

Disability Law Service

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Mandatory Reconsiderations for ESA (physical functions)

**Points to consider when requesting a
Mandatory Reconsideration**

Introduction

To successfully overturn an ESA decision in a *Mandatory Reconsideration*, you will have to make a reference to the descriptors in the assessment that apply to you and how they affect your daily life, giving examples where possible.

You may use this guide to understand how an assessor scores your condition in the assessment, and to best explain your circumstances in a way the decision maker will be more likely to reconsider in your favour.

The Limited Capability for Work Assessment: Physical Functions

The limited capability for work assessment has 10 activity headings relating to physical disabilities. Under each activity heading is a list of *descriptors* with scores ranging from 0 to 15 points. You score points when you are not able to perform a task described safely, to an acceptable standard, as often as you need to and in a reasonable time.

The highest points you score under each activity heading are added together and, if you score 15 points or more, you are assessed as having a limited capability for work. These points can be scored under just one activity heading or from any number of headings added together.

If you believe a decision is wrong because you have not been awarded enough points on the assessment, you must explain if you meet any of the descriptors in an activity and how this affects your daily life, giving examples where possible.

Provide as much evidence as possible to accompany your statements both in the mandatory reconsideration and appeal phases. A medical report from your GP addressing the descriptors that affect you could especially prove to be invaluable in successfully appealing the decision.

Activity 1: Mobilising

Activity 1 is defined in regulations as: 'Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally or could reasonably be, worn or used'.

Activity 1 assesses the ability to move around and to use steps - points are awarded depending on how far a claimant can move safely and repeatedly on level ground without needing to stop - including the use of aids such as a manual wheelchair, crutches or walking stick which are normally or could reasonably be used. The activity also assesses the ability to go up or down two steps without the help of another person.

Descriptors

The descriptors that relate to Activity 1 are –

a) Cannot, unaided by another person, either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion. 15 points

b) Cannot, unaided by another person, mount or descend two steps even with the support of a handrail. 9 points

c) Cannot, unaided by another person, either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion. 9 points

d) Cannot, unaided by another person, either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion. 6 points

e) None of the above applies. 0 points

What you will need to do

First, you are asked how far you can move safely and repeatedly on level ground without needing to stop (with choices of 50 metres, 100 metres, 200 metres or more, or 'it varies'. 'Moving' in this case includes using aids such as crutches, a walking stick or a manual wheelchair (but not an electric wheelchair) without help from another person; it is not simply about walking.

If you have difficulty walking, but do not use a manual wheelchair because it would not make getting around any easier for you, explain why. For instance, you may lack the arm strength to be able to manoeuvre the chair properly. The walking must also be completed reasonably. If you can complete a task but suffer significant pain or distress in doing so, or if a particular descriptor activity can only be performed by inducing significant breathlessness or distress, you should explain this.

If you are unsure how far you can move before you need to stop, then you should test yourself on an average day. It would help if you had someone with you to measure the distance in paces; one pace of an average healthy male adult is about three-quarters of a metre. Time how long it takes you to cover the distance, and the tribunal might feel that it is more able to rely upon your estimate as to the time it might take to accomplish a journey if it is one which is undertaken with regularity, for example a trip to your local pharmacy. It is also important to realize that it does not matter whether you have to stop for a few seconds or for several minutes, any interruption to avoid significant discomfort or exhaustion suffices, whether the interruption is better described as stopping or a pause.

Explain if precautions or techniques you use on a regular basis in a controlled environment, like your home, might not be able to be maintained in a workplace. For example, any coping technique based on the ability to reach a toilet quickly to avoid incontinence would need to be disregarded, because immediate access to toilet facilities cannot be guaranteed in all situations or workplaces.

Second, you are asked whether or not you can go up or down two steps without help for another person if there is a rail to hold on to. Even if you are able to this once, if fatigue, pain or co-ordination or balance difficulties prevent you from being able to do it repeatedly (after reasonable rest periods), you should state that you are actually incapable of doing it and should explain these circumstances. If you have fallen when trying to negotiate steps in the past, write down what happened.

The phrase 'unaided by another person' does not necessarily limit its scope to physical assistance and can also include psychological support that you may need, provided it is 'active' support (e.g. talking and hand movements). For example, a person who has an acute phobia of stairs or fear of falling down them may just as much be aided by a person talking to, reassuring and cajoling them

as does the act of physical aid by another person. Let them know if this is the case.

Activity 2: Standing and sitting

Activity 2 is defined in regulations as: 'Standing and sitting'.

Activity 2 assesses the ability to remain in one place - a workstation - by either standing with the freedom to move around, or sitting using an adjustable chair. It also assesses the ability to transfer independently from one seated position to another.

