

**Department for Work and Pensions (DWP)
Central Freedom of Information Team**

freedom-of-information-request@dwp.gsi.gov.uk

Our reference: FOI 2163

Date: 19 June 2017

Dear Glenys Harriman

Thank you for your Freedom of Information request received on 19 May 2017.
You asked:

“Students who are on DLA/PIP and have a Limited Capability for Work are able to get Universal Credit. BUT - unlike ESA - they are not treated as having a Limited Capability for Work when sending in fit notes.

So I would be grateful if you could help me with the following scenario, providing me with the regulations and/or guidance that explain how this works.

How does a student - who is not already on Universal Credit – make a claim for UC if they have not yet had a Work Capability Assessment, taking into consideration the issue that they will not meet the claiming criteria until they are found to have a LCW? Presumably unless they meet the claiming criteria for UC they won't be put forward for a Work Capability Assessment so they would be stuck in a Catch 22?

I am aware that there is a regulation that allows a claim from someone who - purely because of their income - only becomes entitled to Universal Credit once they are found to have a Limited Capability for Work - but in this scenario it's not the student's income that is stopping them from claiming Universal Credit - it's the fact that they are a student and thereby ineligible.

Please provide the regulations and/or guidance that describes the process of how such students make their claim and a WCA referral etc.”

DWP response

In Universal Credit (UC), limited capability for work or limited capability for work and work related activity is determined in one of two ways. One is following the outcome of a Work Capability Assessment. The other is where the claimant is treated as having limited capability for work.

Regulation 41 in the Universal Credit Regulations 2013 provides for when a Work Capability Assessment can be carried out, once entitlement to UC has been determined.

The circumstances in which a claimant is to be treated as having limited capability for work, or limited capability for work and work related activity, are

listed in Schedules 8 and 9 of the Universal Credit Regulations 2013. The claimant should provide sufficient medical evidence in support of having one of the conditions or treatments listed such that the claimant can be treated as having limited capability for work (Schedule 8), or limited capability for work and work related activity (Schedule 9), without the need to refer for an assessment.

Schedules 8 and 9 are here <http://www.legislation.gov.uk/uksi/2013/376>.

In order to prepare for a move into work in the future a UC claimant who has been determined as having limited capability for work and entitlement to Disability Living Allowance (DLA) or Personal Independence Payment (PIP), can become a full time student and continue to receive financial support through UC. Provision is at Regulation 14 (b) in the Universal Credit Regulations 2013.

A new claim for UC can be made and taken where a disabled person in full time education, who is entitled to DLA or PIP, can be treated as having limited capability for work. This means having one of the conditions or treatments listed in Schedules 8 and 9 of the Universal Credit Regulations 2013, and providing the necessary medical evidence in support of that.

In these cases the claimant meets the UC disabled student requirements: i.e. the student is entitled to DLA or PIP, has limited capability for work, and is in full time education. The UC claim can continue throughout the period of full time study providing the limited capability for work determination remains valid and entitlement to DLA or PIP continues.

Regulation 28(7) of the Universal Credit Regulations 2013 provides for a claimant's income (or joint income) to be treated as the prescribed minimum – one penny in accordance with Regulation 17. This regulation applies where the claimant meets the basic entitlement conditions.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Central Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to: DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF
www.ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745