

Welfare

R I G H T S

B r i e f i n g N o t e

Moving into Work

**A Guide for people with a disability
or who have been unable to work
because of illness and are
considering starting work**



**Leicestershire
County Council**

October 2010

The information contained in this booklet is intended to make you aware of some of the complex benefit issues that may arise. It is not a statement of the law on these issues. Every effort has been made to compile this booklet using information which is up to date at the time of publication. Leicestershire County Council however cannot accept responsibility for any loss arising from the use of the information contained in this guidance or any omissions therein.

You are advised to seek independent advice if you believe that any of the information in this booklet might be relevant in your particular situation.

This booklet is available in other languages. If you would like a translated copy please contact the Welfare Rights Training & Information Officer, Tel: 0116 2787111.

Leicestershire Adult Social Care Services are constantly working to improve its services. If you would like to make a comment, suggestion or complaint, please contact:

Corporate Complaints Manager

Social Care Service

FREEPOST LE17795

County Hall (Eastern Annex)

Glenfield

Leicester

LE3 8XR

Tel: 0116 305 5875

Email: social-services-tell-us@leics.gov.uk

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WHAT IS WORK?

For the purposes of this guide the definition of work is “activity done in the expectation of some sort of gain”. Gain usually means money but may mean board or lodgings, or services in return for your labour.

Full Time and Part Time Work

The Department for Work and Pensions (DWP) defines full-time work as paid work that you do for an average of 16 hours or more a week. Part-time work occupies less than 16 hours per week.

JOBCENTRE PLUS

The Jobcentre Plus is the part of the DWP that deals with benefits for people of working age, this includes benefits for people too ill or disabled to work as well as benefits for people seeking employment.

Who should I see

If you suffer from a disability or are receiving benefits because you are too ill to work a **Disability Employment Adviser (DEA)**, usually based in Jobcentre Plus offices or Jobcentres, can provide specialist support on employment issues. You may be advised to contact a Job Broker under the **New Deal for Disabled People** scheme but you can insist on seeing a DEA. Job Brokers can give information about what services their own agency can offer but a DEA can give a far greater range of information and advice.

What are Disability Employment Advisers?

DEAs can work with you to plan the best way for you to return to work and help you find a job that is suitable. Jobcentre Plus has strong connections with many employers who make every effort to meet the needs of disabled people who are looking for work.

A DEA should help you draw up an action plan to assist you in your search for suitable employment. They can:

- Give you an employment assessment which helps identify your abilities and strengths, and how your disability or health condition affects the type of work you want to do. As part of the assessment, you will get an action plan to help you achieve your goals. Having an employment assessment will not affect your benefits.

- Provide a job matching and referral service, to let you know about jobs that match your experience and skills. If you feel it's appropriate, the adviser may be able to approach the employer for you.
- Provide **New Deal for Disabled People**, a support programme run by employment specialists.
- Refer you to a specialist programme for disabled people. Specialist programmes include the Job Introduction Scheme and WORKSTEP Programmes.
- Explain how the Disability Discrimination Act could protect you in work, and how you can find out more.
- Provide details of local disability organisations. You can ask your DEA about local and national organisations for disabled people.

For more information about Disability Employment Advisers, contact your local Jobcentre Plus office. (See page 31 for contact details).

Will I be pressured to start work?

You may be reluctant to contact Jobcentre Plus because of anxiety that you will be pressured into taking unsuitable work or training, or to start work that you are not ready to undertake. This should not happen. DEAs should be able to help you plan the best way for you to return to or start work. If you are making initial enquiries about the opportunities available, say so and reject any unsolicited offers of appointments or interviews.

It is important to remember that if you have passed the Personal Capability Assessment or the Work Capability Assessment (see below) the DWP have decided that you are too ill to work and you cannot be forced to attend job interviews or start work. However depending on what benefit you are claiming you may be subject to sanction of benefit if you do not take part in Work-Focused Interviews or certain other activities to get you "Work Ready"

What is Pathways to Work?

Pathways to Work is a Government initiative operating throughout the country from April 2008 that was introduced to get more people off incapacity related benefits and into work.

The Pathways to Work scheme has a requirement of attendance at Work Focused Interview(s) but there is considerable help and incentives to look for and find paid employment.

All of those claiming benefits because they are not well enough to work are subject to the Pathways to Work regime.

Work Focused Interviews (WFI)

If you are receiving incapacity related benefits you will be asked to attend a Work Focused Interview (WFI) about eight weeks after making a claim and at regular intervals after that. If you are claiming benefit for your partner they may also have to attend a WFI. If an appointment is made for a WFI and you fail to attend without good cause your benefit will be reduced until you attend a WFI. If you have made a new claim the claim can be terminated and you will not be paid any benefit unless you attend a WFI.

The requirement to attend a WFI can be waived or deferred if it is considered that a WFI would not be of assistance or not appropriate (eg you were too ill to attend, or there was a domestic emergency). If you are claiming ESA, a WFI can only be waived if you are starting or returning to work of 16 or more hours per week in the near future.

You do not have to attend a WFI if you are:

- In remunerative work (16 hours a week or more)
- Aged 60 or over
- Claiming Jobseekers Allowance (JSA)

For ESA

- you have a Limited Capability for Work-Related Activity (i.e. you are in the Support Group)
- You are only entitled to Contributory ESA at a nil rate/receiving NI credits only

Attending the WFI does not put any obligation on you to agree to look for work or training. It is meant to look at ways of overcoming barriers preventing you from working. You must participate and this includes such things as you turn up on time, answer a few basic questions about education, skills, employment history, caring responsibilities and/or medical conditions etc. You will be expected to take part in drawing up an action plan.

For benefits other than ESA you will also have to undergo a "Capability Report" and for ESA you will have to have a Work-Focused Health-Related Assessment. Both of these look at the barriers preventing you from accessing work and what help you would need to enable you to become "work ready".

