**Full-time disabled students not eligible for Universal Credit (UC) until they have received a work capability assessment (WCA)**

A disabled full time student is eligible for ESA if they receive DLA or PIP.

They are “treated as having a limited capability for work” on this basis.

They only need to have a work capability assessment at all to see if they should be in the support group (and so receive a higher amount of ESA).

But we have recently confirmed that under UC that a disabled student cannot – except in very limited circumstances – be treated as having a limited capability for work.

This means that they cannot be awarded UC for living or rent costs until they have had a face to face WCA and been found to have a limited capability for work.

In practical terms this means that it could be 9 months or longer before they can receive any UC.

In procedural terms a disabled student will be refused UC on making a claim on the sole grounds that they are a full-time student (even if they send in a medical certificate with their claim).

They will probably then need to keep sending in medical certificates regardless until they are given a WCA and are found then to have a limited capability for work.

They will then have to make a new claim for UC and ask for the original decision to refuse their UVC claim to be revised.

NB – We have yet to confirm with the DWP that it accepts this procedure and that full UC arrears will be payable to the disabled student.

Not only will this mean some disabled people will be able to face the financial week to week cost of being a student but they will also not be able to take up a residential college place.

The above will be compounded by the problem that we discussed last week of disabled people under 25 only receiving ESA or UC at the rate of £57.90 per week if they are placed in the work-related activity group.

Worryingly, in the space of one year we have received completely different advice from the DWP on this UC issue.

Below are copies of the two email responses we have received.

The first of April 2016 states that under UC a disabled student can be treated as having a limited capability for work on supplying medical certificates.

However, the second of March 2017 states that this is not the case and that a disabled student needs to have been assessed as having a limited capability for work.

**Sent: 12 April 2016 11:22
To: Ken Butler <**ken.butler@disabilityrightsuk.org**>
Subject: RE: Disabled full time Students and Universal Credit \*\*\*sent to OCC inbox 17/02/16\*\*\***

Dear Ken

Firstly, please accept my apologies for the delay in getting a response for you. Colleagues in the UC programme have now provided the following response to the questions you have raised :

How in practice can a full time student be awarded universal Credit on the grounds of limited capability for work?  **A disabled student can claim UC if they have limited capability for work – which in this instance means submitting medical evidence of having a health condition or disability - and are in receipt of an attendance allowance, DLA or PIP.**

Under ESA someone can claim ESA as a disabled student if they are getting DLA or PIP (as they can be treated as having a limited capability for work).

I’m not sure in practice how it’s possible for a full time student to claim Universal Credit on the grounds of having a limited capability for work. Please see the first point, above.

**Regulation 14 of the UC Regulations 2013 allows someone to claim UC despite being in FT education but they have to be both getting DLA and PIP and have a limited capability for work. Please see the first point, above.**

Schedule 8 of the regulations specifies those who can be treated showing a limited capability for work. Schedule 8 ( and for LCWRA, Schedule 9) only details the very specific health conditions and treatments which enable a Decision Maker to make a determination of LCW without the need to refer the claimant for a WCA: it is not an all-encompassing list of what may constitute having LCW.

This does not include full time students who are getting DLA or PIP.  Correct: please see the point above about Schedule 8

Neither does it include those who are submitting medical evidence and have not had a work capability assessment.  Please see the point above about Schedule 8

This means that a full time student can only be accepted as having a limited capability for work after a work capability assessment has been carried out. In this instance, having limited capability for work means, confusingly, submitting medical evidence of having a health condition or disability rather than having been determined as having LCW following a WCA.

Regulation 41 of the regulations would allow a full time student to be assessed as to whether they have a limited capability for work. Correct

However, regulation 28 would prevent an award of the limited capability for work element being awarded before a 3 months waiting period (although requiring someone to submit medical evidence during this time).  **Correct**

On the basis of the above how is a full time student able to establish entitlement to UC? **The confusion arises over the use, in this instance, of the term ‘having limited capability for work’ when it should say ‘submitting medical evidence’.**

If they get PIP and claim UC they will not be eligible for UC – as they have not has a LCW determination**. Please see the last point, above.**

Even if they submit medical evidence Schedule 8 does not allow them to be treated as having a limited capability for work. It may do if the claimant has one of the conditions or treatments listed in Schedule 8.

On the face of it, this means that a decision to refuse their UC claim will be made shortly after they submit it. –denying them the actualopportunity of having a work capability assessment?. **As above, the confusion arises over the use, in this instance, of the term ‘having limited capability for work’ when it should say ‘submitting medical evidence’.**

From: DWP UC Briefing Team]
Sent: 17 March 2017 10:17
To: Ken Butler <ken.butler@disabilityrightsuk.org>
Subject: RE: students, limited capability for work and Universal Credit

The rules for a disabled student claiming Universal Credit are that the student must be entitled to Disability Living Allowance or Personal Independence Payment and have limited capability for work.

In Universal Credit, having limited capability for work is determined in one of two ways. One is following the outcome of a Work Capability Assessment. The other is where the claimant is treated as having limited capability for work. And the rules here are that the claimant has one of the conditions or treatments listed in Schedules 8 and 9 of the Universal Credit Regulations 2013, and provides sufficient medical evidence in support of that such that the claimant can be treated as having limited capability for work (Schedule 8) or limited capability for work and work related activity (Schedule 9), without the need to refer for an assessment.

So, a claim can continue where an existing Universal Credit claimant, entitled to Disability Living Allowance or Personal Independence Payment, with a health condition or disability and who has already been determined as having limited capability for work, decides to go into full time education.

Similarly, a disabled student in receipt of Employment and Support Allowance who has been determined, following a work capability assessment in Employment and Support Allowance, as having limited capability for work or limited capability for work and work related activity who then moves to Universal Credit can continue with their claim.

A new claim for Universal Credit can be made and taken where a disabled person in full time education who is entitled to Disability Living Allowance or Personal Independence Payment can be treated as having limited capability for work or limited capability for work and work related activity. This means having one of the conditions or treatments listed in Schedules 8 and 9 of the Universal Credit Regulations 2013, and providing sufficient medical evidence in support of that.

In these cases the claimant meets the Universal Credit disabled student requirements: i.e. the student is entitled to Disability Living Allowance or Personal Independence Payment, has limited capability for work, and is in full time education.  The Universal Credit claim can continue throughout the period of full time study providing the limited capability for work determination remains valid and entitlement to Disability Living Allowance or Personal Independence Payment continues.

(Schedules 8 and 9 are here <http://www.legislation.gov.uk/uksi/2013/376>)

We continue to monitor the effect of policies as Universal Credit rolls out nationally.