Descriptors

The descriptors that relate to Activity 2 are –

a) Cannot move between one seated position and another seated position which are located next to one another without receiving physical assistance from another person. 15 points

b) Cannot, for the majority of the time, remain at a work station: (i) standing unassisted by another person (even if free to move around) or; (ii) sitting (even in an adjustable chair) or (iii) a combination of (i) and (ii) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion. 9 points

c) Cannot, for the majority of the time, remain at a work station: (i) standing unassisted by another person (even if free to move around); (ii) sitting (even in an adjustable chair); or (iii) a combination of paragraphs (i) and (ii), for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion. 6 points

d) None of the above applies. 0 points

What you will need to do

Two tasks are considered under this heading.

First, you are asked if you can move from one seat to another right next to it without help from someone else. This will be relevant if you are a wheelchair user and are unable to transfer from the wheelchair without help. Simple aids such as

4

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a transfer board will be taken into account, but the use of more elaborate apparatus, such as a hoist, should be ignored.

Write down if you have problems with similar activities, such as getting on and off the toilet or getting in and out of a car and explain how these difficulties affect your daily life.

Second, you are asked how long you can stay in one place, either standing or sitting, or a combination of the two, without help from another person and without pain. This test should not assess simply whether you are able to sit in a chair, it should be considering whether you are able to 'remain at a work station' in the context of working at a job. If, for example, you need to sit with a rigidly outstretched leg so that you could not fairly be said to be capable of doing a job of work at a work station, even with the benefit of an adjustable chair, this would not amount to 'remaining sat at a work station'.

You are not expected to remain still, and you can change position. With standing, you would be expected to use aids such as a walking stick, if they help. However, if you can only stand using two sticks, make sure you explain this as you should be treated as unable to stand because this would severely limit the sort of work you could do while standing (such as using the phone).

Although you are expected to alternate between sitting and standing if this would be helpful to staying in one place, there may be situations where you have to alternate so much between the two positions that you cannot 'remain at a work station' in any meaningful way. Clearly explain this fact if you feel as though this is usually the case for you. If the pain becomes extreme and the contortions undertaken to relieve it were frequent, or where moving away would not help at all this will also be taken into account.

Activity 3: Reaching

Activity 3 is defined in regulations as: 'Reaching'.

Activity 3 relates to shoulder function and/or elbow function in both arms. It assesses the ability to raise the upper limbs to a level above waist height, having regard to the claimant's ability to reach in an upward direction through movement at the shoulder including forward and sideward movement and internal rotation of the shoulder. It is an evaluation of power, co-ordination and joint mobility in the upper limbs.

Descriptors

The descriptors that relate to Activity 3 are –

- a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket. 15 points**
- b) Cannot raise either arm to top of head as if to put on a hat. 9 points**
- c) Cannot raise either arm above head height as if to reach for something. 6 points**
- d) None of the above applies. 0 points**

What you will need to do

This activity focuses on your ability to raise your arms above waist height. It is about reaching upwards, not about manual dexterity. To obtain points, you must have problems with both arms.

When answering whether you can or cannot do the task described, you need to consider whether you can do it repeatedly, not just once.

If you cannot raise either arm to the top of your head as if to put on a hat, you should explain this, as this question is unjustifiably excluded from the questionnaire.

Activity 4: Picking up and moving or transferring

Activity 4 is defined in regulations as: 'Picking up and moving or transferring by the use of the upper body and arms'.

Activity 4 assesses the ability to pick up and transfer articles at waist level, a level that requires neither bending down and lifting, nor reaching upwards. A claimant's upper limb power, joint movement and coordination may have to be considered.

Descriptors

The descriptors that relate to Activity 4 are –

- a) Cannot pick up and move a 0.5 litre carton full of liquid. 15 points**

b) Cannot pick up and move a one litre carton full of liquid. 9 points

c) Cannot transfer a light but bulky object such as an empty cardboard box. 6 points

d) None of the above applies. 0 points

What you will need to do

This activity focuses on your ability to pick up and move light objects (specifically: a half-litre carton of liquid, a litre carton of liquid and an empty bulky cardboard box). You are not asked if you can pick up the objects from the ground, so it is assumed that you are moving the object at waist level; neither are you asked if you can do each task with just one hand.

When moving objects at waist level, the assessment needs to consider the use of your shoulder and neck in this process and how they would be affected by your limitations. Make sure to explain any difficulties arising from this.

Remember to focus on whether or not you can do the task described repeatedly (after a reasonable rest period in each case), and not whether you can do it just once.

If you have dropped objects of a similar size in the past when trying to move them, write down what happened. In this way, you may be able to show that you cannot perform the task in question *reliably*.

