



Centre of Excellence in Interdisciplinary Mental Health

Promoting Mental Health and Social Inclusion: Combating Poverty

Paper 2

MENTAL HEALTH AND INCAPACITY FOR WORK

An Information Pack for people claiming Incapacity Benefit, Income Support and Severe Disablement Allowance

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and
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PROMOTING MENTAL HEALTH AND SOCIAL INCLUSION: COMBATING POVERTY

This series has been established to stimulate and share ideas and good practice in the mental health field which promote mental health and social inclusion by combating poverty.

If you want to contribute to the series please contact the series Editor. We are interested in accounts of project work, good practice and relevant research. We particularly welcome ideas from service users/survivors and carers.

This information pack has been written for people using mental health services and their advocates who are concerned to maximise benefit income. Research has shown that the Incapacity for Work Test, brings with it complex and worrying procedures for people with mental health problems who are unable to work and who claim Incapacity Benefit, Income Support and Severe Disablement Allowance.

This guide has been tested and developed through a series of training events with users, advocates and mental health workers. It is being used nationwide by agencies to advice individuals and groups of people with mental health problems.

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INCAPACITY FOR WORK AND MENTAL HEALTH

An information pack for people claiming Incapacity Benefit, Income Support and Severe Disablement Allowance

This information pack has been designed to assist people with mental health problems understand the Incapacity for Work Test and to go through each of its stages. It aims to support people get the best out of the current set of arrangements and maximise their benefit income. We consider that people using services, advocates, carers, benefit advisers and mental health workers will find this pack a useful guide to a complex area.

The authors of this guide are actively involved in welfare rights advice and training for mental health service users and workers. The guide has been updated to take into account changes in the law and the practical experiences and strategies of users and advisers. The authors have learnt a great deal from people who have contacted them about their experiences and would like to hear from anyone who is working in this area and is developing new approaches which offer support to individuals and groups.

The pack will help you to negotiate successfully the procedures which the Department for Work and Pensions use to establish incapacity for work, for Incapacity Benefit, Income Support and Severe Disablement Allowance.

Please note different procedures are used for Employment Support Allowance, see page 1 for more information.

This guide includes information about the Incapacity for Work Test and the stages of the Personal Capability Assessment (PCA). It suggests ways in which groups and organisations can provide assistance and support for mental health service users who find themselves being tested for their capacity for work.

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*Suresearch is an independent network of mental health service users, survivors and allies engaged in research and training and based at the Centre for Excellence in Interdisciplinary Mental Health, The University of Birmingham- www.suresearch.org.uk or www.ceimh.bham.ac.uk.

INCAPACITY FOR WORK AND MENTAL HEALTH

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THE EMPLOYMENT AND SUPPORT ALLOWANCE (ESA)

The Employment and Support Allowance (ESA) replaced Incapacity Benefit (IB) and Income Support (IS) for new claimants from 27 October 2008. The IS claimants that it affects are those people who would have claimed IS on Incapacity for Work grounds.

All existing claimants on IB, Severe Disablement Allowance (SDA) and IS (on Incapacity for Work grounds) will **continue** to get their existing benefits.

However, it is the Government's intention that eventually all claimants on IB, SDA and IS will be transferred to ESA. Until the transfer happens Incapacity for Work will continue to be decided by the Personal Capability Assessment (PCA), using the process explained in this guide. On transfer to ESA incapacity for work will be decided by the Work Capability Assessment (WCA). The WCA is a test of Limited Capability used to decide who stays on ESA and what rate of benefit they receive.

The proposed timetable for transferring existing claimants of IB, SDA and IS onto ESA is as follows:

- From October 2010, the transfer procedures will be tested in Burnley and Aberdeen.
- From February 2011, at the earliest, the transfer is due to start in the rest of the country and will continue until the end of March 2014.

The transfer will start with people on Incapacity Benefit and people on Income Support. People on SDA will be transferred last. If you do not get paid benefit but just receive National Insurance Credits you will be transferred after March 2014.

At this stage we understand that the transfer process will happen when a person comes up for their next PCA after February 2011.

The government target is that 9730 claimants a week will be changed to ESA using the Work Capability Assessment.

INCAPACITY FOR WORK AND YOU

If you have a diagnosis of mental illness you are likely to be faced with difficulties in keeping and finding work. These difficulties might well include:

- The attitudes of employers to people who have been diagnosed as having a mental illness.
- The lack of energy, concentration or motivation which you have for periods of time and which you think will make a regular job difficult to do.
- The lack of suitable employment in the area.
- The lack of qualifications or training which you have for the jobs which are available.

The Incapacity for Work Test is likely to add to these difficulties. Despite its name the test has nothing to do with your capacity to find and keep work. It takes no account of your skills, talents, employment experience or the job market in your area. It is about testing your capacity to undertake a number of physical and mental tasks. Your ability to do these tasks is then taken as a measure of what social security benefit you should be paid.

Failing the Incapacity for Work Test may reduce your weekly benefit income if you claim Incapacity Benefit, Income Support or Severe Disablement Allowance. So it is important to understand what this test is about and how you can succeed in taking this test and keeping your benefit.

There might be times when you will find yourself worried, angry, anxious, depressed or confused by what is involved in this test. If this happens it is important to share your thoughts and feelings with people you trust and understand what you are going through. Talking about what's happening and using this guide to check out each stage of the procedure will help you survive and keep your benefit income.

WHAT IS THE INCAPACITY FOR WORK TEST?

It is the test used by the Department for Work and Pensions (DWP), to decide whether you are still unable to work for health or disability reasons. Benefits such as Statutory Sick Pay, Incapacity Benefit (IB), and Severe Disablement Allowance (SDA) can only be paid if you are, in social security words, **“incapable of work”**. The Incapacity for Work Test is also used if you claim Income Support (IS) because you are unable to work for health or disability reasons.

Some people call it “being on the sick” or “on the panel”. You may also hear the test called “the medical test”.

There are other ways of claiming benefit such as:

- **signing on unemployed (Jobseeker’s Allowance)**
- **claiming as a lone parent (Income Support)**
- **caring full-time for someone who is severely disabled, or terminally ill, or who has a long-term severe illness (Income Support and Carer’s Allowance)**
- **being age 60 or over and able to claim Pension Credit.**

The main test of Incapacity for Work is called the Personal Capability Assessment (PCA). At the start of your claim for IB, IS or SDA you will have sent in sick notes from your doctor saying that you are incapable of work. After you have been on the sick for a while the DWP stops using doctors’ sick notes to decide incapacity for work and uses the PCA instead. For more information about when you have to go through the PCA, see page 8.

WHAT BENEFITS DOES IT AFFECT?

IT SHOULD NOT AFFECT:

Disability Living Allowance (DLA)

You do not have to be “incapable of work” to claim DLA for care or mobility needs.

Some people who have been found “capable of work” under the Personal Capability Assessment (PCA), have found the Department for Work and Pensions (DWP) reviewing their DLA. If this happens to you seek advice from an independent benefits adviser, for example in Citizens Advice or a welfare rights service.

IT DOES AFFECT:

- Incapacity Benefit (IB)
- Income Support claimed because you are unable to work for health or disability reasons
- Severe Disablement Allowance (SDA) - it depends when your claim started.
 - **For claims starting before 13 April 1995** – carry on sending in sick notes from your doctor as usual. You are 'exempt' from the PCA (see page 8 and page 12).
 - **For claims starting on or after 13 April 1995** – it depends why you were awarded SDA
 - If you receive SDA because you were assessed as 80% disabled, you are 'exempt' from the PCA (see pages 8 and page 12).
 - If you receive SDA because you claimed before age 20, the PCA is used if you are on a regular review cycle or if there are doubts about whether you are still incapable of work.

What about the benefit changes from 27 October 2008?

The PCA is used for:

- People who have been claiming IB, IS, SDA continuously since before 27 October 2008
- and
- People who are able to reclaim IB, IS, SDA after 27 October 2008 because they successfully appeal a decision that they are fit for work or because there is a link to their previous claim, for example they have been working for not more than 2 years. If you think you are in this position seek advice from a benefits advisor.

Note: From 31st January 2011 you will no longer be able to link a claim to a previous claim, all reclaims of IB, IS and SDA will be treated as a claim for Employment and Support Allowance.

The PCA is not used for people who have to claim the new Employment Support Allowance (ESA), different tests are used for ESA (Please see page 1).

For information about other recent changes affecting IB and IS, see Appendix 7 of this guide, page 50.

WHY THE PERSONAL CAPABILITY ASSESSMENT IS IMPORTANT

The Personal Capability Assessment decides whether you stay “on the sick” or have to claim benefit some other way, e.g. by signing on unemployed.