If you do not attend and participate in a WFI your benefit will be sanctioned at the rate of £12.25 for the first 4 weeks and if you still do not attend or take part £25.50 per week thereafter. (2009 – 2010 rates). If you have a good reason for not attending you should inform Jobcentre Plus within 5 working days of your interview to avoid a sanction of your benefit. Ask for advice about this if you are not sure.

If you are part of the Pathways to Work scheme and you find full-time paid work you may be entitled to extra money. As well as the assistance listed below you may be entitled to the Return to Work Credit.

Return to Work Credit

Return to Work Credit is £40.00 per week paid for up to 52 weeks and will not affect any payment of Tax Credits or benefits whilst it is in payment.

You will receive it if you have been claiming one of the following benefits for 13 weeks or more when you start work:

- Incapacity Benefit (including credits only)
- Income Support (paid because of your incapacity)
- Severe Disablement Allowance
- Statutory Sick Pay for 13 weeks or more and are now claiming any of the above benefits or
- Employment & Support Allowance

AND you must be working sixteen hours or more per week and:

- expect your gross income to be £15,000 or less per year
- you must claim within five weeks of starting work;
- you must expect the job to last for more than five weeks;
- you must be starting a job which complies with Employment Legislation e.g. pays the appropriate National Minimum wage
- you must not already be in receipt of Return to Work Credit or In Work Credit.

IS THERE ANY TRAINING OR OTHER HELP AVAILABLE?

There are various schemes and training offered by Jobcentre Plus and New Deal for Disabled People Job Brokers. They can vary from short introductory courses to longer courses at residential training centres.

Some schemes offer the chance to experience the workplace and some offer recognised qualifications.

Workstep

Workstep provides support for disabled people who face far more complex barriers to finding and keeping work. It is delivered in partnership with local authorities, voluntary organisations, private sector companies and Remploy Ltd.

With the support provided by Workstep people with a disability are able to make a valuable contribution in their job and hopefully develop and progress into open employment. The Workstep provider helps you find a job, introduces you to your manager and colleagues, and stays in touch to check that everything is going smoothly.

For more information about the Workstep scheme you should talk to your DEA.

Work Preparation

Work Preparation is a scheme designed to help you overcome any barriers associated with your disability if you have been unable to work for a long time due to illness or disability. It is tailored to your needs and seeks to help you overcome any difficulties you might face when you return to work.

The scheme can help with things such as confidence, stamina, new skills and work experience. It also helps you find out what kind of work you are suited to and if you are ready for a working environment.

Work Preparation can last from a few days up to 6 weeks and **generally** your benefits should not be affected. Before making any choice get advice from your DEA and get a “better off calculation” (see page 8).

Work Trial

If you are aged 25 or over and you have been claiming benefits for at least 6 months (if you are disabled this may be reduced) you can join the Work Trial programme. Work Trial allows you to try out a job for up to 30 working days. You will still be entitled to all of your benefits and the Jobcentre can pay you up to £10 per day travelling expenses and up to £3 per day for meals.

New Deal for Disabled People (NDDP)

The New Deal for Disabled People is a voluntary scheme provided by the DWP and is open to people receiving a number of benefits including:

- Incapacity Benefit
- Income Support with a Disability Premium
- Housing Benefit/Council Tax Benefit with a Disability Premium
- Severe Disablement Allowance
- Employment & Support Allowance

NDDP consists of a network of Job Brokers drawn from private, public and voluntary sectors. These Job Brokers help you to find and prepare for work and help you to stay in work once you have found a job.

The methods used varies depending on the individuals need but Job Brokers can offer such things as:

- Training
- Help matching your skills and abilities with what employers want
- Work Experience
- Work Trials
- Assistance with job applications and interviews
- Help with writing your CV
- Help with self-employment

While you are on NDDP you can still access other Jobcentre Plus services, so long as you fulfil the criteria for that scheme.

You can choose which Job Broker you see. For details of Job Brokers contact your local Jobcentre Plus or call the NDDP Helpline on 0800 137 177, Textphone 0800 435 550 or visit www.jobbrokersearch.gov.uk.

Job Introduction Scheme

The Job Introduction Scheme is a scheme for disabled people whom a DEA has decided are able to start a job but need a chance to prove their ability to do the job to the employer.

The scheme pays £75.00 per week to the employer for the first six (sometimes 13) weeks of the employment. The job must be expected to last at least 26 weeks (including the time you are on the Job Introduction Scheme).

What other help is available?

There are certain grants available to assist disabled people back into work these are:

Adviser Discretion Fund

This is a fund that your personal adviser can draw on for payments of up to £100 (or more if the cost of the item is higher) which will help you back to work if you have been on benefits for at least 13 weeks. Payments can be for anything, including:

- Equipment
- Clothing
- Travel costs
- Aids or adaptations related to your disability

The fund is entirely discretionary, you are not entitled to any payment and there is no right of appeal against a decision refusing you a payment.

Access to Work

If your disability is likely to last for 12 months or longer, there are grants available under this scheme to enable you to pay for services, adaptations or equipment in the workplace (or in the home if that is where you work from) or additional costs for travel to work due to your disability. You can claim a grant if you work full-time or part-time, are employed or self-employed.

If you are about to start work or have been working for less than 6 weeks the grant will cover 100% of your costs.

If you have been working for 6 weeks or more the grant will cover 80% of your costs between £300 and £10,000 and 100% of any costs above £10,000.

Any grant will last for up to 3 years. You may apply again after three years but any further payment will be dependent on rules that apply at that time. Costs that may be covered by the grant include

- Non-standard equipment needed because of disability
- Alterations to premises to make them accessible
- A support worker at work or when travelling to work
- A reader or communicator while at work

How will I know if I am better off working?

If you are considering going back to work it is very important to work out if you will be better off moving into full-time or part-time work, claiming IB, ESA, Income Support, JSA or Working Tax Credit.