Activity 5: Manual dexterity (using your hands)

Activity 5 is defined in regulations as: 'Manual dexterity'.

Activity 5 assesses hand and wrist function and the level of ability to manipulate objects that a claimant would need in order to carry out work-related tasks. Ability to use a pen or pencil is intended to reflect the ability to make a purposeful mark such as a cross or a tick. The same concept applies to the use of a computer keyboard. A claimant will be assessed as able to use a keyboard or mouse if they can use either of them.

Descriptors

The descriptors that relate to Activity 5 are –

7

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- a) Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand. 15 points
- b) Cannot pick up a £1 coin or equivalent with either hand. 15 points
- c) Cannot use a pen or pencil to make a meaningful mark with either hand. 9 points
- d) Cannot single-handedly use a suitable keyboard or mouse. 9 points
- e) None of the above applies. 0 points

What you will need to do

This activity focuses on your ability to use your hands and wrists in relation to the kind of things you would be expected to do at work. A number of different tasks are dealt with here, including a pen or pencil and a suitable keyboard or mouse. It is the problems you have in being able to press, turn, pick up or manipulate the object in question that matters here, not whether you are literate or understand how to use a computer.

You are asked if you can manage the tasks with either hand. So, if you can manage to do something effectively with one hand, but not the other, you will not pick up any points for the task, bear in mind that it is your ability to perform each task repeatedly and reliably that matters.

The phrase '*cannot single-handedly use a suitable keyboard or mouse*', means that if you are unable to perform either one of the tasks you will score points.

Activity 6: Making self understood

Activity 6 is defined in regulations as 'Making self understood through speaking, writing, typing, or other means which are normally or could reasonably be used, unaided by another person'.

Activity 6 assesses the ability to express yourself rather than simply speech. The scope of the activity includes impediment to communication such as an inability to express thoughts, resulting from brain injury or generalised neurological conditions causing problems with speech and manual dexterity such as Motor

8

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Neurone Disease and advanced Parkinson's Disease. The ability to write, type or text needs to be considered in cases of speech difficulties.

Descriptors

The descriptors that relate to Activity 6 are –

- a) Cannot convey a simple message, such as the presence of a hazard. 15 points**
- b) Has significant difficulty conveying a simple message to strangers. 15 points**
- c) Has some difficulty conveying a simple message to strangers. 6 points**
- d) None of the above applies. 0 points**

What you will need to do

This activity looks at your ability to express yourself, by talking or by other methods. It may be relevant if your condition affects your speech and you also have difficulty writing or typing because of reduced dexterity. It is assumed you are using the same spoken language as the person with whom you are communicating and that they can understand your accent or dialect.

You are asked if you can communicate a simple message to other people (such as the presence of something dangerous) by speaking, writing, etc. but without the help of another person.

You will need to make clear which of the descriptors best fits your situation, given examples where possible. You should also explain why you cannot write or type the message (if you have dexterity problems, you can cross-reference your answer to Activity 5 above).

Activity 7: Understanding communication

Activity 7 is defined in regulations as: 'Understanding communication by: (i) verbal means (such as hearing or lip reading) alone; (ii) non-verbal means (such as reading 16 point print or Braille) alone; or (iii) a combination of sub-paragraphs (i) and (ii), using any aid that is normally or could reasonably be used, unaided by another person'.

9

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Activity 7 considers difficulties in understanding a simple spoken or written message because of sensory impairment. In each case a descriptor can be satisfied because of hearing or sight problems, so it is only necessary to show you have difficulty or cannot understand a spoken or written message, and not both.

Descriptors

The descriptors that relate to activity 7 are –

- a) Cannot understand a simple message, such as the location of a fire escape, due to sensory impairment. 15 points**
- b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment. 15 points**
- c) Has some difficulty understanding a simple message from a stranger due to sensory impairment. 6 points**
- d) None of the above applies. 0 points**

What you will need to do

This activity is relevant if you have hearing or visual problems. You are asked two questions.

First, whether or not you can understand simple messages (such as the location of a fire escape) from other people by hearing or lip-reading without the help of another person.

Second, whether or not you can understand simple messages from other people by reading large-size print or using Braille.

You should have gotten 15 points if you cannot understand either a simple spoken message or a simple written message due to sensory impairment; 15 points could also be obtained if you have ‘*significant difficulty*’ understanding a simple message from a stranger due to sensory impairment and 6 points if you have ‘*some difficulty*’ doing so. If any of these apply, you should make this clear.

Note that in each case the requirement is that you are unable to understand *either* a spoken message *or* a written message, it is not necessary for both faculties (hearing and sight) to be impaired. So, for example, if you can hear a spoken

message but cannot read the message in large-size print or Braille, descriptor (a) would apply and you should score 15 points.