For example:

- It decides whether you can carry on claiming Incapacity Benefit, or Income Support or Severe Disablement Allowance.
- It can decide how much money you get. For example, it can decide whether you are paid a disability premium with your Income Support or Housing Benefit or Council Tax Benefit.

For a single person the disability premium is worth an extra £28.00 Income Support a week, or up to £18.20 a week extra Housing Benefit and up to £5.60 a week Council Tax Benefit. For a couple the premium is worth an extra £39.85 Income Support a week, or up to £25.90 a week extra Housing Benefit and up to £7.97 a week Council Tax Benefit. (All figures are for April 2010 - April 2011)

Note: if you or your partner (this includes same sex partners) get DLA or are registered blind you can get a disability premium without having to be incapable of work

THE PERSONAL CAPABILITY ASSESSMENT AND YOU

A number of people using mental health services say that they are very worried by the Personal Capability Assessment. People are unsure of what will be involved, what kind of information will be asked for and what questions they might have to answer about their lives, health and circumstances. They are very concerned that their weekly benefit income could be reduced because they will give the 'wrong' answers.

If you have any of these concerns it is important that you identify each of them and talk them through with someone who knows you, or has been involved in taking the test themselves or has assisted other people using mental health services when they have been faced with the PCA. In this way you will be able to check out your concerns and find out what you will need to help you through the steps involved.

It is important to keep in touch with an adviser, advocate or user group throughout the process. At various stages you may feel angry, confused, despondent or mystified by what is happening. Talking this over with someone else can help you survive.

Some people will not be asked to do the PCA

Whether you have to do the test is sorted out at the first stage of the test. Decisions are made then about what the Department for Work and Pensions calls "**exemptions**" from the PCA.

If you are "**exempted**", you won't have to do the test. You will be exempted if you are in one of the following groups:

- 1) You are getting the highest rate of DLA care component (this is £71.40 for the year April 2010-April 2011).
- OR
- 2) You are terminally ill and your death is expected within 6 months.
- OR
- 3) You have severe mental health problems. (See Stage 1 of the test procedure on page 10 and Appendix 2)
- OR
- 4) You are assessed as 80% disabled for Severe Disablement Allowance or Industrial Injuries Disablement Benefit.
- OR
- 5) You have one of a list of severe conditions. (See Appendix 3)
- OR
- 6) You have been claiming Severe Disability Allowance since before 13 April 1995

There are other situations in which you won't be asked to do the Personal Capability Assessment.

These are when:

- You are in hospital
- You are undergoing certain kinds of serious hospital treatment as an outpatient, for example: dialysis, chemotherapy, radiotherapy
- You are pregnant and working would pose a serious threat to your health or to that of your unborn child
- You are “on the sick” because you are a carrier of, or have been in contact with, an infectious or contagious disease.

Who will be asked to do the Personal Capability Assessment?

If you are not “exempt” you will have to do the PCA.

WHEN WILL I HAVE TO GO THROUGH THE PCA?

To maintain your claim for IB, IS or SDA you will have to go through the PCA at periodic intervals to check whether you are still “incapable of work”. It is difficult to predict how often this will happen. Some people find themselves on a regular cycle, for others there is no set pattern. It depends on your diagnosis and the recommendation of the DWP's Medical Service doctor.

What do you have to do?

The PCA can involve you filling in a questionnaire, getting information from your doctor and going to a medical examination and interview. (See pages 10-16).

The PCA cannot take into account social factors which affect your capacity for work, like age, level of education, work experience. The test looks at how well you can do a list of physical and mental activities (see Appendices 4 and 5 for full details).

WHAT THE PERSONAL CAPABILITY ASSESSMENT INVOLVES

There are some general points to remember about the PCA.

- The full test procedure usually takes 2 to 3 months, but may take longer.
- You will be paid your usual amount of benefit throughout the test. If it is decided after all stages of the test that you are “capable of work”, your benefit and the amount you are paid may change (for more details see pages 24-26).
- Non-medical people called Decision Makers (DM) employed by DWP make the decisions on whether you are “incapable” or “capable” of work. They work in the Incapacity Benefits section of Jobcentre Plus. In making the decision they are advised on medical matters by doctors employed through the Medical Services (MS).

THE PERSONAL CAPABILITY ASSESSMENT HAS FOUR STAGES

STAGE 1

Are you exempt?

Jobcentre Plus office checks records to see if you are exempt, enquiry letter sent to doctor where more information needed to decide on exemption. See Appendix 2 about severe mental illness exemption

If not exempt pass to Stage 2

STAGE 2

Questionnaire and Med.4

Self-assessment questionnaire about physical disabilities sent to you. Completed questionnaire must be returned within time limit. Jobcentre Plus office checks information with Medical Services (MS) doctor and scores answers.

If score less than 15 pass to Stage 3

STAGE 3

Medical

Interview and examination by MS doctor about mental health problems and physical disabilities. Exceptional circumstances: the doctor will also advise if any of the 4 exceptional circumstances apply and you can be treated as incapable of work. (See pages 14 & 15 for more information)

Report from MS doctor sent to Jobcentre Plus office for Stage 4

STAGE 4

Decision and appeal

Decision Maker (DM) at Jobcentre Plus office makes the decision on incapacity for work by deciding on the final scores on the basis of the MS report, the information you have given etc. and adding them up. Where you do not score enough points the Decision Maker (DM) can still find you incapable of work if one of the exceptional circumstances apply.

Seek advice if you are found capable of work about appealing and what benefit to claim

More information about what happens at each stage is given in this section. A “Personal Action Plan” on what you can do at each stage is given on page 18 onwards.

STAGE ONE - EXEMPTION

The first time you went through the PCA the DWP will have looked at whether you are exempt: If you were not exempt for any of the other reasons listed on page 7 - 8 the DWP will have looked at whether you were exempt because you have “severe mental illness”.

The DWP will have decided on the severe mental illness exemption after writing to your GP, or the doctor who signed your last sick note and on the advice of the DWP Medical Service. For more information about the “severe mental illness” exemption, see Appendix 2, page 32.

If you were given an exemption the first time you went through the PCA, you would have received a letter informing you of the decision. Each time you go through the PCA the DWP should check whether the exemption still applies by writing to your doctor. If the DWP decides that an exemption no longer applies you will be moved to Stage 2 of the procedure and be sent an IB50 Questionnaire.

If you are sent an IB50 Questionnaire check whether you should have a ‘severe mental illness’ exemption or one of the other exemptions. For example, you may have developed a physical condition that qualifies you for an exemption or your mental health problems may have got worse, or you may have been awarded DLA care component at the high rate.

If you think you should have an exemption you will need to write to the DWP office that sent the Questionnaire arguing for the exemption and backing it up with medical evidence from your doctor, CPN etc. An independent benefits advice service can help you with this.

STAGE TWO - THE INCAPACITY FOR WORK QUESTIONNAIRE

If you are not given an exemption you will be sent the “Incapacity for Work” questionnaire (Form IB50) whose purpose is to find out about the **physical** disabilities and difficulties that you have.

The questionnaire asks you to assess your ability to perform 14 **physical** activities (See Appendix 4 for the list of activities covered) and to describe any difficulties you have doing the activities.

There are no questions about **mental health** activities. But on page 16 you are asked

“Have you been treated for anxiety, depressions or mental illness? Or do you think you have a mental health problem?”

You are asked about when you have received treatment and there is a large box inviting you to describe your problems, treatment and the effect on your day to day activities of your mental health problem.

The DWP can use what you write in this space to pick up on mental health problems not mentioned in their records. You will not be sent a self-assessment questionnaire for mental health activities. The assessment of any difficulties arising from the mental health problems you have will be carried out at a medical with a Medical Services (MS) doctor. (See Stage 3 pages 14-15).

On page 17 of the questionnaire you are asked about practical arrangements which would have to be made if you attended a medical examination. You are asked about your availability over the next three months and any special needs which would have to be met if you were asked to attend a medical examination.

You will get a letter with the questionnaire. It tells you that you have to complete and return the questionnaire within 4 weeks of the date of the letter. If you don't return it by then, you will be sent a reminder to complete and return the questionnaire within the next 2 weeks or your benefit may be stopped.

The physical disabilities questionnaire must be returned to the Incapacity Benefit section of the Jobcentre Plus office. The Decision Maker (DM) will score your answers to the physical disabilities questionnaire (see Appendix 4 for the scoring system). As part of this process the Decision Maker (DM) will contact the Medical Service (MS) for advice and clarification and their doctor will check that your answers fit with the medical conditions you have put on the questionnaire.

The information about your mental health problems that you have put on page 16 will not be scored.

The information you have given about your mental health problems should be used by MS to:

- double check whether you are exempt
- provide background information for the mental health assessment.

If you are given a score of 15 or more points for physical disabilities you will be sent a letter telling you that it has been decided that you are incapable of work.

