
STATUTORY INSTRUMENTS

2013 No. 379

The Employment and Support Allowance Regulations 2013

PART 11

Supplementary provisions

Claimants appealing a decision

87.—(1) This regulation applies where a claimant has made and is pursuing an appeal against a decision of the Secretary of State that embodies a determination that the claimant does not have limited capability for work under these Regulations.

(2) Subject to paragraph (3), where this regulation applies, a determination of limited capability for work by the Secretary of State under regulation 15 must not be made until the appeal is determined by the First-tier Tribunal.

(3) Paragraph (2) does not apply where either—

- (a) the claimant suffers from some specific disease or bodily or mental disablement from which the claimant was not suffering when entitlement began; or
- (b) a disease or bodily or mental disablement from which the claimant was suffering when entitlement began has significantly worsened.

(4) Where this regulation applies and the Secretary of State makes a determination—

- (a) in a case to which paragraph (3) applies (including where the determination is not the first such determination) that the claimant does not have or, by virtue of regulation 18 or 19, is to be treated as not having limited capability for work; or
- (b) subsequent to a determination that the claimant is to be treated as having limited capability for work by virtue of a provision of these Regulations other than regulation 26, that the claimant is no longer to be so treated,

this regulation and regulation 26 have effect as if that determination had not been made.

(5) Where this regulation applies and—

- (a) the claimant is entitled to an employment and support allowance by virtue of being treated as having limited capability for work in accordance with regulation 26;
- (b) neither of the circumstances in paragraph (3) applies, or, subsequent to the application of either of those circumstances, the claimant has been determined not to have limited capability for work; and
- (c) the claimant's appeal is dismissed, withdrawn or struck out,

the claimant is to be treated as not having limited capability for work with effect from the day specified in paragraph (6).

(6) The day specified for the purposes of paragraph (5) is the first day of the benefit week following the date on which the Secretary of State receives the First-tier Tribunal's notification that the appeal is dismissed, withdrawn or struck out.

(7) Where a claimant's appeal is successful, subject to paragraph (8), any finding of fact or other determination embodied in or necessary to the decision of the First-tier Tribunal or on which the First-tier Tribunal's decision is based is to be conclusive for the purposes of the decision of the Secretary of State, in relation to an award made in a case to which this regulation applies, as to whether the claimant has limited capability for work or limited capability for work-related activity.

(8) Paragraph (7) does not apply where, due to a change of circumstances after entitlement began, the Secretary of State is satisfied that it is no longer appropriate to rely on such finding or determination.