Activity 8: Navigation and maintaining safety

Activity 8 is defined in regulations as: 'Navigation and maintaining safety using a guide dog or other aid if either or both are normally used or could reasonably be used'.

Activity 8 considers the impact of visual restrictions on the ability to safely navigate having regard to the reduced function in the person's central vision and focus, peripheral vision and a person's ability to adapt to their condition. The person's confidence and training must be taken into account and the concept of safety awareness and the person's ability to safely negotiate hazards in a workplace must also be considered.

Descriptors

The descriptors that relate to Activity 8 are –

- a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment. 15 points**
- b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment. 15 points**
- c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment. 9 points**
- d) None of the above applies. 0 points**

What you will need to do

This activity focuses on your ability to navigate and get around safely. It may apply if you have visual problems.

If your vision has only recently deteriorated, explain if this has affected your confidence in any way as this should be taken into account. If your vision varies from day to day, describe what you are like on both bad days and good days and how often the bad days occur.

Provide details of any situations that have occurred when you have tried to get around without someone with you, for example bumping into things or people, getting lost, or incidents with traffic. Write down if your driving license has been withdrawn because of your visual problems.

Dizziness affecting balance and motion sickness when walking should be considered for this activity. For example, if turning your head to check for traffic when crossing the road can cause a particular problem in this regard.

Activity 9: Evacuation of the bowel and/or bladder (LCW)

Activity 9 is defined in regulations as: 'Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally or could reasonably be worn or used'.

Activity 9 considers the ability to maintain continence of bladder or bowel, or prevent leakage from a collecting device. The descriptors take into account loss of continence while a claimant is awake/conscious and the loss of continence must lead to 'extensive' leakage of urine or feces which is likely to require the person to have to wash and change clothing.

Descriptors

The descriptors that relate to Activity 9 are –

a) At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device, sufficient to require cleaning and a change in clothing. 15 points

b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly. 6 points

c) Neither of the above applies. 0 points

What you will need to do

This activity concerns your ability to control your bowels or bladder (or use a collecting device, such as stoma bag or catheter, without leakage). This can be a difficult area because it is so personal, but try to put as much information down as you can as it is all absolutely confidential.

Bladder incontinence that occurs when you are asleep will be ignored, as will minor leakage that can be contained by the use of pads.

All that is required is a change of clothing, not a complete change. Almost any change of clothing would count for this purpose since the soiled clothing would then have to be retained in a workplace for the rest of the day.

If you have mobility problems that mean you are not able to get to the toilet in time, these should be taken into account. Explain what precautions you have tried to take and why these may not always work. If you are incontinent because you are unable to reach the toilet quickly enough as a result of mobility issues, then you should explain this. For example, if you have urge incontinence and have to change your clothes at least once a month despite the use of incontinence aids because you are unable to reach the toilet quickly enough as a result of a lower limb / back problem then you will satisfy descriptor (a).

Activity 10: Consciousness during waking moments

Activity 10 is defined in regulations as: ‘Consciousness during waking moments.’

Activity 10 assesses any involuntary loss or alteration of consciousness resulting in significantly disrupted awareness or concentration occurring during normal waking hours and which prevents the claimant from safely continuing with any activity. Altered consciousness may include where a claimant has clouding of mental faculties resulting in loss of control of thoughts and actions although they will not be fully unconscious.

Descriptors

The descriptors that relate to Activity 10 are –

a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. 15 points

b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. 6 points

c) Neither of the above applies. 0 points

What you will need to do

This activity covers fits, seizures or absences. It should cover *'any involuntary loss or alteration of consciousness resulting in significantly disrupted awareness or concentration'* that occurs during the hours when you are normally awake. The DWP describes *'altered consciousness'* as *'... a definite clouding of mental faculties resulting in loss of control of thoughts and actions'*.

The DWP does not consider giddiness, dizziness or vertigo (in the absence of an epileptic or similar seizure) to be states of altered consciousness. Neither does it consider that migraine symptoms would result in a significant loss of consciousness in most cases (basilar-type migraine is potentially an exception). Falling asleep during the day does not equate to loss of consciousness.

Drowsiness caused by medication could be considered to be an involuntary loss or alteration of consciousness, if severe enough.

'Altered consciousness' implies that, although not fully unconscious, there is a definite clouding of mental faculties resulting in loss of control of thoughts and actions. Explain if this situation relates to you and give examples if this has occurred in the past.

Altered consciousness can be the result of anxiety and panic attacks. Describe past experiences: how you felt they led to altered consciousness and how they resulted in significantly disrupted awareness or concentration.

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