If you are given a score of less than 15 for physical disabilities you will move on to Stage 3.

STAGE THREE – MENTAL HEALTH ASSESSMENT

If you score less than 15 points on the Incapacity for Work physical disabilities questionnaire, you will be asked to attend a medical examination with a doctor from the Medical Service (MS), which will include a **“mental health assessment”**.

You will be sent a letter giving the time, date and place of the medical. You must be sent this at least a week before the medical. If you don't turn up for the medical without giving “a good reason”, you can be found “capable of work” and this will affect your benefits.

See Page 20 for what the DWP means by “a good reason” and the effect on your benefit of not turning up at the medical without “a good reason”.

At the medical:

- The MS doctor should ask about any physical disabilities you have and will assess your ability to perform the 14 physical activities in the Incapacity for Work Questionnaire by ticking one of the listed descriptors.
- The doctor will also carry out a **“mental health assessment”** using the questions listed in Appendix 5.

(For details of the scoring descriptors and how they relate to the scores and the result of the test see Stage 4 page 16 for how the scores for mental and physical activities can be combined).

- The doctor must also look at whether an exemption for severe mental illness applies. (See Appendix 2 for more information about this exemption)

“In every case where the mental health assessment is applied you should also consider carefully whether in fact the criteria for exemption on the grounds of severe mental illness are met.”
para 3.8.3.1, page 116, 'Incapacity Benefit Handbook for Approved Doctors'.

EXCEPTIONAL CIRCUMSTANCES

- The doctor must also look at whether there are any “exceptional circumstances”.

If one of the 4 following situations apply you will be treated as “incapable of work”, whatever your score on the physical disabilities test or mental health assessment:

- 1) There would be a substantial risk to your, or another person's, mental or physical health if you were found capable of work.

Example

"This criterion can be applied in mental health cases if the claimant has recently received treatment for a mental health condition but the condition remains uncontrolled to a degree that a return to work might represent a substantial risk to their own health. There may be evidence from the claimant, their GP or a treating mental health professional and from the PCA examination. Under this category also consider the risk of self harm, including self-neglect."

para 3.8.3.1, page 115-116, 'Incapacity Benefit Handbook for Approved Doctors'.

The Handbook also points out this exceptional circumstance refers not just to the risk to the claimant's health but to the health of any person.

- 2) You are "suffering from a severe life threatening disease in relation to which:
 - (i) There is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
 - (ii) In the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure".

Example

If a person "has recently been receiving treatment and there is evidence that their mental disease is at present uncontrolled to a degree that they might represent a substantial risk to their own life. There may be evidence from the client, their GP or treating mental health professional and from the PCA examination. The risk to the person may be through self harm or self neglect."

para 3.8.2.1, page 113, 'Incapacity Benefit Handbook for Approved Doctors'.

- 3) You have a previously undiagnosed potentially life-threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the PCA by a doctor approved by the Secretary of State, this means a Medical Services (MS) doctor.
- 4) You are waiting for a major surgical operation or major therapeutic procedure within 3 months after the PCA medical examination.

What happens next:

The doctor sends a report to the Decision Maker (DM) at the Incapacity Benefits section of the Jobcentre Plus office. The report will include the assessment for the physical and mental health tests and gives reasons why any of the MS doctor's assessments differ from your own assessment of your problems. The MS doctor also has to say when your health is likely to improve. The DM then moves to Stage 4.

STAGE FOUR - FINAL DECISION ON INCAPACITY FOR WORK

The Decision Maker (DM) makes the final decision on the scores to be given for each activity. Using evidence from the Medical Services (MS) report, the questionnaire and the evidence in letters from doctors and other professionals, to decide which descriptors apply to you.

To decide whether you are “**capable**” or “**incapable**” of work the DM adds up the scores.

You are **incapable** of work if:

- You score 15 or more on the physical test
- You score 10 or more on the mental health assessment
- You score 15 or more when your physical and mental health scores are combined. This is done in the following way:
 - * If you score 6,7,8 or 9 on the mental health assessment, 9 is added to your physical test score.
 - * If you score less than 6 on the mental health assessment the mental health score is **not** combined with the physical score.

EXAMPLES

- 1 Scores 17 on the physical test. **Incapable of work**
- 2 Scores 12 on mental health assessment. **Incapable of work**
- 3 Scores 6 on physical and 7 on mental health assessment. $6+9=15$
Incapable of work
- 4 Scores 12 on physical and 5 on mental health assessment. Only a total of 12. **Capable of work**

Where you don't score enough points, as in Example 4, you can still be “**incapable of work**” if it is decided that one of the “**exceptional circumstances**” (outlined on pages 14-15) apply.

If you are found “**capable of work**” you will be sent a letter informing you of this and giving you a breakdown of the scores.

If you are found “**incapable of work**” you will be sent a letter informing you of this. The DM will also decide when you will do the PCA again using the information from the MS doctor about when your health is likely to improve

A PERSONAL ACTION PLAN FOR THE PERSONAL CAPABILITY ASSESSMENT

In preparing for the PCA you may find it useful to think about drawing up a personal action plan to cover each stage of the test.

ACTION FOR STAGE ONE - EXEMPTION

You will not be told that this stage of the test is taking place. So all you can do beforehand is to make sure that the DWP has enough information to spot potential grounds for exemption. This can be done through:

- the response made by your doctor to the enquiry letter sent by the DWP (see page 11)
- information you may be able to provide about terminal illness
- informing the Incapacity Benefit section of your Jobcentre Plus office if you are awarded DLA Care at the highest rate.
- informing the Incapacity Benefit section of your Jobcentre Plus office if you have been diagnosed as having a medical condition that qualifies you for an exemption.

The enquiry letter for severe mental health exemption - This can be filled in by a GP, Consultant Psychiatrist, Hospital Doctor. The DWP is most likely to send it to your GP. If you decide that the GP is not the best person to reply to the letter, it is worth writing now to the Incapacity Benefits section of the Jobcentre Plus office asking them to put on file the name of the doctor to whom enquiries concerning your mental health problems should be directed.

Terminal illness - if you are expected to die within 6 months get a DS1500 form from your doctor. You can also use this form as part of your claim for an automatic award of DLA Care at the highest rate. If you send the DS1500 to the DLA Unit as part of your DLA claim they should automatically notify the Incapacity Benefits section at the Jobcentre Plus office. Check that this has happened.

REMEMBER you can argue for an 'exemption' at any stage in the test. You will need medical evidence to back up your argument. (See Appendix 2 for an example of a supporting letter from a consultant). Also remember that the DWP often misses even the most straightforward exemptions, like the DLA higher rate care component

ACTION FOR STAGE TWO- THE INCAPACITY FOR WORK QUESTIONNAIRE

If you think you are 'exempt' from the PCA

For example:

- because you get DLA highest rate care component,
- you fit the criteria for the severe mental illness exemption,

but are still sent a questionnaire contact the Incapacity Benefits section at the Jobcentre Plus office and point out to them that you are 'exempt'. You can get help with this from a welfare rights or Citizens Advice Bureau worker or other independent benefits adviser.

If you are not exempt you will be expected to proceed with Stage Two.

Filling in the questionnaire

The questionnaire is long and detailed. It is advisable to ask someone, for example, a carer, advocate, care worker or social worker, to complete the form with you. Put aside a couple of hours to complete the form.

Give as much detail as possible about problems you have with physical activities, for example: pain, stiffness, exhaustion and how your problems vary from day to day. **Include the physical problems that you experience because of the effects of medication on your mental health condition.**

On page 5 of the questionnaire it talks about doing "**day to day things**". But remember the questions are really about work, where you are expected to do things promptly, repeatedly and quickly as the job requires, so explain why you cannot do activities **repeatedly, promptly and quickly** over a day or over a week (see Appendix 8 for a useful legal decision on this).

Describe your mental health problems on page 16 of the questionnaire. It can be difficult to decide what to put in such a large space. Put information relevant to the questions asked in the mental health assessment (see Appendix 5) as well as describing your problems and treatment. This will make sure:

- that the DWP and Medical Services are aware that you have mental health problems
- that information is provided about how these problems are relevant to the PCA
- that a full background is provided for the medical examination
- that any grounds for exemption for severe mental illness can be spotted
- that you have a useful summary for evidence if you need to appeal later

REMEMBER: you can include extra sheets of paper if you need more space to write on.

On page 17 list any practical arrangements that would need to be made to enable you to have a medical examination. E.g. such as an interpreter; a signer; a male doctor; a female doctor; examination in your own home; examination in another venue, familiar to you.

Return the questionnaire within 6 weeks. You will get a reminder about this 4 weeks after you get the questionnaire. If you are unable to return it within the time limits, let the Incapacity Benefit section at the Jobcentre Plus office know the reasons. If you have a “**good reason**” your benefit won’t be affected.