You may wish to start out by working as a volunteer or doing a few hours a week to see how you cope. It may be important to find out what help you will get with childcare costs or whether childminding costs cancel out any increase in income. You may just want to increase or decrease the number of hours you work.

The only way to be sure that you will not be worse off if you start work is to get a **Better Off Calculation**. A Better Off Calculation looks at your present circumstances and compares them with your income if you were to start work to calculate how much better or worse off you will be. They can be done for different scenarios (eg comparing income from full-time and part-time work). It is vital that you get a Better-Off Calculation before you commit yourself to any kind of work.

Where can I get a Better-Off Calculation?

Welfare Rights Offices, advice agencies, solicitors specialising in welfare benefits, staff at Jobcentre Plus offices and New Deal Job Brokers may be able to perform Better-Off Calculations.

Not everyone who claims to be able to do a Better-Off Calculation can do an accurate one. It is advisable to get a calculation from an independent adviser or Welfare Rights Officer. Always ask for a written calculation and make sure you receive a copy, do not make any decision about returning to work unless you have a written, accurate calculation. A “rough estimate” may in the long run leave you financially worse off than you thought.

If you take a job and are financially worse off because of incomplete or inaccurate advice you may be entitled to compensation from the agency that gave the advice.

To enable someone to provide an accurate Better-Off Calculation you must provide them with as much detail as possible about your financial situation (eg all benefit payments you receive, rent/housing costs, whether you get free healthcare, etc). It is advisable that you take as much paperwork concerning your income along to anyone who will be making the calculation.

THE EFFECT OF WORKING AND CLAIMING BENEFITS

How do I protect my existing benefits?

Many people who are thinking of returning to or trying out work are worried that working may have a negative affect on their existing benefit entitlement.

What "Working" tells the DWP about your incapacity or Limited Capability for Work

Irrespective of the kind of work you are doing, or the number of hours worked, the fact remains that you will be doing some work whilst claiming benefit on the basis that you are "incapable of work". Therefore, the DWP will look at whether you have improved and should now be considered capable of work. This decision is made in a different way depending on the test for 'incapacity' used in your case. This will be:

- The "own occupation" test (only applicable very rarely since introduction of ESA) or
- The "Personal Capability Assessment"
- The Limited Capability for Work test

Some people are exempt from these tests. They are:

- People who are in an "Exempt Group":- or
- People receiving Severe Disablement Allowance on 12/4/95

Advice: *If in any doubt, ask the DWP, which test for illness or disability (if any) is used for you. If you are exempt from these tests, check the exact reason why you are exempt.*

People subject to the Personal Capability Assessment (PCA)

If the "Own Occupation" test does not apply to you, (because you do not satisfy the conditions about recent employment or have been incapable of work for more than 28 weeks) you will have to satisfy the "Personal Capability Assessment". This is a test of your ability to carry out a number of activities. There are two lists of activities used - one for people with physical disabilities, and another for people with mental disabilities.

Each list contains categories of activities. For example, the test of physical disability looks at things such as ability to walk, bend, kneel, reach and hear. The test for mental disabilities looks at areas such as "daily living" and "coping with pressure". Points are given for each descriptor (which describe what you can and can't do in each category), and if you reach enough points then you are treated as being incapable of work.

People subject to the Limited Capability for Work test

If you are claiming ESA you will be subject to the Limited Capability for Work test. This is similar to the PCA in that you will have to score a set number of points (15 in all cases) from a series of descriptors that look at your ability to carry out certain tasks in respect of your physical and mental health problems.

Advice:- When you start excluded/voluntary/permitted work, you will still have to pass the Personal Capability Assessment or the Limited Capability for Work test and reach the required number of points in order to continue to receive Incapacity Benefit/Severe Disablement Allowance/ESA. If your condition has improved then you run the risk of losing benefit. Therefore, you must make sure that any work that you are doing does not call into question the points that you have been awarded.

Example.1:- You have a certain number of points because you have difficulty walking. If you are doing a job that requires little or no walking, then this should not affect your points total, provided there has been no improvement in your ability to walk.

Example.2:- Alternatively, if you start a job that requires a lot of walking, then the points you have been awarded may be called into question. You may then be called for a medical assessment.

(For more information about the Personal Capability Assessment, please refer to the **Claiming Incapacity Benefit** guide or for more information about the Limited Capability for Work test see the **Employment & Support Allowance: A Basic Guide** briefing note in this series).

People who are in an 'Exempt Group'

If you are in one of the *Exempt Groups* the activities or tasks you will be doing may indicate that you no longer fit into that exempt group, or that the original decision that you were in an exempt group was wrong.

Tactics: If you think that the type of work that you are doing might suggest that you should not fall into an exempt category, then you need to explain why you should still be exempt from the tests.

Example:- Someone who is exempt from the "Personal Capability Assessment" due to severe learning difficulties, may start working in what initially appears to be a quite responsible job. The DWP might then question whether the person should still be exempt. However, the work might be in a sheltered environment with close support and this would therefore need to be explained.

Alternatively, if you accept that you are no longer (or should never have been) in one of the exempt groups, you will need to check whether you satisfy one of the other tests of incapacity for work (the "Own Occupation" test, or "Personal Capability Assessment"), or were receiving Severe Disablement Allowance before 12th April 1995. Check first which test would apply to you if you were not in one of the exempt groups and follow the advice in this briefing note about that test. See Appendices 1, 2 and 3 for the full list of exemptions.

People receiving Severe Disablement Allowance on 12 April 1995

If you were receiving Severe Disablement Allowance on 12/4/95 and have been receiving it ever since, then you are exempt from the two tests for incapacity so long as your doctor continues to certify that you are incapable of work.

Advice: *Check with your GP that he or she will continue to give you sick notes if you start doing some work. Give your GP the full details of the intended hours and nature of work.*

However, you are still only able to do work that is either excluded, voluntary or permitted (see Permitted Work Page 16). Otherwise you will be treated as capable of work, and lose your entitlement to Severe Disablement Allowance. As Severe Disablement Allowance is no longer available to new claimants, you may find that your work jeopardises your future benefit entitlement. You should proceed carefully and seek advice if you are in this situation.

