

FAO/ The Manager

23<sup>rd</sup> May 2019

To whom it may concern

We are currently assisting the above client with their benefit matters. Please find attached authority to act on their behalf.

This is a first stage complaint on behalf of \_\_\_\_\_ against the conduct of her work coach whilst dealing with the requirements of her claimant commitment \_\_\_\_\_ has relayed the following events to us:

- 1) \_\_\_\_\_ has a history of long term physical and mental disabilities dating back to 2010 and is not computer competent. Her husband with whom she was married 45 years unfortunately died last year causing her mental health to further deteriorate to the point where she could no longer engage with work or work related activity.
- 2) \_\_\_\_\_ subsequently made a claim for Universal Credit as she could no longer engage in work. \_\_\_\_\_ then attended a WCA and received a decision dated 04/07/2019 that she did not have limited capability for work.
- 3) \_\_\_\_\_ explained that due to not knowing how to access pdf letters and documents on her journal she could not access the decision notice. She states that when she attended her next work search appointment (over a month had passed since the decision had been made) she was informed that she was now required to engage in work search requirements.
- 4) She further states that when she informed her job coach that she did not agree and that she was too ill to work she was advised that *"it was too late now and that she should have read her letter sooner."*
- 5) \_\_\_\_\_ has reported a gradual breakdown of the relationship between her and her work coach which has been aggravated by the further requirements which have been asked of her.

states she has told her work coach directly on numerous occasions that she cannot handle the requirements of her claimant commitments due to her mental health.

- 6) Some of the most inappropriate comments reported include advising that she needs to *"get over the death of her husband"* and that *"work would keep her mind off it."*
- 7) has then stated that when she attended her work search review meeting in March 2019 she presented her work coach with a report from her GP dated 18/03/2019 (attached for ease of reference). Despite the report clearly stating that is not ready for employment it appears no discretion was used by the work coach to re-negotiate the terms of her claimant commitment or refer her for another WCA.
- 8) After her latest work search review attended our centre for advice on how to deal with the situation. She was visibly very distressed when recounting these events and stated that her work coach makes her feel *"intimidated and uncomfortable."* When advised that a complaint was the most appropriate avenue to address her concerns she was highly reluctant, further stating that she was frightened of the effect this could have on her claim going forward.

#### Further points for consideration

It's noted and accepted in DWP guidance (ADM Chapter J3231) that claimants who have been found not to have LCW or LCWRA following an assessment under ESA legislation and continue to submit fit notes of that condition and that condition is substantially the same as at the point of LCW determination than the Secretary of State can impose any reasonable and appropriate work related requirement. Indeed this appears to be the guidance that the work coach is paraphrasing on his journal entry dated 23/05/2019 (also attached).

This guidance is based partly on The Employment and Support Allowance Regulations 2008 Regulation 30 which provide:

*30.(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—*

*(b) that it has not, within the 6 months preceding the date of claim, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work under regulation 22 or 23 unless—*

...

*(ii) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened*

*(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited*

*capability for work and that appeal has not yet been determined by an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998(1).*

It's submitted that in this instance the work coach has not followed DM guidance correctly, and has therefore erred in law when determining work search for

- Advising that it was "too late" to challenge her WCA decision was incorrect. All WCA decisions have a right of appeal and DWP guidance states late revisions can be considered up to 13 months with special circumstances (DMG Vol 1 Ch 3 Revision 03074/03075)
- This misadvice has directly interfered with appeal rights and therefore caused months of distress by having to meet requirements that needn't have applied. *ESA Regs 2008 Reg 30 (3)* (as stated above) would have been satisfied and given her temporary LCW till her appeal.
- Upon receipt of the doctors report dated 18/03/2019 which states directly "*I am writing to inform you that in my view it would be impossible for her to start any employment or sustain any*" nearly a year after her last WCA should surely have indicated a change or deterioration of condition which would give rise to a new referral for WCA.
- If was correctly referred upon notification of her change in condition, DM guidance states work search and work related requirements would not be imposed during the WCA process (ADM Chapter J3232).

This list alone is not exhaustive of the matters which require attention. It shouldn't need to be pointed out that the comments which has reported are inappropriate. It's also raised concerns over the treatment of vulnerable claimants like who work coaches are meant to be offering further support and consideration to when experiencing exceptional circumstances like the death of a spouse.

#### **Required Action**

- The late reconsideration request for the decision dated 04/07/18 needs to be sent to a decision maker immediately for consideration. The reasons for lateness being a combination of lack of computer literacy and misadvice.
- A new WCA referral needs to be made urgently.
- Considering the acrimonious relationship which reports, it's considered a new job coach should be assigned to support with her claim going forward.
- An apology, explanation and compensation due to the level of distress suffered

A response is expected within 14 working days or this complaint will be escalated without further notice.

Thank you for your time and attention in this matter.

Yours faithfully,

Amber van Boost

Welfare Rights Caseworker



30 May 2019

Our Ref: 10292

TO WHOM IT MAY CONCERN

Dear Sir/Madam


I am writing to you regarding ~~Ms. [redacted]~~ who has been a patient in my practice for many years. She suffers with multiple medical conditions including depression and anxiety which has been present before the death of husband recently. She is also suffering with multiple physical conditions including osteoarthritis of multiple joints, carpal tunnel syndrome and Morton's neuroma. She is currently taking antidepressants and regular analgesia to help cope with everyday life.

I can confirm that health and wellbeing of ~~Ms. [redacted]~~ is negatively affected by her current level of work search. She also feels intimidated and feels more anxious and depressed with the equipment of this job search and I am extremely concerned for her health and wellbeing and I can see deterioration in her symptoms.

In view of worsening of her neck pain (a complaint that we have not investigated further), I have requested an MRI of her neck. I would be very grateful if these factors can be taken into account.

Many thanks.

Yours sincerely



Practice