“**Good reasons**” include your current state of health and the nature of your disabilities.

If the DWP do not agree that you have good reasons for not returning the questionnaire and stops your benefit, put in a new claim as soon as possible. You may need to appeal to regain any lost benefit. See page 26 for more information about appealing in this situation.

Remember to ensure that your benefit is paid send in the completed questionnaire.

Letters from hospital doctors and other mental health care professionals

These are important evidence to back up what you say in the questionnaire and for the Mental Health Assessment at the medical. The Medical Services have said that they welcome as much information as possible from doctors and other mental health care professionals, for example, Community Psychiatric Nurses (CPNs), so that they can make a proper assessment.

Other evidence

You should consider whether there is important evidence to back up what you say in the questionnaire and for the Mental Health Assessment at the medical, which you can get from other sources. For example, carers, friends, former employers, claims for other benefits like DLA.

ACTION FOR STAGE THREE - MEDICAL WITH MEDICAL SERVICES (MS) DOCTOR

You will have to travel to the medical examination. If you have problems travelling and need to make special arrangements e.g. having someone accompanying you make sure you share these difficulties with the Medical Services (MS) doctor.

Phone up and rearrange the date and time of the medical if either is not convenient for you. If something crops up at the last minute to stop you going, get someone to ring up for you to explain what has happened.

REMEMBER: if you fail to attend the medical without “**a good reason**” you will be found “**capable of work**” your benefit will stop and you will need to make a new claim. “**Good reasons**” include your state of health and the nature of your disabilities.

If you have listed special needs on the questionnaire form check that notice has been taken of these and arrangements made to meet them. If you forgot to list your needs on the form, or your situation has changed since you filled in the form, tell the Client Help Desk at the Medical Service (the telephone number will be on the appointment letter) what you need

You do not have to go ahead with the medical if they have not made suitable arrangements for you.

The guidance given to MS doctors encourages you to take someone with you to help you feel more at ease. Doctors are also advised that:

“companions will be able to give useful information particularly in cases where the client has mental health problems, learning difficulties, or communication problems, or people who stoically understate their problem”.

para 3.1.3.3, page 39, Incapacity Benefit Handbook for Approved Doctors

REMEMBER: the person can be anyone you choose an advocate, carer, relative, friend or support worker and if you wish they can stay with you throughout the medical.

If having the medical would do serious damage to your health, get your doctors or another medical professional involved in your care to write to MS explaining why you should not be required to undergo the medical. The law allows MS to make an assessment without a medical.

At the medical the MS doctor is supposed to get you to “talk around” the questions on the Mental Health Assessment (see Appendix 5) often by asking you about how you spend a typical day. But some doctors just ask straight questions.

Before the medical it is a good idea to talk through the questions with the person going with you. Some people have found it useful to do a role-play of the interview with another person. Think about the problems you would have with the mental health assessment activities if you were working. You may find it useful to make a list of them and take it with you.

Some people have found that they are not seen at the time of their appointment and have had to wait for considerable periods of time before being examined. Be prepared for this.

It is also useful to check that the MS doctor has had the letters you have sent in from doctors, mental health care workers, relatives, carers, etc. giving information about your problems. If you have not been able to send them in beforehand, hand them over at the medical.

It is important to let the MS doctor know how bad you really feel and not to put on a brave face or understate your difficulties.

REMEMBER: if at any point in the medical you feel too distressed to continue, ask for a break.

If you are not happy about the way the medical has been conducted, for example: it was very rushed; the doctor did not give you time to explain your difficulties; the doctor's manner was not helpful, you should complain to MS. See Appendix 6 for the standards issued by MS as guidance to doctors to help you prepare your complaint.

A benefits adviser, mental health worker, relative or advocate can help you write your letter of complaint.

Mental health services users have made a video called “Bungled off Benefit”, about how to survive the medical with the MS doctor, see Appendix 8 of this guide for more details.

ACTION FOR STAGE FOUR - DECISIONS AND APPEALS

If the Decision Maker (DM) decides that you have scored enough points to be **“incapable of work”**, you will receive a letter telling you this. The letter does not say how long the decision lasts or if and when you will be asked to do the PCA again. If you want to know this, write to or phone the Incapacity Benefits section at the Jobcentre Plus office.

When the PCA is applied again it should start at Stage 1 with an exemption enquiry letter being sent to your doctor. If you get a questionnaire and you think you are exempt, write to the Incapacity Benefits Section explaining why you think you are exempt and sending them supporting evidence, like medical evidence.

If the Decision Maker (DM) decides that you have not scored enough points to be **“incapable of work”** you will receive a letter telling you this and also telling you for which activities you scored points.

Get advice from a welfare rights worker or Citizen’s Advice worker or other benefits adviser about appealing against the decision and asking for a revision.

Appeals

It is worth appealing. Government figures have shown that 67% of people attending a tribunal with a representative win their Incapacity Benefit appeal.

You have 1 month from the date on the decision letter to put in your appeal, and it is a good idea to do it **as soon as possible**. Deciding to appeal also gives you a choice about claiming benefit while you wait for a response.

Revisions/Reconsiderations

You may be able to get the decision changed without going to an appeal tribunal hearing. This is called a revision or reconsideration. If you have got evidence which has not been seen by the DWP and which backs up your case, you can write to the Incapacity Benefits Section of the Jobcentre Plus office with the evidence asking them to look again at (“revise” / “reconsider”) their decision. This could be a decision about whether you are exempt, a decision about what points you’ve scored or whether one of the exceptional circumstances applies.

You have within one month from the date on the decision letter to put in your request for a revision or reconsideration.

A benefits adviser can help you do this. If the decision is not changed when revised / reconsidered, you will still be able to appeal.

You have to appeal within one month.

FOUND CAPABLE OF WORK- WHAT HAPPENS NEXT?

You can be found “**capable of work**” if you don’t score enough points on the PCA. It can also happen if you don’t return the questionnaire or you don’t attend the medical and you don’t give a “**good reason**” for failing to do these things.

Sick notes from your doctor

Your doctor may issue you with sick notes because he or she is not in agreement with the PCA decision. These are useful evidence for an appeal but should **not** be taken to the Jobcentre Plus office, unless you decide to claim Income Support whilst appealing, or are reclaiming because your benefit stopped when you failed to return the questionnaire or attend a medical interview.

Your doctor may issue you with sick notes because your health problems have got worse or you’ve developed new ones. If this happens you should go back “on the sick”. Get advice from a benefits adviser on how this would affect your past and future benefit claims

Claiming a benefit income

If you are found “**capable of work**” you stop being “**on the sick**”. You may be able to claim benefit without having to sign on unemployed. For example:

- Lone parents can claim Income Support from the Jobcentre Plus office, depending on the age of their youngest child.
- Carers caring for a disabled adult or child can claim Income Support without having to sign on unemployed, if the person they care for gets, or has put in a claim for, Attendance Allowance or the middle or high rate of DLA Care. Carer’s Allowance can be claimed by the carer as soon as Attendance Allowance or the middle or high rate of DLA Care has been awarded.
- Men aged 60-64 years may be able to claim Pension Credit from the Pension Service. Pension Credit is paid to people, depending on their date of birth and their income, without any need to sign on unemployed or be incapable of work.
- If you have a partner, she or he may be able to claim for you on her/his benefits

From 5th December 2005 this includes same sex partners.

- If you are in full time study and getting DLA you can carry on getting Income Support (IS) as a disabled student without having to be “**on the sick**”.

If you don’t fit into one of the above groups, get advice about signing on unemployed for Jobseekers Allowance. If you are appealing there are further claiming options.

BENEFIT CLAIMING IF YOU DECIDE TO APPEAL

If you decide to appeal against the decision that you are “**capable of work**”, you may have a choice between signing on unemployed or claiming Income Support (IS) without having to sign on.

If your benefit is stopped because you failed the PCA:

- The Income Support Rules allow claiming without signing on if you have appealed against the decision but you will be paid at a reduced rate

Below are the advantages and disadvantages of claiming IS or JSA

If you claim Income Support because you are appealing there are some advantages and some disadvantages.

- *Advantages* - You don't have to go through the JSA fortnightly signing on procedures or show that you are available and actively seeking work.
- *Disadvantages* - Your Income Support will be reduced by 20% of the allowance for a single person of your age (£10.37 if you are aged 18 - 24 years and £13.09 if you are aged 25 years or over.)
- You will not be credited with National Insurance. This could cause a gap in your National Insurance record if you lose your appeal.

If you sign on as unemployed there are some advantages and some disadvantages

- *Advantages* - If you are not eligible for Income Support (for example because your partner works 24 hours or more a week) you may get 6 months contributory Jobseekers Allowance based on your National Insurance contributions.
- You will get National Insurance credits regardless of whether you win your appeal
- *Disadvantages* - You will have to go through the JSA fortnightly, signing on procedures and show that you are available and actively seeking work within the limits of your health or disabilities.