What "working" tells the DWP about your entitlement to Disability Living Allowance

Although your entitlement to DLA does not depend on you being incapable of work, the fact that you have started working may result in your claim being reviewed, on the basis that this is an indication that your condition has improved, or that the original decision to award you benefit was incorrect. If you have to inform your local DWP office that you are starting some work because they pay you benefits, this information could be passed on to the D.L.A. unit at Blackpool.

If the work you are doing suggests that you may no longer have the same level of attention/supervision needs or indicates that your mobility has improved, then your DLA could also be reviewed or withdrawn.

Advice:- *In practice, this is rarely a problem and you do not necessarily need to inform the DLA unit that you are thinking of working or have actually started work. However, it is always advisable to think, in advance, about whether starting work may prompt the DWP to look at your entitlement again, and what arguments you would use, to show that your care needs or mobility problems have not changed.*

WHAT TYPE OF WORK CAN I DO?

The type of work you are allowed to do can vary depending on the benefit you are claiming. You may become eligible for some benefits and lose others if you start work

Full-Time Work

Full-time work is paid work 16 hours or more a week. Wages will be higher but returning to full-time work after a long period can be very demanding.

Incapacity Benefit

You cannot claim Incapacity Benefit, Severe Disablement Allowance or Income Support paid because of an **incapacity for work** if you work full-time.

Employment & Support Allowance

As a general rule you cannot claim Income Based or Contributory ESA and work full-time

Income Support

You cannot claim Income Support if you work full-time.

If you are the partner of someone claiming Income Support you can work up to 24 hours per week, but any income would be taken pound for pound from your Income Support after any disregards.

Jobseekers Allowance(JSA)

You cannot claim Jobseekers Allowance and work full-time.

If you are the partner of someone claiming Income-Based JSA you can work up to 24 hours per week, but any income would be taken pound for pound from your JSA (after any disregards).

Tax Credits

If you work full-time you can claim **Working Tax Credit**. If you have childcare responsibilities, are treated as having a disability for Tax Credit purposes, or fulfil the 50+ conditions you only have to work for 16 hours a week to qualify. Otherwise you have to be aged 25 or over and work for 30 hours a week or more.

If you receive, or have been receiving recently, certain disability and incapacity related benefits and are at a “disadvantage in getting a job” the amount of Tax Credits you receive will be higher.

Disability Living Allowance (DLA)

Working full-time should not affect your award of DLA but see the previous section.

In fact DLA may enable you to claim and/or increase your entitlement to Working Tax Credit

Carer's Allowance

You cannot claim Carer's Allowance if you earn more than £100.00 per week. Your wages cannot be averaged, but if you earn less than £100.00 in any week you may be able to claim Carer's Allowance for the following week. (Seek advice).

Housing Benefit and Council Tax Benefit (HB & CTB)

Depending on your circumstances your entitlement to HB and/or CTB may be reduced or end altogether. (Seek advice).

Childcare Costs

There are childcare elements in Working Tax Credit calculations. Up to 80% of eligible childcare costs up to £175 (one child) or £300 (2 or more children) can be allowed.

Child care costs disregards can be applied in the calculation of Housing and Council Tax Benefit entitlement.

Other Help

You may be able to get help with health costs, prescriptions and school meals if your income is low enough. See *Appendix 4*

Part-Time Work

Part-time work is paid work of less than 16 hours a week on average. Part-time work may be easier to manage or provide a stepping stone into full-time work.

Incapacity Related Benefits

You cannot work part-time and claim Incapacity Benefit, Income Support because of an incapacity for work, Severe Disablement Allowance or Employment & Support Allowance EXCEPT if you are doing “**Permitted Work**” (see page 16).

Income Support

Generally you can only claim Income Support and work part-time if you are a single parent or a carer.

It is important to remember your Income Support will be reduced by the amount you earn less any disregards that apply.

Jobseekers Allowance

You can work **up to 16 hours per week** and claim JSA.

Your income will be reduced by the amount you earn less any disregard:

- £5 disregard for Contribution Based JSA except
- £20 if you are a part-time firefighter, auxiliary coastguard, part-time lifeboat crewmember or a member of the TA
- For Income Based JSA the same disregards apply as for Income Support

Tax Credits

You cannot claim Working Tax Credit if you work fewer than 16 hours per week. If you have responsibility for a child you can still claim Child Tax Credit but if your earnings are high enough the payments may be reduced.

Carers Allowance

You cannot be paid Carer's Allowance if your weekly earnings exceed £100.00 per week.

Disability Living Allowance

Working part-time should not affect your DLA unless your care or mobility needs have changed (see previous section)

Housing Benefit & Council Tax benefit

Depending how much you earn HB and/or CTB may be paid at a reduced rate or stop altogether.

Childcare Costs

There are childcare cost disregards available with HB and CTB

Other Help

You may be able to get help with health costs, prescriptions and school meals if your income is low enough. See *Appendix 4*.

Temporary Work

What is temporary work?

Temporary work is the term used to cover casual, agency and temporary work that can last days or a few weeks.

Temporary work can cause disruption and delay to your benefits.

Temporary work can be either full-time or part-time. Check the advice in this section concerning this type of work to see how your benefits may be affected. If your hours vary the Decision Maker at the DWP should average the working hours for the period of work in question. If you disagree with this average you should get advice about challenging the decision.

How will my benefits be affected

The same rules apply for temporary work as for permanent work, ie whether full-time or part-time, depending on how much you earn.

You should note that to claim Working Tax Credit the work must be expected to last for at least 4 weeks.

Permitted Work

What is Permitted Work?

Permitted Work is work that you are allowed to do whilst you are still treated as incapable of work ie those claiming Incapacity Benefit, Employment & Support Allowance, Severe Disablement Allowance or Income Support paid because of an incapacity for work.

