

Benefits Bulletin REVISED

Disabled Students and Universal Credit

31st August 2020

Issue **3** [2020]

1. Introduction

The Department for Work and Pensions (DWP) has introduced new regulations ([Statutory Instrument 2020 No. 827](#)) with effect from **5th August 2020**, which serve to restrict the circumstances in which disabled students embarking on or already attending courses of 'non-advanced education' or 'advanced education' may apply for Universal Credit.

The regulations previously read that a disabled student could apply for Universal Credit if they:

- were getting Personal Independence Payment (Disability Living Allowance or Attendance Allowance); and
- had 'limited capability for work' under the Work Capability Assessment.

This was ambiguous in itself because it was not clear what had actually meant. Did it mean that to qualify:

A. a disabled student must already have in place a 'limited capability for work' determination as part of an existing Universal Credit (or Employment and Support Allowance) claim before they enter education; and/or

B. a disabled student would need to be found to have 'limited capability for work' under the new Universal Credit claim made on the date they enter education or during their studies?

The ambiguity led to mixed practices and decision-making on behalf of the DWP.

The [Explanatory Memorandum](#), which accompanied the new regulations, states that the original policy intention was that Universal Credit should only be made available in the cases of A. not B. and that the new regulations reflect this.



By 'disabled student' we mean a person in education or person who is about to embark on a course of education who has a physical or mental health condition.

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According to the Explanatory Memorandum, the objective is that Universal Credit will provide some financial support to enable those with 'limited capability for work' to be encouraged to enter full-time education as a means of improving their job prospects, the viewpoint being that someone already in education does not need that encouragement.

The problem is that many people seek to apply for Universal Credit as they enter into education or as a result of the onset of a health condition (or deterioration of an existing condition) during their studies.

As stated, the old rules led to mixed practices. In some parts of the country the DWP have been telling disabled students that it would not put them through the Work Capability Assessment (in order to make a 'limited capability for work' determination) and was, in consequence, refusing their claims on the basis that they did not already have a 'limited capability for work' determination. There has been a great deal of lobbying on the subject on behalf of disabled students and presently there is a High Court case which is due to examine the human rights/equal opportunity aspect of the legislation/former practice.

This Benefits Bulletin seeks to explain the new rules and to confirm what we believe the advice should be to disabled students who find themselves affected by them.

The starting point should be to recognise that Universal Credit may be claimed by people in education in a number of different situations and that if a student with disabilities cannot apply because of the new rules, they should check to see whether they can apply under another provision (see Section 3 on page 4). Parents of some young disabled students attending 'non-advanced education' (principally young people for whom Child Benefit may be claimed) may be entitled to extra Universal Credit (or Child Tax Credit) for them during their education.

Where this does not apply a disabled student themselves may be able to take the following steps:

- apply for New Style Employment and Support Allowance (New Style ESA) - See Note 2 on page 6 - to get a 'limited capability for work' determination before applying for Universal Credit; and/or
- apply for Universal Credit and challenge any decision that they do not qualify because they did not have a 'limited capability for work' determination before they embarked on their studies on grounds of discrimination and the High Court challenge.

In some cases, the best advice is that the disabled student should take both steps in an attempt to secure Universal Credit entitlement.



Of course, in the case of 'advanced education' the disabled student may be able to access a student loan and/or grant. They may be applying for Universal Credit merely as a top-up to this. In this situation it would be advisable that they first check if they would qualify for any Universal Credit irrespective of the new rules issue discussed herein. It could be that the amount of the student loan/grant received is greater than any possible Universal Credit entitlement and, therefore, there would be no point in pursuing an application for Universal Credit. By the same token, in cases of 'non-advanced education' it is Universal Credit or bust - the disabled student would have no income but for Universal Credit.

The new rules will impact greatly on disabled students who are attending courses of 'non-advanced education' (whether that be whilst living with parents or attending residential college) where their parents are not entitled to extra Universal Credit (or Child Tax Credits) for them whilst they are studying.



This is because there will be no financial safety net for them, they will not be able to apply for Universal Credit in their own right and their parents will not get any financial support for them except for Child Benefit which would end when the disabled student is aged 19 (up to 31st August after their 19th birthday).

The outcome of the High Court case (or any further challenge to the Court of Appeal or Supreme Court) challenging the former rules (pre 5th August), and what impact that may have on the new rules (post 5th August) may change the current situation and future advice to disabled students.

If you need further information or advice on how best to proceed (or what the options are) in any particular case then do get in touch with the Specialist Support Team. You can email them at wrs@wolverhampton.gov.uk or ring them on (01902) 555351.