Remember: If you win your appeal you will go back into IB, IS or SDA

If your benefit stopped because you failed to return the Incapacity for Work questionnaire or failed to attend the medical interview:

You need to make a fresh claim. You may also be appealing a decision that you did not have a good reason for failing to return the questionnaire or attending the medical interview. In this situation:

- You cannot claim Income Support on the basis of appealing
- You can only reclaim IB or IS if:
 - Your benefit stopped because you did not send back the questionnaire, but you have now sent in a completed questionnaire with your reclaim for benefit or,
 - Your health has got worse or,
 - You have a new health condition
- If you cannot reclaim IB or IS, you have to sign on unemployed for Jobseekers Allowance. See page 26. **Loss of Benefit Income** to see how this affects your rate of benefit.

BENEFIT CLAIMING IF YOU DECIDE NOT TO APPEAL

If you don't fit into one of the groups who don't have to sign on for benefit, and you decide not to appeal against the decision that you are "capable of work", you will have to sign on unemployed for Jobseekers Allowance (JSA).

Signing on Unemployed for JSA

You may be paid contributory JSA or Income Based JSA, or both depending on your national Insurance record and circumstances. It is written into the law and guidance that the JSA section of Jobcentre Plus cannot challenge the PCA decision that you are "capable of work" but you must say that you are available and actively seeking work within the limits of your health or disabilities.

Loss of Benefit Income

If you are considered to be "**capable of work**" your weekly income from benefit will be reduced. This can happen in several ways:

- **Losing the Disability Premium:** If you are getting Income Support you may be paid the disability premium because of how long you have been on the sick. If you are taken off the sick by the PCA you will lose the disability premium. Remember if you get DLA you will keep the disability premium which is paid with income-based Jobseekers Allowance, Income Support, Housing Benefit and Council Tax Benefit (See page 27 "How to get More Money").
- **Changing from Incapacity Benefit to contributory Jobseekers Allowance.** Jobseekers Allowance based on your National Insurance contributions is paid at a lower rate than Incapacity Benefit, there are no additions for children or a partner. Contributory Jobseekers Allowance only lasts for 6 months.
- **Claiming Income Support while you appeal.** As explained on page 25 there is a reduction of 20% of the allowance for a single adult of your age.

HOW TO GET MORE MONEY

REMEMBER: a successful claim for Disability Living Allowance (DLA) could help you increase your weekly benefit income.

This is because:

- DLA is always paid on top of other benefits. It won't reduce income related benefits like income related Employment and Support Allowance, income based Jobseekers Allowance, Income Support, Housing Benefit, and Council Tax Benefit, or Pension Credit.
- DLA can help you qualify for extra Jobseekers Allowance, Income Support, Housing Benefit, and Council Tax Benefit, because DLA paid at any rate, for either care or mobility qualifies you for the disability premium, when aged under Pension Credit age.
- The high or middle rate of DLA care can also help you qualify for the Severe Disability Premium. The high rate of DLA care also qualifies you for an Enhanced Disability Premium. The Severe and Enhanced Disability Premiums are paid with income related ESA as well as with IS, JSA, IB, HB and CTB
- The middle or high rate of DLA care can help you qualify for extra Pension Credit, when you reach the qualifying age.
- It doesn't matter whether you are on the sick, signing on unemployed, claiming as a lone parent or carer, working or studying, you can still claim DLA
- DLA can help you qualify for Working Tax Credit if you find work.

There is a paper in this series called "**Claiming Disability Living Allowance: an Information pack for people aged under 65 and using Mental Health Services, their Carers and Advocates**". It contains detailed information about how to make a successful claim for DLA when you have a mental health problem. For details see back cover of this guide

A SERVICE ACTION PLAN FOR THE PCA

Concerns with mental health and employment issues are a key part of the mental health and social inclusion agendas being addressed by mental health services. It is therefore vital for service purchasers, service providers, groups and organisations of service users, carers, mental health workers, employment development workers and advocates to think about what they can offer to support and assist those who find themselves involved in the PCA.

Below are some ideas about the components of a helpful and informed service response to people who are unable to work because of mental health problems and are claiming Incapacity Benefit, Income Support and Severe Disablement Allowance.

The way in which these components are delivered locally can take a wide variety of forms. In some areas different agencies are working together, in others a user group may take the lead. But critical to developing a responsive local service is to start by asking what mental health service users need.

- **Identify local and national sources of expertise in this area.** Remember, a service which combines welfare benefit knowledge and an understanding of mental health problems is essential. If this is not available in your area make sure mental health service commissioners and providers are alerted to the need for it in order to support the well being of mental health service users and their households.
- **Develop mental health awareness in advice agencies.**
All local advice agencies should be offered mental health awareness training for their staff. They should be encouraged to give the appropriate amount of time, priority, support and sensitivity in advising people with mental health problems.
- **Develop benefit awareness amongst mental health professionals.**
All mental health professionals should be offered benefit awareness training. They should be encouraged to give time and attention to the benefit issues facing mental health service users, they should be clear about the part that they might play in providing advice, evidence and assistance to people with mental health problems. They should be able to utilise local and national sources of expertise when necessary.
- **Provide information sessions for mental health services users.**
These sessions should be open to anyone who is interested. They should be delivered in a way that combines the provision of accurate and accessible information with encouragement to participants to share their questions and concerns. Enough time should be provided for individuals with particular issues to pursue to get expert advice after the session. Participants should be offered clear written information to take away for future reference. This

information should include details about local and national resources that they can use.

- **Provide one-to-one benefit advice.**

This can take several forms. It could be through a general independent advice service (e.g. Citizens Advice Bureau) which makes sessions available for people using mental health services. It could be through a special initiative provided for mental health service users in a locality. It could be offered by users' organisations or mental health organisations that have individual members with an expertise in this area. It could be offered as part of employment schemes or through day or resource centres used by people with mental health problems. Whatever form it takes it must ensure that advice is provided in a safe setting where confidentiality is assured.

- **Identify sources of ongoing support for individuals.**

Different people will need different kinds of support at different stages of the process. Some people find it distressing to receive a letter saying that they are exempt from the PCA because of severe mental illness. They may value talking to someone about why this has happened and what it means for their future plans. Some people may need assistance with forms, others with gathering evidence, others may wish to be accompanied to examinations, others may want someone to talk things over with when the pressure feels too great. Often people need help in winding down after filling in a questionnaire or attending a medical examination.

Such support can be offered by users, advocates, advice workers, mental health workers, and employment development workers. What is important is that it is reliable and responsive. A few minutes when needed is worth an hour after the immediate need has passed. It might be worth, for example, considering providing such support at a regular time on a drop in basis so that people know where to turn when they identify a need. Talk to service users who have had experience of the PCA about what needs to be offered. Information and advice about work and training opportunities for people who are found capable of work should be part of this support work.

- **Monitor and publicise outcomes and user experiences with the Incapacity for Work Test Procedures**

It is important that the experiences which people have of the DWP and the Medical Service are monitored in order to track what impact these changes are having on people's mental health, well-being and benefit income. There are some national organisations (see Appendix 7 for details) that will be interested in this information. Locally information can be used to open up dialogue with relevant agencies and inform the advice sessions provided for service users, advocates and workers.

APPENDIX 1

WEEKLY BENEFITS RATES APRIL 2010 TO APRIL 2011

INCAPACITY BENEFIT

Long-term Incapacity Benefit	£91.40	Additions: adult dependant	£53.10
		Child dependant*	£11.35
		Age Allowance: under 35	£15.00
		35-44	£ 5.80

* Additions for children are only paid to people who have been receiving them since before 6th April 2003. Anyone who claimed on or after 6/4/03 had to claim Child Tax Credit.

SEVERE DISABLEMENT ALLOWANCE (SDA)

Basic rate	£59.45	Additions: adult dependant	£31.90
		Child dependant*	£11.35
Age Allowance: under 40	£15.00		
40-49	£ 8.40		
50+	£ 5.45		

INCOME SUPPORT

single person

age 16-24	£51.85
age 25 or over	£65.45

Couple

One or both are under 18	Rates vary according to circumstances
Both age 18 or over	£102.75

single parent

age 16-17	£51.85
age 18 or over	£65.45

Additions

Disability Premium	£28.00 for single person £39.85 if you live as a couple
Carer's Premium	£30.05
Severe Disability Premium	£53.65 for single person £107.30 where couple both qualify
Enhanced Disability Premium	£13.65 for single person £19.65 if you live as a couple
Family Premium*	£17.40
Dependent Child*	£57.57
Disabled Child Premium*	£52.08
Enhanced Disability Child Premium*	£21.00

*** Money for children**

Only people who have had children included in their Income Support before 6th April 2004 now receive these additions and are waiting to be transferred to Child Tax Credit. All other people with children on Income Support receive Child Tax Credit.

