

## Universal Credit and Limited Capability for Work

### What is Universal Credit?

UC is a means-tested benefit for single, working age people and couples where one or both are working age. It is for people in work, jobseekers, carers, or those who have a limited capability for work. Entitlement depends on income, savings and personal circumstances.

### Who has a limited capability for work?

The DWP use the Work Capability Assessment (WCA) to decide which UC claimants have a Limited Capability for Work (LCW) or a Limited Capability for Work Related Activities (LCWRA).

So, unless the claimant has a short-term illness (eg. flu), they might need to request a WCA.

### What difference does having LCW / LCWRA make?

This will determine which 'conditionality group' the claimant is put in for their Claimant Commitment.

It could also give them more UC. (See below)

### The Work Capability Assessment (WCA)

The WCA is used to determine whether a UC claimant can be classed as having a Limited Capability for Work (LCW) or a Limited Capability for Work Related Activities (LCWRA). It is almost identical to the WCA used for Employment and Support Allowance.

**LCW** - There is a set of descriptors for which points are scored (Schedule 6 UC Regs 2013) - at least **15 points** are required for LCW.

In some circumstances, claimants are automatically **treated as** having LCW (Schedule 8 UC Regs 2013), eg. if they are having regular kidney dialysis, they are undergoing treatment in hospital or there would be a substantial risk to the claimant or anyone else if they were found fit for work. Where the State Pension age member of a mixed age couple gets PIP or DLA, they are treated as having LCW (those on the highest rate for care needs get LCWRA – see LCWRA box to the right).

**LCWRA** – There is a separate list of descriptors (Schedule 7 UC Regs 2013) – at least **one** of these must apply.

In some circumstances, claimants are automatically **treated as** having LCWRA (Schedule 9 UC Regs 2013), eg. if they fit the special rules for terminal illness, they are undergoing chemo or radiotherapy for cancer, there would be a substantial risk to the claimant or anyone else if they were expected to do work preparation activities or if they are the State Pension age member of a mixed age couple and entitled to Attendance Allowance, the highest rate care component of DLA or the enhanced daily living component of PIP.

### How does someone request a WCA?

The claimant can self-certify for the first 7 days, then they will need medical evidence (normally a Med3 'fit note' from their GP). They can ask their Work Coach to refer them, or request via their UC account.

**Top tip** - It is important that they make it clear to the UC dept that they want to be referred for a WCA – otherwise they might not be referred, even though they are submitting fit notes!

**Top tip** - DWP guidance indicates that, even if someone has a fit note which lasts for more than 28 days, unless they have certain conditions or are undergoing certain treatments so they can be treated as having a LCW or LCWRA, they should not be referred for a Work Capability Assessment until day 29 in that period of sickness – there is nothing in the UC Regulations to say this is the case! So, claimants should insist on a referral straight away (see standard text on website).

### Who cannot have a WCA?

If the claimant has previously failed a WCA whilst they have been claiming UC or ESA, they cannot have a new WCA unless there has been a relevant change to their health condition, or the previous decision was based on incorrect information. (Reg 41 UC Regs 2013)

If a claimant is working and earning more than 16 hrs pw x minimum wage, they can only request a WCA if they are entitled to PIP/ADP, DLA/CDP, AFIP, CAA or Attendance Allowance. (Reg 41 UC Regs 2013)

### The WCA process

1. The claimant will normally need to complete a UC50 questionnaire.
2. Most (but not all) are required to attend a face-to-face medical assessment.
3. They will be notified of the decision – normally via their UC journal.

During this process, claimants who are in 'All Work Requirements' conditionality group remain in this group, but their Work Coach has the discretion to make adjustments to their work search requirements, taking into account to their health condition.

#### If found to have LCW

The claimant will be moved into the 'work focused interviews and work preparation' conditionality group. Their Claimant Commitment will need to be reviewed. Any work preparation must be reasonable and take account of their health condition.

There is no LCW Element for anyone who has not been in a continuous period of LCW since 3.4.17.

However, if they work or their partner works, the Work Allowance (earnings disregard) will apply (from when they first provided medical evidence – so they could be owed back pay). Also, if their partner works, they could qualify for a Childcare Costs Element.

#### If found to have LCWRA

The claimant will be moved into the 'no work requirements' conditionality group. Their Claimant Commitment will need to be reviewed.

The LCWRA Element is included from the monthly assessment period (MAP) which starts after the MAP in which the 'relevant period' ended. The 'relevant period' is a period of 3 months and should have started on the date when the claimant first provided medical evidence, ie self-certified for the first 7 days / provided a 'fit note', NOT from the date they were referred for their WCA if that was later (Reg 28 UC Regs 2013) (see standard text on website).

**Top tip!** Make sure claimants get their LCWRA included from the correct MAP.

**Note** - If both members of a couple both have LCWRA, they can only have 1 LCWRA Element.

**Note** - The Carer Element cannot be included where an LCWRA Element is included for the same claimant.

### Terminal illness

If the claimant's doctor has issued a SR1 (confirms that death could reasonably be expected within 12 months) – they fit the special rules and they should get the LCWRA Element from the Monthly Assessment Period during which they got their diagnosis. The claimant should not need to complete a UC50 or attend a medical assessment.

### If found not to have LCW or LCWRA

The Claimant Commitment / jobseeking requirements should still take account of any health problems.

The claimant can challenge the decision if they disagree with it. The first step is called Mandatory Reconsideration (they must request this within 13 months of the date of the decision). If they are not happy with the MR decision they can then appeal. They should seek specialist advice.

### Short-term illness

If a jobseeker is temporarily unwell, they can have any work search & work availability requirements 'switched off' – for a maximum of 2 periods of up to 14 days in any 12-month period. However, if the claimant has previously failed a WCA, or failed to complete a UC50/failed to attend medical assessment with the same health condition – the 'switch off' might not be allowed. (Reg 99 UC Regs 2013).

### On ESA before claiming UC?

If someone moves over to UC from ESA and their ESA claim was terminated because they claimed UC, then their 'status' on ESA should transfer over to UC.

If they had the Work Related Activity Component included with their ESA (because their ESA claim pre-dated 3.4.17) they should have the LCW Element included from the start of the UC award.

If they were getting the Support Component in ESA, they should have the LCWRA Element included from the start of the UC award.

More information on the website.