

ESA: GOOD CAUSE

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INTRODUCTION

- 1 This memo expands the existing guidance in DMG 42261 et seq on what should be taken into account when considering whether a claimant failed to attend for or submit to a medical examination¹ without good cause².

1 ESA Regs 08, reg 23 & 38; 2 reg 24 & 39

GENERAL CONSIDERATIONS

- 2 When considering whether the claimant showed good cause, the DM should ensure that they fully explain how they made their determination by recording
 1. findings about the claimant’s state of health at the time and the nature of their disability
 2. what evidence was considered
 3. what findings were made on the evidence
 4. what steps they took to contact the claimant
 5. whether the claimant is vulnerable

6. whether there were previous failures and whether good cause was accepted
 7. the reasons for their determination on good cause.
- 3 DMs are reminded about the guidance on evidence in DMG 01300 et seq, and in particular about the guidance on corroboration at DMG 01380 et seq.

CLAIMANT'S STATE OF HEALTH

- 4 The claimant may state that they were unable to attend a face-to-face assessment due to the state of their health on the date of the appointment (see DMG 42267). Claimants may have difficulty in producing further medical evidence to support their statement, as GPs are not obliged to provide this. Failure to provide such evidence is **not** of itself a reason for refusing to accept that good cause was shown.
- 5 The DM should consider whether the stated health problem prevented the claimant from contacting Medical Services to re-arrange the appointment. The DM should also consider the nature of the claimant's health condition and whether it could reasonably have lead to the claimant being, for example, incapacitated, forgetful, confused, unmotivated or too anxious to comply with the process because of their health condition.

Example 1

Luke has an appointment for an examination on 5.8.13. He contacts Medical Services to say that he cannot attend as he has flu, and arranges another appointment for 19.9.13. Luke fails to attend the new appointment. He returns the BF223 form explaining that the reason he did not attend was because he still had flu. Luke's recent fit note shows low back pain as the reason for LCW. The DM determines that good cause was not shown. Flu is incapacitating but usually only lasts for a week where there are no complications. It was unlikely that he still had flu since the previous appointment, and in any event it should not have prevented him from contacting Medical Services.

Example 2

Katie has an appointment for an examination on 2.10.13, but fails to attend. She states on the BF223 form that she woke up on the day of the appointment with severe dental pain, and had to wait in the dentist's surgery for an emergency appointment. She required root canal treatment, and was prescribed a 5 day course of antibiotics for an infected wisdom tooth. As a result she was unable to attend the appointment. The DM accepts that good cause was shown for the failure to attend.

NATURE OF CLAIMANT'S DISABILITY

- 6 DMs are reminded that the nature of the claimant's disability is a factor that **must** be taken into account when considering whether good cause is shown (see DMG 42261). The DM should make every effort to ensure that all sources of evidence are considered before making a determination on good cause. Evidence about the claimant's health may be obtained from
1. form BF223 (good cause enquiry form)
 2. any fit notes supplied
 3. ESA1 claim form
 4. ESA50 questionnaire where one is available
 5. any evidence previously submitted that is relevant
 6. ESA85 report where one is available.
- 7 This may be particularly relevant in cases where the claimant has
1. mental health conditions affecting memory or concentration
 2. a learning difficulty, for example where this affects comprehension
 3. medication which affects memory or concentration
 4. a sensory impairment, such as being registered blind.

Example 1

Jack claims ESA. His fit note states that he has problems with his feet. Jack fails to return form ESA50, and did not give any reasons for this failure. The award of ESA was terminated. Jack's social worker returned the form which had been completed for him, and explained that Jack had significant difficulties understanding correspondence, and often delayed seeking help as he panicked. Good cause is accepted, and ESA is reinstated.