The amounts paid to people receiving Income Support, Jobseeker's Allowance (Income-Based) and Pension Credit through Child Tax Credit plus Child Benefit are the same as the additions listed above.

DISABILITY LIVING ALLOWANCE (DLA)

Care needs: higher	£71.40	Mobility higher	£49.85
middle	£47.80	lower	£18.95
lower	£18.95		

JOBSEEKERS ALLOWANCE (JSA)

Contributory JSA:

Age 16-24	£51.85
Age 25 and over	£65.45

Income based JSA:

Calculated the same way as Income Support

CARER'S ALLOWANCE

Basic rate £53.90	Additions:	Adult dependant	£31.70
		Child dependant**	£11.35

** Additions for children are only paid to people who have been receiving them since before 6th April 2003. Anyone claiming on or after 6/4/03 had to claim Child Tax Credit.

APPENDIX 2

EXEMPTION FOR SEVERE MENTAL ILLNESS

Definition of “severe mental illness”

The legal definition of severe mental illness is “involving the presence of mental disease, which severely and adversely affects a person’s mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.”

When deciding whether the definition fits you the Decision Maker in the Incapacity Benefits section of the Jobcentre Plus office will seek advice from MS. MS guidance says:

“For the purpose of advising whether the client’s condition meets these criteria it will be necessary to consider the detailed manifestations of the disease and the care needs which arise. As a general rule, clients living outside of hospital who meet the legislative criteria are very likely to require ongoing psychiatric care. This may include:

- sheltered residential facilities where the person receives regular medical or nursing care
- day care at least one day a week in a centre where qualified nursing care is available
- care at home with intervention, at least one day a week, by a qualified mental health care worker, or
- long term medication with anti-psychotic preparations including depot neuroleptic or mood modifying drugs.

Social Functioning and Risk to others

Where, as a result of their mental disease or disablement, the person’s behaviour is so adversely affected that:

- their ability to function socially is severely restricted, or
- they are very likely to pose a real threat or danger to others (such as work colleagues or members of the public);

then you should consider advising that they meet the severe mental illness criteria.

Whilst this guidance describes a general approach it is important for all Medical Advisers to remember that each case must be considered on the individual circumstances.

Medication

Anti-psychotic medication

Major tranquillisers (BNF Section 4.2) are frequently given by a depot injection

which not only secures consistent serum levels but also helps compliance. The Atypical Antipsychotics can be given orally and have the advantage of fewer extra pyramidal side effects. Examples of these include Risperidone, Sulpiride and the very potent Clozapine that requires careful monitoring of haematological values.

Severe forms of Depression may qualify for an exemption if one or more of the following apply:

~ A history of recent self harm, especially attempted suicide, may provide a strong pointer.

~ A more distant history of attempted suicide needs to be considered in the light of evidence concerning the claimant's current mental health.

~ History of self neglect.

~ Requirement for recent hospital admission and/or current day hospital treatment.

~ Supervision by community mental health team as well as GP.

~ Lack of insight and/or poor compliance with treatment/supervision.

~ Additional conditions including personality disorder, alcohol abuse.

Exemption may apply in cases of severe phobic anxiety. The following features should lead to a consideration of Exemption

~ Severe anxiety symptoms such as depersonalisation, derealisation, panic attacks.

~ Severe panic disorder with rapid spiral of anxiety, predominant physical symptoms, and fear of catastrophic consequences.

~ Secondary depression, where significant symptoms persist despite treatment.

~ Additional disorders producing cumulative effects, including personality disorder.

~ Paranoid schizophrenia masquerading as agoraphobia.

~ Where agoraphobia is part of a primary depressive illness, treat as depressive disorder.

Obsessive Compulsive Disorder can be severely disabling and Exemption can be considered when:

~ There is an associated severe depressive disorder.

~ When obsessive/compulsive behaviour is having a severe negative impact on daily living activities and social functioning.

When advising exemption, if the pattern of the condition has become chronic relapsing, and intractable to treatment, a longer term prognosis would be appropriate."

paras 2.2.3.1 – 2.2.3.1.2 pages 17 – 19, Incapacity Benefit Handbook for Approved Doctors

Example of a Supporting Letter which aided a person with a diagnosed compulsive obsessive condition gain an exemption.

Our Ref:

Your Ref:

To Whom It May Concern:

Dear Sir/Madam

Re: Susan Braithwaite

Mrs Braithwaite has attended this department and received help in the Psychiatric Out Patient Department, as well as the Clinical Psychology Department since 2002.

She initially presented with rituals and obsessive compulsive neurosis, later on it became obvious that the case was much worse, with agoraphobia and panic attacks. Different treatments were tried with her, with little success.

These aspects of her illness contribute to severe restrictions on her life. A good part of her time is wasted on rituals, the agoraphobia avoids her enjoying any leisure or going out, and the panic attacks strongly undermine any attempt to get her out of the house.

The combination of these problems would amount to a severe mental illness, and she cannot obviously work.

Yours faithfully

Consultant Psychiatrist

APPENDIX 3

EXEMPTION FOR OTHER SEVERE CONDITIONS

All these exemptions are decided by the Decision Maker (DM) in the Incapacity section of the Jobcentre Plus office. Before deciding on an exemption the DM will seek advice from the Medical Services.

- tetraplegia,
- paraplegia, or uncontrollable involuntary movements or ataxia which render you functionally paraplegic,
- persistent vegetative state,
- dementia,
- registered blind,
- severe learning disabilities: defined as a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning,
- severe and progressive neurological or muscle wasting diseases,
- active and progressive forms of inflammatory polyarthritis,
- progressive 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,
- multiple effects of impairment of function of the brain and/or nervous system causing motor sensory and intellectual deficits,
- manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation.

APPENDIX 4

PHYSICAL DISABILITIES - ACTIVITIES AND SCORES

The wording of the Descriptors

The Descriptors were introduced in 1995. The wording of some of the Descriptors was changed in 1996/1997. Recent legal decisions by the Social Security Commissioners and the Court of Appeal (see Appendix 8) have held that some of the changes made in 1996/1997 were clearly illegal and that other changes may be illegal if it can be shown that they disadvantage people. This means that in an appeal situation you may have more room to challenge a decision that you are capable of work.

You will find that for some of the descriptors there are two different versions of the wording. You may find that you would gain points by the original rather than the current wording. In an appeal situation this could make the difference between scoring enough points to pass the PCA or not scoring enough points. For example: The activity "Lifting and Carrying". Wording was introduced in 1996/1997 to restrict the activity to lifting and holding without moving anywhere. If you can lift and hold an item listed in the activity but can't carry it across a room because, for example you use crutches, then it could be argued at an appeal that the original wording should apply.

ACTIVITIES

Walking on level ground with a walking stick
or other aid if normally used

	Descriptor	Points
a	Cannot walk at all	15
b	Cannot walk more than a few steps without stopping or severe discomfort	15
c	Cannot walk more than 50 metres without stopping or severe discomfort	15
d	Cannot walk more than 200 metres without stopping or severe discomfort	7
e	Cannot walk more than 400 metres without stopping or severe discomfort	3
f	Cannot walk more than 800 metres without stopping or severe discomfort	0
g	No walking problem	0

Walking up and down stairs

	Descriptor	Points
a	Cannot walk up and down one stair	15
b	Cannot walk up and down a flight of 12 stairs	15
c	Cannot walk up and down a flight of 12 stairs without holding on and taking a rest.	7
d	Cannot walk up and down a flight of 12 stairs without holding on.	3
e	Can only walk up and down a flight of 12 stairs if goes sideways or one step at a time.	3
f	No problem in walking up and down stairs	0

Sitting in an upright chair with a back but no arms

	Descriptor	Points
a	Cannot sit comfortably	15
b	Current Wording Cannot sit comfortably for more than 10 minutes without having to move from the chair because the degree of discomfort makes it impossible to continue sitting	15
	Original Wording Cannot sit comfortably for more than 10 minutes without having to move from the chair	
c	Current Wording Cannot sit comfortably for more than 30 minutes without having to move from the chair because the degree of discomfort makes it impossible to continue sitting	7
	Original Wording Cannot sit comfortably for more than 30 minutes without having to move from the chair	
d	Current Wording Cannot sit comfortably for more than one hour without having to move from the chair because the degree of discomfort makes it impossible to continue sitting	3
	Original Wording Cannot sit comfortably for more than one hour without having to move from the chair	
e	Current Wording Cannot sit comfortably for more than two hours without having to move from the because the degree of discomfort makes it impossible to continue sitting	0
	Original Wording Cannot sit comfortably for more than two hours without having to move from the chair	
f	No problem with sitting	0