2. What is Universal Credit?

Universal Credit is a Social Security benefit designed to provide people with a minimum income to meet the cost of day-to-day living and their rent. It can be claimed in a variety of different circumstances including when someone is without paid employment, working or unable to work due to ill-health.

The actual amount of Universal Credit awarded is dependent on the circumstances of the claimant and any partner.

When a person successfully applies for Universal Credit, their actual entitlement is assessed using the 'Maximum Amount of Universal Credit' figure for their circumstances.

This 'Maximum Amount of Universal Credit' is greater for couples, those with children and those with disabilities.

A person's (and their partner's) assessed income is then deducted from the 'Maximum Amount of Universal Credit'. Some income types are fully disregarded in the calculation (e.g. Personal Independence Payment, Disability Living Allowance, Attendance Allowance and Child Benefit) whereas others will either be fully taken into account (e.g. New Style ESA and Carer's Allowance) or partly taken into account (e.g. earnings from employment).

The balance, if there is one, is the amount of Universal Credit that may be paid.



Universal Credit can be paid by itself or as a top-up to other Social Security benefits, income and earnings. However, it cannot be awarded to someone if they are assessed as having £16,000 or more in savings or capital.

If a student is in 'advanced education' then any student loan (even if they choose not to apply for one) or grant is taken into account as income excluding, for example, any amount intended for tuition fees, books, travel, equipment and/or childcare. Any disabled student allowance would also be fully disregarded.

The very fact that student loans/grants are taken into account often means that even when a student is able to apply for Universal Credit, they will not qualify for a payment because the amount of the student loan/grant taken into account is greater than the Maximum Amount of Universal Credit.

3. Students and Universal Credit

Although Universal Credit is viewed as providing a minimum income for all, it is not available to everyone. Indeed, the rules provide that people who are considered to be **'receiving education'** are, with some exceptions, excluded from applying.

A disabled student will be considered to be 'receiving education' for Universal Credit purposes if they:

- are undertaking a full-time course of 'advanced education' (e.g. a degree or postgraduate level course); or
- are undertaking a full-time course of study or training for which a loan or grant is provided for their maintenance; or
- count as a **'qualifying young person'** because they are aged under 19 (or aged 19 up to and including 31st August after their 19th birthday) and they are undertaking a course of 'non-advanced education'.

A disabled student will also be treated as 'receiving education' if none of the above apply but they are undertaking a course of study or training that is not compatible with the 'work-related requirements' imposed upon them by the DWP as part of their Universal Credit claim.



Apart from the very specific condition which is being examined in this Benefits Bulletin, even if a disabled student is considered to be 'receiving education' they may still qualify for Universal Credit if they:

- are aged under 21 (or aged 21 providing they turned 21 during their course) and undertaking a course of 'non-advanced education' (e.g. a course below or equivalent to a GCSE or A-level standard) and they may be considered to be without 'parental support' because they have no parents (or persons acting in place of their parents) or because they must live away from their parents (or persons acting in place of their parents) because they are estranged from them or because if they were to live with their parents (or persons acting in place of their parents) there would be a serious risk to their physical or mental health and/or safety
- have a child
- are a single foster parent
- are over pension age but their partner is not
- are a member of a couple and either their partner is not a person 'receiving education', or their partner is a person who is 'receiving education' but they are able to apply for Universal Credit.

In relation to this Benefits Bulletin and disabled students, Regulation 14(b) of the Universal Credit Regulations 2013 used to provide that a disabled student would not be considered to be 'receiving education' if they were "... entitled to Attendance Allowance, Disability Living Allowance or Personal Independence Payment and has limited capability for work'.

Now, since 5th August 2020, Regulation 14(b) of the Universal Credit Regulations 2013 has been amended so that it now reads that a disabled student should not be considered to be 'receiving education' if they:

- are entitled to Attendance Allowance, Disability Living Allowance or Personal Independence Payment; and
- it has been determined that they have (or may be treated as having) 'limited capability for work' under the Universal Credit rules or Employment and Support Allowance rules; and

- the determination that they have (or may be treated as having) 'limited capability for work' (LCW) was 'made on or before the date of claim to Universal Credit, where the person is receiving education on the date the claim is made, or the date on which the person starts receiving education, where the person starts receiving education after the date of claim to Universal Credit'.

Therefore, by our reading of things (including the Explanatory Memorandum) this means, that at the very least, a disabled student will not be able to apply for Universal Credit during their studies unless it has been determined that they have 'limited capability for work' (e.g. by way of a claim for New Style ESA) or as part of a Universal Credit claim made before they start their studies.

The following case study examples highlight the potential benefit entitlements of disabled students (with an award of Personal Independence Payment but **WITHOUT** a 'limited capability for work' determination) and their parents under the new rules whilst they are in 'non-advanced education' and/or 'advanced education'.