There are four types of Permitted Work for claimants of incapacity related benefits

I. Permitted Work Lower Limit:

- You cannot earn more than £20 per week
- There is no time limit to how long you can do Permitted Work Lower Limit

II. Supported Permitted Work

- You cannot earn more than £95.00 (October 2010) per week net
- The Permitted Work must be part of a treatment programme which must be done under medical supervision while you are in hospital or regularly attending hospital as an outpatient OR
- The Permitted Work must be supervised by a person employed by a public or local authority or voluntary organisation that provides or arranges work opportunities for people with a disability

III. Permitted Work Higher Limit

- You cannot earn more than £95.00 (October 2010) per week net
- The period of Permitted Work cannot last for more than 52 weeks
- After 52 weeks Permitted Work there must be a gap of at least 52 weeks before you can start another period of Permitted Work.

IV. Permitted Work Personal Capability Exempt

- You cannot earn more than £95.00 (October 2010) per week net
- You can continue to do Permitted Work for as long as you are exempt from the PCA

Before you start Permitted Work you are obliged to inform the DWP as it is considered a relevant change of circumstances. If necessary get their written agreement that the work will be treated as Permitted Work

It is important to note that if your net income goes above £95.00 in any week you will no longer be considered to be doing permitted work and you will lose your entitlement to incapacity related benefit.

Permitted Work and Employment and Support Allowance

As with Incapacity Benefit there are 4 types of Permitted Work:

I. Permitted Work Lower Limit:

- You cannot earn more than £20 per week
- There is no time limit to how long you can do Permitted Work Lower Limit

II. Supported Permitted Work

- You cannot earn more than £95.00 (October 2010) per week net
- The Permitted Work must be part of a treatment programme which must be done under medical supervision while you are in hospital or regularly attending hospital as an outpatient OR
- The Permitted Work must be supervised by a person employed by a public or local authority or voluntary organisation that provides or arranges work opportunities for people with a disability

III. Permitted Work Higher Limit

- You cannot earn more than £95.00 (October 2010) per week net
- The period of Permitted Work cannot last for more than 52 weeks
- After 52 weeks Permitted Work there must be a gap of at least 52 weeks before you can start another period of Permitted Work (unless since the beginning of the last period of specified work, you have ceased to be entitled to ESA for a continuous period exceeding 12 weeks)

IV. Permitted for those with “Limited Capability for Work-Related Activity” (namely those in the Support Group)

- You cannot earn more than £95.00 (October 2010) per week net
- You can continue to do Permitted Work for as long as you are in the Support Group

How will my benefits be affected?

Permitted work must be for a normal average of less than 16 hours per week and therefore treated as Part-Time Work (see page 14).

Help with Childcare

An important exception to the rules about Permitted Work and how it affects other benefits is:

In certain circumstances you may be allowed to disregard childcare costs of up to £60 per week when working out your pay for the purposes of Permitted Work. Get specialist advice if you think this may apply to you.

It is important to note that if you receive Income Support, Housing Benefit or Council Tax Benefit you could receive reduced amounts or your benefit could stop altogether.

Income Support is reduced pound for pound after any disregards. Housing Benefit is reduced by 65% of any excess income after disregards and Council Tax Benefit reduced by 20%. Seek advice if you are not sure.

To encourage claimants to try Permitted Work those claiming ESA (both Contribution-Based and Income-Based) will have all of their income disregarded, this means that up to £95.00 will be ignored. Also claimants on Income-Based ESA are entitled to their maximum eligible Housing Benefit and full Council Tax Benefit. In April 2010 the Government introduced an earnings disregard of up to £95.00 per week in Housing and Council Tax Benefit for claimants of Incapacity Benefit, Contributory ESA and SDA.

Voluntary Work

What is Voluntary Work?

Voluntary Work is work that you do for which no payment is made except expenses such as travel costs, reasonable amounts for meals whilst performing your voluntary duties and childcare costs.

You cannot work for a “close relative” and it has to be reasonable for you to work for no payment. If you do work that someone would ordinarily be paid for you may be considered to be in receipt of the wage that would normally be paid and this will affect any benefit you receive. If you have any doubts contact your local Jobcentre.

There are no restrictions on the amount of hours you can volunteer for.

How will my benefits be affected

Your benefits should not be affected as any expenses you receive are not treated as income. If you are in receipt of means tested benefits, ie: Income Support, Income-Based JSA, Income-Based ESA, Housing Benefit/Council Tax Benefit you should inform the office that deals with your claim and keep any receipts that cover your expenses.

You should consider the implications of what volunteering may tell the DWP about your illness or disability and how it affects the assessment of your incapacity for work or Disability Living Allowance (see “How do I protect my existing benefits” page 9).

See the DWP Guide VG1 “*A Guide to Volunteering While on Benefits*”

Self-Employment

What is Self-Employment

Self-Employment is any kind of work you do for yourself, it could be running a small business, shop, making goods or selling things on ebay as a business.

You will have to pay your own National Insurance contributions and Income Tax. You can for example, be a sole trader or a partner in a business and work full-time or part-time, and, if you receive incapacity related benefits you can set up a business under the Permitted Work rules (see page 16).

Even though you consider yourself to be Self-Employed it is important in relation to entitlement to benefits that the DWP and HMRC consider you Self-Employed. For more information see the HMRC booklet IR56 *Employed or self-employed*.

If you are in any doubt as to whether you will be considered employed or self-employed get advice.

Self-Employment is a complex area as there are issues concerning whether you have a reasonable prospect of being paid, how the number of hours you work are calculated and how your income is calculated less any deductions. You should contact your local Jobcentre and ask how your self-employed earnings will be calculated. They may refuse to give a written answer, if this is the case contact an advice agency for help.

How will my benefits be affected?

The ways in which you benefit may be affected by self-employment are the same as for other forms of work (see pages 13-16).

Income Support/Income-Based ESA/Housing Benefit/Council Tax Benefit /Income Based Jobseekers Allowance.