Standing without the support of another person;
may use a walking stick

	Descriptor	Points
a	Cannot stand unassisted	15
b	Cannot stand for more than a minute before needing to sit down	15
c	Cannot stand for more than 10 minutes before needing to sit down	15
d	Cannot stand for more than 30 minutes before needing to sit down	7
e	Cannot stand for more than 10 minutes before needing to move around	7
f	Cannot stand for more than 30 minutes before needing to move around	3
g	No problem standing	0

Rising and Sitting from and Upright Chair

	Descriptor	Points
a	Cannot rise from sitting to standing	15
b	Cannot rise from sitting to standing without holding on to something	7
c	Sometimes cannot rise from sitting to standing without holding on to something	3
d	No problem with rising from sitting to standing	0

Bending and Kneeling

	Descriptor	Points
a	Cannot bend to touch knees and straighten up again	15
b	Current Wording Cannot bend or kneel or bend and kneel as if to pick up a piece of paper from the floor and straighten up again	15

Original Wording

Cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.

c **Current Wording**

Sometimes cannot bend or kneel or bend and kneel as if to pick up a piece of paper from the floor and straighten up again

3

Original Wording

Sometimes cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again.

d No problem with bending and kneeling

0

Manual Dexterity

	Descriptor	Points
a	Cannot turn the pages of a book with either hand	15
b	Cannot turn a sink tap or the control knobs on a cooker with either hand	15
c	Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand	15
d	Cannot use a pen or pencil	15
e	Cannot tie a bow or laces or string	10
f	Cannot turn a sink tap or the control knobs on a cooker with one hand	6
g	Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand	0
h	No problem with manual dexterity	0

Lifting and Carrying

Current wording

Lifting and carrying by use of the upper body and arms (excluding all other activities)

	Descriptor	Points
a	Cannot pick up a paperback book with either hand	15
b	Cannot pick up and carry a 0.5 litre carton of milk with either hand	15

c	Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand	15
d	Cannot pick up and carry a 2.5 kilogram bag of potatoes with either hand	8
e	Cannot pick up and carry a 0.5 litre carton of milk with one hand but can with the other.	6
f	Cannot pick up and carry a 2.5 kilogram bag of potatoes with one hand but can with the other.	0
g	No problem with lifting and carrying	0

Reaching

	Descriptor	Points
a	Cannot raise either arm to put something in the top pocket of a coat or jacket	15
b	Cannot raise either arm to his/her head to put on a hat	15
c	Cannot put either arm behind his/her back to put on a coat or jacket	15
d	Cannot raise either arm above his/her head to reach for something	15
e	Cannot raise one arm to his/her head to put on a hat but can with the other	6
f	Cannot raise one arm above his/her head to reach for something but can with the other	0
g	No problem with reaching	0

Speech

	Descriptor	Points
a	Cannot speak	15
b	Speech cannot be understood by family or friends	15
c	Speech cannot be understood by strangers	15
d	Strangers have great difficulty understanding speech	10
e	Strangers have some difficulty understanding speech	8
f	No problems with speech	0

Hearing with a Hearing Aid if Used

	Descriptor	Points
a	Cannot hear sounds at all	15
b	Cannot hear well enough to follow a television programme with the volume turned up	15
c	Cannot hear well enough to understand someone talking in a loud voice in a quiet room	15
d	Cannot hear well enough to understand someone walking in a normal voice in a quiet room	10
e	Cannot hear well enough to understand someone talking in a normal voice on a busy street	8
f	No problem with hearing	0

Vision in normal Daylight with Glasses

	Descriptor	Points
a	Cannot tell light from dark	15
b	Cannot see the shape of furniture in the room	15
c	Cannot see well enough to read 16 point print at a distance greater than 20 centimetres	15
d	Cannot see well enough to recognise a friend across the room at a distance of at least 5 metres.	12
e	Cannot see well enough to recognise a friend across the road at a distance of at least 15 metres	8
f	No problem with vision	0

Contenance other than bed wetting

	Descriptor	Points
a	No voluntary control over bowels	15
b	No voluntary control over bladder	15
c	Loses control of bowels at least once a week	15

d	Loses control of bowels at least once a month	15
e	Loses control of bowels occasionally	9
f	Loses control of bladder at least once a month	3
g	Loses control of bladder occasionally	0
h	No problem with continence	0

Remaining Conscious without having epileptic or similar seizures during waking moments

	Descriptor	Points
a	Has an involuntary episode of lost or altered consciousness at least once a day	15
b	Has (as above) at least once a week	15
c	Has (as above) at least once a month	15
d	Has had (as above) at least twice, in the six months before the test is applied	12
e	Has had (as above) once in the six months before the test is applied	8
f	Has had (as above) once in the three years before the test is applied	0
g	Has no problems with consciousness	0

SCORING SYSTEM

You will be found to be “incapable of work” if you score 15 points or more on the physical disabilities activities. You can only get one score for each activity.

EXAMPLE You have disabilities which limit the use of your hands so that you cannot tie your shoes (10 points) and you also cannot pick up a 2p coin with one hand (6 points). You will score 10 points for the “Manual Dexterity” activities.

There are two ways of reaching a score of 15 points:

1. You score 15 for just one of the activities

EXAMPLE You cannot walk more than 50 metres (about 55 yards) without stopping or suffering severe discomfort, even with the elbow crutch that you normally use. You will score 15 points for “Walking on level ground”.

OR

2. You don't score 15 points for one activity, but your score added up across different activities comes to a total of 15 points or more.

EXAMPLE You sometimes cannot bend or kneel as if to pick up a piece of paper from the floor and straighten up again. Score 3 points for “Bending and Kneeling”.

You cannot pick up a 2p coin with one hand. Score 6 points for “Manual Dexterity”.

You cannot raise one arm to your head to put on a hat. Score 6 points for “Reaching”.

Total score: 15 points.

BUT where you score in both “Walking on level ground” and “Walking up and down stairs” you cannot add both these scores, you can only have the highest.

EXAMPLE You score 7 for “Walking up and down stairs” and 3 for “Walking on level ground” and 6 for “Reaching”. **Your total score is $7 + 6 = 13$.**

Physical Disabilities and Mental Health Problems

If you score 6, 7, 8 or 9 on the Mental Health Assessment (See Appendix 5) 9 points are added to your physical disabilities score.

APPENDIX 5

MENTAL HEALTH ASSESSMENT – ACTIVITIES AND SCORES

The wording of the Descriptors

The Descriptors were introduced in 1995. The wording of some of the Descriptors was changed in 1996/1997. Recent legal decisions by the Social Security Commissioners and the Court of Appeal (see Appendix 8) have held that some of the changes made in 1996/1997 were clearly illegal and that other changes may be illegal if it can be shown that they disadvantage people. This means that in an appeal situation you may have more room to challenge a decision that you are capable of work.

You will find that for some of the descriptors there are two different versions of the wording. You may find that you would gain points by the original rather than the current wording. In an appeal situation this could make the difference between scoring enough points to pass the PCA or not scoring enough points. For example: Activity 15 “Completion of tasks”. Activity 15 (c) – it can be argued that television programmes with their combination of sound and pictures require less concentration, so if you can follow a television programme but cannot concentrate enough to read a magazine article or follow a radio programme, then it could be argued at an appeal that the original wording of this activity should apply.

ACTIVITIES

Completion of tasks

	Descriptor	Points
a	Cannot answer the telephone and reliably take a message	2
b	Often sits for hours doing nothing	2
c	Cannot concentrate to read a magazine or article or follow a radio or television programme	1
d	Cannot use a telephone book or other directory to find a number	1
e	Mental condition prevents him from undertaking leisure activities previously enjoyed	1
f	Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration	1

- | | | |
|---|--|---|
| g | Agitation, confusion or forgetfulness has resulted in mishaps or accidents in the 3 months before the test is applied. | 1 |
| h | Concentration can only be sustained by prompting | 1 |

Daily Living

Descriptor	Points
a Needs encouragement to get up and dress	2
b Needs alcohol before midday	2
c Is frequently distressed at some time of the day due to fluctuation of mood	1
d Does not care about his appearance and living conditions	1
e Sleep problems interfere with his daytime activities	1

Coping with Pressure

Descriptor	Points
a Mental stress was a factor in making him stop work	2
b Frequently feels scared or panicky for no obvious reason	2
c Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful	1
d Is unable to cope with changes in daily routine	1
e Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest	1
f Is scared or anxious that work would bring back or worsen his illness	1

Interaction with other people

Descriptor	Points
a Cannot look after himself without help from others	2
b Gets upset by ordinary events and it results in disruptive behavioural problems	2

- c Mental problems impair ability to communicate with other people 2
- d Gets irritated by things that would not have bothered him before he became ill 1
- e Prefers to be left alone for six hours or more each day 1
- f Is too frightened to go out alone 1

SCORING SYSTEM

You will be found to be incapable of work if you score a total of 10 points or more on the Mental Health Assessment. If you score 6, 7, 8, or 9 on the Mental Health Assessment, 9 points are added to your physical disabilities score.

