
STATUTORY INSTRUMENTS

1995 No. 311

The Social Security (Incapacity for Work) (General) Regulations 1995

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER IV

TREATING AS CAPABLE, DISQUALIFICATION ETC.

Person who works to be treated as capable of work

16.—(1) Subject to paragraphs (3) and (4) and regulation 13(3) (persons receiving certain regular treatment) a person shall be treated as capable of work on each day of any week commencing on Sunday during which he does work to which this regulation applies (notwithstanding that it has been determined that he is, or is to be treated under regulations 10 to 15 or 26 as, incapable of work or that he meets the conditions set out in regulation 28(2) for treating the all work test as satisfied until assessment) unless that work—

- (a) falls into any of the categories of exempt work set out in regulation 17(1); and
- (b) is done within the limits set out in regulation 17(2).

(2) Work to which this regulation applies is any work which a person does (not being work as a councillor that is to be disregarded under section 171F of the Contributions and Benefits Act), whether or not he undertakes it in expectation of payment, apart from care of a close relative or domestic tasks carried out in his own home.

(3) A person who does work to which this regulation applies in a week which is—

- (a) the week in any spell of incapacity in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work; or
- (b) the last week in any spell of incapacity,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

(4) A person shall not be treated as capable of work under this regulation by reason only of the fact that, during an emergency, he undertakes any activity to protect another person or to prevent serious damage to property or livestock.

Exempt work

17.—(1) The categories of exempt work referred to in regulation 16(1)(a) are—

- (a) work undertaken on the advice of a doctor which—
 - (i) helps to improve, or to prevent or delay deterioration in, the disease or bodily or mental disablement which causes that person's incapacity for work; or

- (ii) is part of a treatment programme and is done under medical supervision while that person is an in-patient or regularly attending as an out-patient of a hospital or similar institution; or
 - (iii) is done while that person is attending an institution which provides sheltered work for people with disabilities;
 - (b) work done as a volunteer;
 - (c) duties undertaken as a member of a disability appeal tribunal or the Disability Living Allowance Advisory Board.
- (2) The weekly limits in relation to exempt work are—
- (a) that earnings from work referred to in paragraph (1)(a) do not exceed £43;
 - (b) that, subject to paragraph (3), the combined total of the number of hours spent doing work referred to in paragraph (1)(a)(i) or (b) is less than 16;
 - (c) that work referred to in paragraph (1)(c) is not undertaken on more than one day.
- (3) A person shall not be treated as capable of work because he has exceeded the limit referred to in paragraph (2)(b) in any week, if he has worked or would be expected to work, as the case may be, an average of less than 16 hours a week—
- (a) in a case where a recognisable cycle in respect of that person's work has been established, in the period of that cycle in which the week in question falls; or
 - (b) in any other case, in the period which comprises that week and the 4 weeks preceding it.

Disqualification for misconduct etc.

- 18.**—(1) Paragraph (2) applies where a person—
- (a) has become incapable of work through his own misconduct, except that this disqualification shall not apply in a case where the incapacity is due to pregnancy or a sexually transmitted disease; or
 - (b) fails without good cause to attend for or submit himself to medical or other treatment (excluding vaccination, inoculation or major surgery) which could significantly improve his medical condition or any disability arising therefrom or which would be likely to render him capable of work; or
 - (c) fails without good cause to observe any of the following rules of behaviour, namely—
 - (i) to refrain from behaviour calculated to retard his recovery; or
 - (ii) not to be absent from his place of residence without leaving word where he may be found.
- (2) A person referred to in paragraph (1) shall—
- (a) if he is entitled to incapacity benefit or severe disablement allowance, be disqualified for receiving that benefit or allowance; or
 - (b) in the case of any other benefit, allowance or advantage, be treated as capable of work, for such period not exceeding 6 weeks as may be determined under Part II of the Administration Act.