For the above means tested benefits the Decision Maker will work out your income from your business, apply any disregards and deduct any allowable business expenses to arrive at your average weekly income.

Your benefit may then be reduced or stop altogether depending on whether you are treated as full or part-time self employed and the amount of average weekly earnings you receive (see pages 12 – 15).

Childminders – Special rules apply if you are a childminder. Your income for benefit purposes is calculated as one third of your earnings minus tax, National Insurance and pension contributions.

Royalties and Copyright payments – The rules for calculating royalty and copyright payments differ from the normal calculation of earnings. Each payment is divided by your weekly benefit entitlement including any disregards. This gives the number of weeks you will be expected to live off the payment; you will not be paid any benefit for this period.

Incapacity Benefit, Severe Disablement Allowance, Contribution-Based ESA, Carer's Allowance and Contribution-Based Jobseekers Allowance

These benefits are not normally affected by earnings. However the Permitted Work rules apply and your net earnings cannot exceed the £20 or £95.00 per week, (or £100 per week for claiming Carer's Allowance). Again it is better to get specialist advice on how your income will be calculated and any disregards and allowable expenses that apply.

You can also deduct up to £60 per week childcare costs from your income if you are a lone parent or your partner works or is incapacitated. You must be paying for registered childcare for a child under 11 years.

If you are claiming IB, SDA, IS because of incapacity for work or ESA you are allowed to "Test Trade" as a self-employed person for up to 26 weeks with help from a self-employment provider appointed by Jobcentre Plus.

If you are "test trading" your hours of work are unrestricted, you can have any level of profit, your IB, SDA or Contribution-Based ESA will be unaffected (Income Support and Income-Based ESA will be reduced or stop altogether) and you will still be treated as incapable of work.

Tax Credits

Your entitlement to Tax Credits is based on your previous year's gross income.

The method for calculating your income for Tax Credit purposes is the same as that used for your Income Tax Assessment. For help with this contact the HMRC Self-Assessment helpline on 0845 900 0444.

STARTING WORK

Moving from benefit to employment can be quite difficult, especially if you will not be paid for a period. There are a number of ways that you can get extra help during this period.

Help with Rent and/or Council Tax

If your Income Support, Income-Based ESA or Income-Based Jobseekers Allowance stops because you start work, increase your hours or receive more pay your Housing Benefit and/or Council Tax Benefit can be extended for a further 4 weeks at the existing rate irrespective of what you earn. The job must be expected to last for at least 5 weeks. You do not need to make a fresh claim; you should just inform your local Jobcentre Plus within 4 weeks of your job starting or hours or wages increasing.

If you are not in receipt of Income Support but have been receiving Incapacity Benefit, SDA or Contribution-Based ESA for at least 26 weeks you can get an extended period of Housing/Council Tax Benefit. You must inform the local authority of your change of circumstances. The job must be expected to last for at least 5 weeks.

Help with Mortgage Payments

If you have been claiming Income Support, Income-Based ESA or Income-Based JSA for at least 26 weeks and it stops because you start work, increase your hours or receive more pay, any Housing Costs you receive can continue for another 4 weeks at the same rate, irrespective of your earnings. The job must be expected to last for at least 5 weeks. You should inform your local Jobcentre Plus that you are starting work, or your wages have gone up and the payments should be made.

Job Grant

Job Grants provide a bridge between benefits stopping and wages being paid for your new job. A Job Grant is a one off tax-free payment. The grant is for £100, or £250 if you have children.

You must:

- Have been claiming IS, JSA, IB, ESA or SDA for at least 26 weeks and starting work of at least 16 hours per week
- The work must be expected to last for at least 5 weeks

The grant should be paid automatically when you inform the Jobcentre that you are starting work.

WHAT IF I STOP WORKING?

Many people are concerned that if they start work and fall ill again they will have to reclaim losing any premiums, or receive benefit at a reduced rate.

If you are an employee you may be entitled to Statutory Sick Pay (SSP) depending on your average weekly earnings.

If you are not entitled to SSP, or have been off work sick for more than 28 weeks, you may be entitled to claim Employment & Support Allowance unless you are in a linked period for claiming Incapacity Benefit/Income Support paid because of an incapacity for work (see below)

There are various rules in place to enable you to make a repeat claim for benefit or return to your original rate of benefit with any premiums to which you were previously entitled.

Rapid Reclaim

Rapid Reclaim is a reasonably simple way to reclaim Income Support, JSA, Housing/Council Tax Benefit. Rapid Reclaim means that you can make a repeat claim for the above benefits within 12 weeks of the end of a previous claim on a shorter, simpler benefit claim form.

Linking Rules

There are several "Linking Rules" that enable you to return to former benefits at the same rate as previously, after you have been working, self-employed or training. Below are some of the most important but the list is not exhaustive.

8 Week Linking Rule for IB, IS and SDA

Any two periods of incapacity for work separated by 8 weeks or less are treated as a continual period of incapacity. You will not be entitled to benefit for the period that you were not claiming but you can reclaim Incapacity Benefit, SDA, Income Support on the basis of your incapacity for work, and any Disability Premium included in your Income Support or HB/CTB claim.

This linking rule applies even if you do not start work or have been off sick for less than 196 days.

12 Week Linking Rule for ESA

Any two periods of Limited Capability for Work separated by less than 12 weeks are treated as one continual period. You will not be entitled to benefit during these periods but you can claim ESA and if you have completed the assessment phase and have qualified for one of the additional components, you will not have to have to undergo another assessment and will be entitled to the extra component straight away. If you have not completed the assessment phase, you will have to complete it at this point.

The Welfare to Work 104 Week Linking Rule for IB, IS or SDA

A similar rule can protect your benefits for up to 104 weeks. This rule does not apply if your previous claim ended because you failed the Personal Capability Assessment.

To qualify for the 104 week linking rule you must:

- Have been receiving benefit because of an incapacity for work for at least 196 days
- You must start work (or training where a training allowance is paid) within one month of the date your claim for incapacity related benefit ends.