The scoring system is different from the physical disabilities assessment. Your scores for all the statements which apply to you are added together.

Example

Total scores of 14 made up as follows:

Completion of tasks

a,c,e and h apply to you- **Score 5 (2+1+1+1)**

Daily living

a and e apply to you-**Score 2 (1+1)**

Coping with pressure

a, b and f apply to you-**Score 5 (2+2+1)**

Interaction with other people

d and f apply to you-**Score 2 (1+1)**

APPENDIX 6

General Professional Standards expected of an IB approved doctor

Advice given by IB approved doctors is expected to be:

- ~ Fair and impartial, in accordance with the Department for Work and Pensions' Equal Opportunities policy
- ~ Medically correct
- ~ Complete, justified, and consistent
- ~ Expressed in terms readily understood by the District Office customer
- ~ Legible, where given in writing
- ~ Within the consensus of current medical opinion.

When carrying out examinations, the IB approved doctor is expected to:

- ~ Act in accordance with the Department for Work and Pensions' Equal Opportunities policy
- ~ Make the claimant welcome and feel at ease
- ~ Introduce him - or herself to the claimant
- ~ Be polite at all times
- ~ Encourage a person accompanying a claimant to be present during the examination if so desired by the claimant
- ~ Allow the claimant time to give their history, asking any questions in a non-adversarial manner
- ~ Explain the purpose of the examination
- ~ Explain what the examination entails
- ~ Carry out the examination gently to avoid any unnecessary discomfort to the claimant
- ~ Carry out a relevant examination to provide the information necessary for decision making on benefit entitlement
- ~ Answer questions posed by the claimant, without compromising the subsequent decision making process.

Reproduced from: Appendix 1 pages 137 - 138 "Incapacity Benefit Handbook for Approved Doctors"

APPENDIX 7

RECENT CHANGES

Work-Focused Interviews

For people aged under qualifying age for Pension Credit

A work-focused interview is a compulsory interview with a Personal Adviser at the Jobcentre Plus office to look at your work prospects and to offer help and support with moving into work, including drawing up an employment action plan. Only the interview is compulsory, looking for work is not compulsory.

Work-focused interviews were first introduced in April 2000 in pilot areas. Since then they have been rolled out to other areas of the country as part of the conversion of Benefits Agency and Job Centres to Jobcentre Plus offices.

When and how often?

For people claiming benefits based on incapacity for work the interview used to be part of the claim procedure. From 31st October 2005 onwards your first work-focused interview will have taken place 8 weeks into your claim. You then have work-focused interviews at periodic intervals depending on your circumstances, for example following a PCA, and for example whether you come under "Pathways to Work".

Can it affect my benefit?

Participating in the interview is compulsory. Your benefit can be reduced if you do not attend or take part in an interview without good reason. But you can't be penalised for failing to do the activities in the employment action plan, or if there is nothing you can reasonably do to move towards work, or you don't feel able to work.

You can ask for an interview to be postponed ('deferred') due to health and personal reasons. Interviews can also be 'waived' if it is felt that you have no prospects of ever working.

Contact the Jobcentre Plus office as soon as possible, if you can't attend a work-focused interview. Get advice if you need an interview to be deferred, or think interviews should be waived.

Pathways to Work

This is a government scheme which aims to help people on incapacity based benefits move into work.

Pathways to Work involves regular work-focused interviews. The usual rules on work-focused interviews, as described above, apply. There are also financial payments for people returning to work and for carrying out steps in your action plan.

APPENDIX 8

FURTHER INFORMATION AND RESOURCES

1. CASE LAW

Case law on social security legislation is made by Social Security Commissioners*, the Court of Appeal and the House of Lords. Their rulings (called “decisions” when made by the Commissioners and “judgements” when made by the Court of Appeal and the House of Lords) about the meaning of benefit law must be applied by Decision Makers and appeal tribunals.

On some occasions quoting decisions and judgements can be helpful when talking to the Department for Work & Pensions (DWP), or asking for a decision to be looked at again, or when appealing to a tribunal.

For example

Doing an activity with “reasonable regularity”.

Quote Commissioner’s Decision *26/97 (also numbered as CSIB 17/96) if you can’t do one or more of the physical or mental activities in the PCA on a reasonably regular basis. This decision quotes with approval an earlier decision of the Chief Commissioner of Northern Ireland (CI/95(IB)) which says;

“The real issue is whether, taking an overall view of the individual’s capacity to perform the activity in question, he should reasonably be considered to be incapable of performing it. The fact he might occasionally manage to accomplish it would be of no consequence if for most of the time, and in most circumstances, he could not do so.”

“Accordingly, as I see it, there must be an overall requirement of ‘reasonableness’ in the approach of the tribunal to the question of what a person is or is not capable of doing, and this may include consideration of his ability to perform the various specified activities most of the time. To that extent reasonable regularity’ may properly be considered.”

There are many other decisions: some are helpful to people with specific diagnoses, others deal with the activities and descriptors in the Personal Capability Assessment (PCA), others cover general points to do with the PCA procedures.

For example: there have been a number of recent decisions to do with the computerised PCA assessments currently being used by the Medical Services.

If you are looking for helpful caselaw you will need to contact your nearest independent advice service doing appeal tribunal work.

*from November 2008 the Commissioners are called Upper Tier Judges.

2. DEPARTMENT FOR WORK AND PENSIONS INFORMATION SERVICES

The DWP produces a leaflet IB214 which provides a detailed outline of what the PCA test consists of and the scoring systems. You can get up to 50 copies from the Jobcentre Plus office.

Full details of other leaflets, posters and information services available from the DWP are in the booklet CAT 1 "A catalogue of leaflets, posters and information" which is available on the DWP website at www.dwp.gov.uk/advisers/cat1. DWP Information Services also has a Helpline on 01253 332 921.

You can also join DWP's Publicity Register for regular update information on benefits and pensions. For more information go to the DWP website, see previous paragraph for the address.

3. CPAG WELFARE BENEFITS AND TAX CREDITS HANDBOOK (12th edition) April 2010

Price: £37.00

(£9.00 + Post free for individual benefit claimants)

Available from:

Child Poverty Action Group,
Department WS
94 White Lion Street
London N1 9PF
Tel: 02078377979

Email enquiries to bookorders@cpag.org.uk

Also available on CD Rom

4. DISABILITY RIGHTS HANDBOOK (35th edition)

Price £27.00 (incl. P&P) (£12.00 for people on benefit).

Also available on CD Rom.

Available from:

Disability Alliance,
1st floor, East
Universal House
88-94 Wentworth Street
London E1 7SA
Tel: 0207 2478776

www.disabilityalliance.org

5. INCAPACITY BENEFIT HANDBOOK FOR APPROVED DOCTORS

Available through:

DWP (See above) or downloadable from www.dwp.gov.uk

6. THE BIG BOOK OF BENEFITS AND MENTAL HEALTH 2010-11

Price: £15.99

Available from:

Judy Stenger
Neath Mind Income Project
32 Victoria Gardens
Neath
SA11 3BH
Tel: 01639 643905
Email: welfarights@btconnect.com

Also available from:

MIND
www.mind.org.uk/shop/books/work_money_benefits

7. BUNGLED OFF BENEFIT

A video made by mental health service users about surviving the PCA medical. Downloadable from www.ceimh.bham.ac.uk



CEIMH PUBLICATIONS

Titles in the series:

Paper 1:

Ann Davis, Alex Davis and Martin O'Kane (2010) Claiming Disability Living Allowance: An Information pack for people aged under 65 using Mental Health Service, their Carers and Advocates.

Paper 2:

Jean Betteridge & Ann Davis (2010). Mental Health & Incapacity for Work: An Information Pack for People Claiming Incapacity Benefit, Income Support & Severe Disablement Allowance.

Paper 3:

Marion Clark, Ann Davis, Adrian Fisher, Tony Glynn and Jean Jefferies (2008): Transforming Services: Changing Lives. A Guide to Action

Paper 4:

Jean Betteridge, Alex Davis, Ann Davis and Martin O'Kane (2010): Claiming Attendance Allowance: An Information Pack for adults aged 65 or over with Mental Health Issues, including Dementia, their Carers and Advocates.

Copies of this report can be downloaded from www.ceimh.ac.uk. Alternatively send a stamped addressed envelope with a large first or second class stamp) to: Ann Davis, Centre of Excellence in Interdisciplinary Mental Health, Muirhead Tower, The University of Birmingham, Edgbaston, Birmingham B15 2TT

