because when people were being migrated on to ESA from Incapacity Benefit and Severe Disablement Allowance only their entitlement to Contributory ESA was assessed.



It has now been shown that the DWP was wrong to do this. It has been shown that many were entitled to both Contributory ESA and Income-related ESA. In particular, this was the case for those people who were deemed to have 'limited capability for work-related activity'. This was because these were the people who had quite significant disabilities or were terminally ill and, therefore, qualified for extra amounts called 'premiums'. It was also likely that those who were considered to be living alone (with no-one getting Carer's Allowance for looking after them) and getting the middle or higher rate care component of Disability Living Allowance missed out.

Originally the DWP said that it would only pay arrears dating back to 2014. However, recognising that the error which caused this situation was an internal one, it has agreed to pay arrears to those affected from the date the error occurred.

What now?

This issue potentially affects people who:

- were getting Incapacity Benefit or Severe Disablement Allowance and who were migrated on to Employment and Support Allowance from 2010 onwards
- at the material time, had savings below £16,000
- did not have a partner working and earning a reasonable wage
- were migrated on to ESA and were only ever awarded Contributory ESA

- were assessed as having 'limited capability for work-related activity' and placed into the 'support group'
- were getting Disability Living Allowance middle or higher rate care component
- may have been terminally ill at the time

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As stated, the DWP is presently trawling their records for cases that it thinks may have been affected.



Those affected could receive lump sum arrears payments to address the lost income. Any arrears paid will be disregarded as savings for 52 weeks from the date of payment. Those who are deemed to still be entitled to any extra ESA should also see an increase in the amount of ESA that is currently in payment to them.

Anyone who thinks that they might be affected should write to the DWP and ask for the records in their case to be reviewed and to be paid any money owing to them plus compensation for the error.