If you return to benefit within this 104 week period you immediately re-qualify for the 104 week linking rule again.

The 104 linking rule applies to:

- Incapacity Benefit
- Severe Disablement Allowance
- Income Support on the basis of incapacity for work
- National Insurance credits on the basis of an incapacity for work
- A disability premium as part of a claim for IS, HB/CTB on the basis that you are incapable for work.

There is no need to inform the Jobcentre when you start work.

104 Week Linking Rule for Work or Training Beneficiaries for ESA

You can link periods of limited capability for work for up to 104 weeks as a “work or training beneficiary” if you:

- had limited capability for work for more than 13 weeks in the most recent past period of limited capability for work;
- stopped claiming ESA and
- started work or training within one month of stopping claiming ESA

These rules do not apply if the claim for ESA stopped because you were judged by the DWP to no longer have a Limited Capability for Work.

If you are a Work or Training Beneficiary and have been assessed as having a Limited Capability for Work and/or a Limited Capability for Work-Related Activity you will continue to be treated as having Limited Capability for Work and/or a Limited Capability for Work-Related activity for 13 weeks from the date of your new claim for ESA.

The Tax Credit 104 Week Linking Rule

This linking rule protects your benefits if you were previously in receipt of Incapacity Benefit, ESA or SDA. You can reclaim these benefits at the same rate within 104 weeks if:

- You give up or lose your job (for any reason) or you are off work sick *and*
- You have the WTC Disability Element included in your Tax Credit assessment *and*
- You are paid Working Tax Credit or Child Tax Credit at a higher rate than the Family Element *and*
- You were incapable of work on the first day after your last working day

This rule only protects those on Incapacity Benefit, ESA and SDA; it does not protect those on means-tested benefits.

The Training 104 Week Linking Rule

This linking rule protects your benefits if you were previously in receipt of Incapacity Benefit, ESA or SDA. You can reclaim these benefits at the same rate within 104 weeks if:

- You were in receipt of Incapacity Benefit, ESA or SDA for at least one day in the 8 weeks before your training course started *and*
- You are incapable of work on the day that your course ends.

This rule only protects Incapacity Benefit, ESA and SDA; it does not protect means-tested benefits.

APPENDIX 1

Exemption from the Personal Capability Assessment

- You receive Disability Living Allowance Care Component at the highest rate.
- You are terminally ill. Terminal illness is defined as a progressive condition such that the person is expected to die within six months.
- You are registered as blind.
- You are assessed as at least 80% disabled for the purpose of a Severe Disablement Allowance claim, or receive disablement benefit based on at least 80% disability.
- People with one of the following impairments or illnesses:
 - ~ tetraplegia or paraplegia
 - ~ persistent vegetative state
 - ~ dementia
- people accepted by the Decision Maker as having one of the following impairments or illnesses:- (usually advice will be sought from a DWP doctor)
 - ~ severe mental illness
 - ~ severe learning difficulties
 - ~ severe and progressive neurological or muscle-wasting diseases
 - ~ active and progressive forms of inflammatory polyarthritis
 - ~ impairment of cardio-respiratory function which severely and persistently limits effort tolerance
 - ~ dense paralysis of the upper limb, trunk and lower limb on one side of the body (e.g. from a stroke)
 - ~ impairment of function of brain or nervous system causing motor sensory and intellectual deficits
 - ~ severe and progressive immune deficiency states characterised by the occurrence of opportunistic infections or tumour formation
- hospital in-patients undergoing treatment
- people with an infectious or contagious disease certified by a Medical Officer for Environmental Health.
- people receiving regular treatment such as dialysis or chemotherapy
- women who are pregnant and either:-
 - ~ working would be a risk to their health or the health of their unborn child; OR
 - ~ between the 6th week before their expected week of confinement and 14 days after the actual date of confinement and have no entitlement to Statutory Maternity Pay or Maternity Allowance.
- You were receiving Severe Disablement Allowance on 12th April 1995 and you have been continuously incapable of work since then.
- You are getting constant attendance allowance that is paid at a rate that is higher than the lower weekly rate.

Appendix 2

Those exempt from the Limited Capability for Work Assessment for ESA

A claimant is to be treated as having limited capability for work if—

- (a) the claimant is terminally ill;
- (b) the claimant is—
 - (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or
 - (ii) recovering from that treatment and the Secretary of State is satisfied the claimant should be treated as having limited capability for work;
- (c) the claimant is—
 - (i) given notice in writing under specific legislation to refrain from work; or
 - (ii) otherwise prevented from working under specific legislation,because they are a carrier of or have been in contact with an infectious disease
- (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
- (e) in the case of a pregnant woman, she—
 - (i) is within the maternity allowance period; and
 - (ii) is entitled to a maternity allowance under section 35(1) of the Contributions and Benefits Act
- (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
 - (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
 - (ii) ending on the 14th day after the actual date of her confinement,if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

Appendix 3

Those exempt from the Limited Capability for Work Related Activity for ESA

(1) A claimant is to be treated as having limited capability for work-related activity if—

(a) the claimant is terminally ill;

(b) the claimant is—

(i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or

(ii) recovering from that treatment and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work-related activity; or

(c) in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

2) A claimant who does not have limited capability for work-related activity as determined in accordance with the Work Capability Assessment is to be treated as having limited capability for work-related activity if—

(a) the claimant suffers from some specific disease or bodily or mental disablement; and

(b) because of this disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity.

Appendix 4

Low Income & Health Benefits

Health benefits include help towards charges for NHS prescriptions, dental and optical treatment, glasses, wigs and fabric supports.