Jack then fails to attend an examination on 24.9.13, and does not reply when the BF223 form is issued. The evidence in the questionnaire is that Jack has severe learning difficulties. He has limited literacy skills and lives alone. The DM accepts that Jack had good cause for failure to attend the examination, as due to the nature of his disability he is unable to comply with the process. The DM determines that Jack is

likely to need ongoing support for his benefit claims and refers for consideration of appointee action. They also request that Medical Services arranges a home visit.

Example 2

Tamara is required to attend for an examination on 13.9.13. She rings the examination centre and says that she is due to attend an out-patient clinic at the same time. She is offered and accepts a further appointment for 24.9.13, which she fails to attend.

Tamara does not return form BF223, or respond to attempts to phone her. There is no evidence in the claim form, fit note or ESA50 which indicates that her health condition is likely to impact her ability to attend the appointment. The DM determines that Tamara did not have good cause for the failure to attend, and treats her as not having LCW.

Example 3

Alex claims ESA, stating that he suffers from agoraphobia, anxiety and depression. He does not return the questionnaire. Alex contacts Medical Services to ask for a home visit after being asked to attend the examination centre. The appointment is rearranged, and he is advised to get a supporting letter from his GP. Alex fails to attend an examination 15.8.13. In the BF223 form he states that his GP had told him he would fax a letter to the examination centre requesting a home visit. He had no copy of the letter, and was struggling to keep organised. There is no information on the Medical Services computer system about a request for home visits, but the DM has no reason to doubt Alex's explanation. The DM accepts that Alex had good cause for his failure to attend. The DM also asks Medical Services to arrange a home visit.

PREVIOUS WCA ATTENDED

- 8 The fact that the claimant has previously attended the WCA and been found to have LCW is not sufficient reason that good cause has not been shown for a subsequent failure to attend. The DM should consider each case on its merits.

Example

Lorraine, who has mental health problems, is placed in the SG following previous application of the WCA. She is referred for a further WCA 18 months later, and does not return the questionnaire. She also fails to attend for examination.

In response to the BF223 form, Lorraine's CPN says that due to the strength of the medication taken for several years for paranoid schizophrenia, Lorraine often forgets

to carry out daily tasks or attend appointments. The fact that Lorraine had previously managed to attend for examination despite her memory problems is not of itself sufficient to show that there was no good cause for the current failure.

REPEATED FAILURES

- 9 Where a claimant repeatedly fails to attend an examination, and good cause is accepted, the DM should consider the previous reasons given critically. It may be appropriate to require further evidence to support any explanation for the subsequent failure. Wherever possible the DM should contact the claimant to discuss the importance of attendance.
- 10 However, the fact that good cause was previously accepted is not a reason for concluding that the claimant should be aware of the requirement to attend a subsequent appointment. The same reasons for the failure may continue to demonstrate that good cause is shown, such as in the case of a claimant who has a long term mental health problem, who can only intermittently comply with the processes necessary to manage their benefit claim due to effects of their condition and its treatment.

Example

Viktor failed to attend for an examination. He did not respond to the BF223 form, and his ESA award was terminated. He subsequently provided evidence that on the day of the appointment he had a panic attack on his way to the assessment centre. He was taken to hospital, and discharged later in the day. The DM accepts that good cause was shown, and ESA is reinstated.

Viktor fails to attend the subsequent appointment. He replies on the BF223 form, saying that he had a panic attack and felt unable to leave the house on the day of the appointment, and was too anxious to explain this at the time. The DM accepts that good cause was shown, and asks Medical Services to consider a home visit.

- 11 The DM may wish to consider whether it would be possible to ensure that the claimant does not fail to attend future appointments, where the nature of the claimant's health condition is the reason for good cause being accepted, and the health condition is likely to be long term. For example, if the evidence shows that the claimant is not capable of arranging their own affairs, is appointee action appropriate? Should a home visit be recommended?

ANNOTATIONS

Please annotate the number of this memo (Memo DMG 2/14) against the following DMG paragraphs:

DMG 42261 heading

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: February 2014