Example 1: Jason is aged 16. He lives at home with his parents. He is undertaking his GCSEs. He hopes to go on to study for A-levels and then a degree. As things stand Jason cannot apply for Universal Credit. This is because he lives with his parents. His parents should be able to continue to get Child Benefit for him (and extra Universal Credit or Child Tax Credit if they get these benefits) whilst he is studying for his GCSEs and A-levels. Once he goes on to do his degree course any Child Benefit (or extra Universal Credit or Child Tax Credit) would stop. He should be able to apply for a student loan/grant. He would not ordinarily be able to apply for Universal Credit.

Example 2: Cindy is aged 18 and a lone parent. She lives with her parents. She is studying for her A-levels. Cindy would be able to apply for Universal Credit because she has a child. If Cindy were to move on to 'advanced education' after her A-levels, she could apply for Universal Credit again because she has a child. However, whether or not she would actually be paid any Universal Credit would depend upon how much student loan/grant she got.

Example 3: Tom is aged 19. He is studying for his A-levels. He is unable to live with his parents out of concerns for his mental health. He lives with his girlfriend's family. They are happy for him to stay with them, but they are not acting in place of his parents. Tom can apply for Universal Credit (because he is living away from his parents to preserve his mental well-being) whilst undertaking his A-levels. If he decided to go on to do a degree course, then he should be able to apply for a student loan/grant.

Example 4: Salima is aged 20. She normally lives with her parents but is presently attending a 'Life Skills' course at a residential college. Her parents cannot claim any benefits for her. They will not even get Child Benefit because of her age. She is unable to apply for Universal Credit in her own right.

As things stand under the new rules, in the case of **Example 1: Jason** and **Example 4: Salima**, one way they can seek to secure Universal Credit entitlement in their own right is to get a 'limited capability for work' determination either before embarking on their studies (by making a claim for Universal Credit) or, if they have started their studies, before they actually apply for Universal Credit by submitting a claim for New Style ESA (Credits Only) and then making the claim for Universal Credit once they have a 'limited capability for work' determination. Alternatively, in Emma's case she could seek to argue that her course is compatible with her Work-related Requirements.

In the case of **Example 4: Salima**, if she had already been getting Universal Credit (with a 'limited capability for work' determination) before she started her Life Skills course, she could continue to get Universal Credit. This could be the case if she had a gap in education (e.g. between leaving school and actually undertaking her Life Skills course) and claimed Universal Credit during the gap.

The following case study is designed to give insight as to how Universal Credit entitlement is calculated for disabled students who qualify for Universal Credit whilst in 'advanced education' and getting a student loan/grant.

Case Study: Ardy is aged 19. He is a disabled student undertaking a degree course. He is living away from home. He gets Personal Independence Payment (PIP) of £121.95 per week for his 'daily living' and 'mobility' needs and has a 'limited capability for work' determination. He has been awarded a student loan for his maintenance/living costs of £7,800 per annum. His course runs from September to May (9 months) each year. Whilst studying he is treated as having an income of £756.00 per month student income (£7,800 student loan divided by the 9 months period of study = £866.00 less £110.00 standard student disregard = £756.00 per month) for Universal Credit purposes. His Universal Credit entitlement is £268.00 per month (£1,024.00 per month Maximum Amount of Universal Credit less £756.00 per month student income = £268.00 per month Universal Credit entitlement).



The £1,024.00 per month Maximum Amount of Universal Credit figure is calculated on the basis that he qualifies for £343.00 standard allowance plus £341.00 for LCW/LCWRA - allowance plus £340.00 for his rent. Ardy's PIP is fully disregarded as an income for the purposes of the Universal Credit assessment.

Note 1: The **Work Capability Assessment** is the tool used to determine whether or not a person is to be assessed as having (or treated as having) '**limited capability for work**' and '**limited capability for work-related activity**'. If a person claiming Universal Credit presents as having problems with their ability to work due to a physical and/or mental health condition, then they should be assessed under the Work Capability Assessment (WCA).

Note 2: **New Style Employment and Support Allowance** (New Style ESA) is, put simply, a Social Security benefit for those who are assessed as having 'limited capability for work' / 'limited capability for work-related activity'. To qualify the claimant must have paid and/or been credited with sufficient National Insurance (NI) contributions. Those people who qualify not only get a weekly benefit, but they also earn NI credits which can help them qualify for State Retirement Pension (and any other contributory based benefits) further along the line. People who do not qualify because their NI contributions record is not complete may nonetheless qualify for the NI credit dividend (a 'Credits Only Claim') providing they are assessed as having 'limited capability for work'.

Finally, please be aware that some students aged 16 to 19 may qualify for an [Educational Bursary](#) from their school, college or place of education. See the link for further information.

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