You are exempt from these charges if you fall into one of the following groups:-

- you receive **Income Support, Income-Related ESA, Income-Based Jobseeker's Allowance or Pension Credit (Guarantee Credit)** or are a member of the family of someone who does
- you receive **Child Tax Credit*** with or without **Working Tax Credit***;
- you receive **Working Tax Credit*** with a disability element;
- you have a low income (claim on form HC1) see below;
- you are a child aged 16 or 17 being financially maintained by a local authority after being in LA care on or after 01/10/2001;
- you are a war disablement pensioner and need the relevant item or service because of your war disability;
- you are a permanent resident in a care home and your place is being partly or wholly funded by a local authority;
- you are a hospital in-patient;
- you are an asylum seeker who is receiving support from the National Asylum Support Service, or a local authority.

***Gross taxable annual income must be below £15,276**

For different health benefits, there are other routes to qualifying for help, i.e:

Free prescriptions:

- you are in one of the above groups *or*;
- you are aged 60 or over *or*;
- you suffer from a physical disability which prevents you from leaving your home without the help of another person *or*;
- you suffer from one of a list of specified conditions *or*;
- you are aged under 16, or under 19 and still in full time education *or*;
- you are pregnant or have given birth in the last 12 months.

It is not possible to get reduced cost prescriptions under the low income scheme. If you do not fall into any of the exempt categories, it may be worth buying pre-payment certificates. Claim on form FP95.

Free Dental Treatment & dentures:

- you are in one of the above categories *or*;
- you are under 18, or under 19 and in full time education *or*;
- you are pregnant, or the mother of a child under 1 year old *or*;
- you are a patient of the Community Dental Service

Free sight tests:

- you are in one of the above categories *or*;
- you are 60 or over *or*;
- you are under 16 or under 19 and in full-time education; *or*;
- you are registered blind or partially sighted; *or*;
- you have been prescribed complex lenses; *or*;
- you have been diagnosed as suffering from diabetes or glaucoma; *or*;
- you are aged 40 or over and are the parent, brother, sister or child of someone suffering from glaucoma; *or*;
- you are a war disablement pensioner and require the sight test because of your war disability (in which case you claim from your War Pensions Office); *or*;
- you are a patient of the Hospital Eye Service.

To claim: tell the optician before you have the test. You will need certificate HC2 if you need help because of low income. You must sign a voucher, which can then be redeemed by the optician.

There is no set charge for sight tests so it may be worth shopping around for them. Some opticians do not charge at all.

Vouchers for optical treatment are given to:-

- those in one of the above categories *or*;
- people under 16, or under 19 in full time education *or*;
- people whose eyesight constantly changes so need to frequently replace glasses

You receive a voucher, which you exchange for a pair of glasses. If they cost more than the voucher you have to pay the difference.

Fares to Hospital for treatment are paid if:

- you fall into one of the above categories *or*;
- you are a patient at a genito-urinary tract clinic more than 15 miles from home (5 miles if you need to attend weekly).

Healthy Start Scheme

Healthy Start replaces the Welfare Food Scheme from September 2006. Under Healthy Start pregnant women, breastfeeding mothers and young children in low income families receive fixed value vouchers that can be exchanged for fruit and vegetables, in addition to milk and infant formula.

You may qualify if you are pregnant and/or have at least one child under four years old and your family gets any of the following:

- Income Support
- Income-Based Jobseeker's Allowance
- Income-Related ESA
- Child Tax Credit (but not Working Tax Credit) with an annual family income of £16,040 or less (2009/10)

OR

- If you are pregnant and under 18 years old.

To claim you can request a Healthy Start application form by calling 08701 555 455 and quoting reference HS01.

Or you can complete an application form or download a copy on the Healthy Start website.

Free School Meals

Are provided for families in receipt of Income Support, Income-Related ESA, Guarantee Pension Credit or Income Based Jobseeker's Allowance, for asylum seekers supported by the National Asylum Support Service and families who receive Child Tax Credit (but not also Working Tax Credit) and whose gross annual income is £16,040 or below. From April 2010 all households with children and income below £16,190 per year will be entitled to free school meals

What is a "Low Income"?

If you are not in an exempt group, but are on a low income, then you may be able to get full or partial financial help with health benefits, except for prescriptions, milk tokens and vitamins. Your savings must be below **£16,000**. To claim, fill in form **HC1** which you can get from a Post Office or Department for Work and Pensions office. This form should then be sent to the **Health Benefits Unit** (the address is on the form). If you are entitled to help you will be sent a certificate - an HC2 allowing full help or an HC3 allowing partial help. The certificate is valid for six months (or 12 months if you are over 60), after which a new one will have to be applied for.

If you pay for treatment or travel costs before receiving a certificate you may be able to claim a **refund** by using form **HC5** from the Department for Work and Pensions or a Post Office. This claim for a refund should be made within three months of paying the cost of treatment or travel expenses (one month for dental treatment or hospital eye treatment). You **cannot** reclaim money paid out for optical treatment, so avoid paying in advance.

Local Information

Welfare Rights Service

This Department's Welfare Rights Service publishes a range of briefing notes. All these are available at no cost from your local Social Services Office or from the Leicestershire County Council Website:

http://www.leics.gov.uk/index/social_services/general_information/ss_publications/ss_publications_welfare.htm

The Welfare and Employment Rights Advice Service

Leicester City Council has its own Welfare Rights team for residents of the City, who publish a wide range of free leaflets, posters and booklets about benefits. For more details of these, contact the City Council Offices, New Walk Centre, Welford Place, Leicester.

Tel: City Benefits Advice Line, 0116 2543399 (1 pm - 4 pm Monday – Wednesday)
Job Service Advice Line, 0116 2528643 (9.30 a.m. – 12.30 pm Tues & Fri)

Department for Work and Pensions

Call Centre for Registering a claim **0800 055 66 88**

Call Centre for Benefit Enquiries **0845 6088 525**

If you have any comments to improve this Briefing Note, please send your comments on this detachable slip to:-

Welfare Rights
Adult Social Care Service
Bassett Street
South Wigston
Leicester

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Briefing Note on Moving Back to Work December 2009

I should like to make the following comments/suggestions:-