

Tribunal self-help pack

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September 2021

Introduction

As part of the service, the Welfare Reform Team offers tribunal representation by staff who have been trained in benefit appeal work. However, there might be times that, due to high demand for the service, we are unable to provide a representative. In addition, you may feel that you do not need a representative and would prefer to proceed with the appeal without representation.

This pack has been designed to help you through the various stages of the appeal process – from when you receive the initial decision to the options available to you after the appeal itself. This pack considers the appeals process for benefits administered by the DWP, for example, Universal Credit (UC), Personal Independence Payment (PIP), Employment and Support allowance (ESA).

There are four main sections:

- The initial stages of the appeal
- Preparing for the appeal
- Tribunal procedures
- After the hearing

We hope you find this a useful resource in relation to your appeal, however, if there are any parts of it you don't understand, or you have any questions, please don't hesitate to contact us at:

Clackmannanshire Citizens Advice Bureau

Glebe Hall

Burgh Mews

Alloa

FK10 1HS

Tel: 01259 219404

The initial stages of the appeal

The initial decision

Normally, people will make a claim for benefit on the appropriate form or online. Once this has been submitted, a decision is made by an officer called the **decision maker**. If you are unhappy about a benefit decision you are entitled to challenge that decision.

Requesting written reasons

Your decision letter may include a statement that explains why the decision was made (for Universal Credit it will be in your online account). You can ask for one if you don't think you have been given one, this is known as a statement of reasons for the decision. You should request this written statement of reasons within one month of the **date** of the decision, which will be printed on the decision letter (not one month from the date you received it). Note, the majority of decisions include this statement of reasons.

If you have requested a written statement of reasons for the decision, then you will get some extra time to challenge the decision. It won't normally include copies of medical reports and other evidence used, but you can request copies. It's not necessary to request reasons but you may find it helpful when challenging the decision to know the basis on which it was made.

How can a decision be challenged?

A decision can be challenged by first requesting a mandatory reconsideration (MR); and then if unsuccessful you can lodge an appeal.

This guide will take you through both mandatory reconsiderations and appeals. Note, there are strict time limits for requesting both a mandatory reconsideration and an appeal.

Mandatory reconsideration

If you wish to challenge a decision, you must first request that the DWP carries out a 'mandatory reconsideration' before being able to lodge an appeal. Mandatory reconsiderations give you the opportunity to point a new

decision maker to what is wrong with the original decision and provide any additional information and evidence, if you think it's necessary. It's a good idea to read through the original decision and look at what the decision maker has said and what they have missed. Ask yourself these questions. Has the original decision maker fully taken into account the evidence in your application? Or does it appear from what they have written that they are relying on the face to face (or telephone) medical assessment? What have they missed? Have they made any assumptions about what you can do? Is anything they are saying unreasonable? It's a good idea to make a list of points (or grounds) that you would like to include in your mandatory reconsideration. Have a look at the appeal examples on page 7 of this pack. The third example shows a completed appeal form (SSCS1) in a Universal Credit case. It identifies what the claimant thinks is wrong with the decision, what the decision should be and points to evidence that backs this up. This appeal example would have made a good mandatory reconsideration.

A mandatory reconsideration can be done by telephoning the appropriate DWP helpline or in writing. If you decide to make the request over the telephone please note the date, time and who you spoke to, to ensure you can provide proof (for UC note it on your online account). It may therefore be best to do it in writing.

Providing information and evidence is key to getting your decision changed, and this is your chance to do so. However, it's important to note that there's no payment of the benefit you are disputing during the mandatory reconsideration process, and so you may not wish to hold things up unduly while searching for evidence.

There's no time limit for the decision maker to make their decision following a mandatory reconsideration request so you may need to seek advice on which benefits you can claim during this period by contacting your local CAB or other advice agency. If the decision maker doesn't change the decision in your favour with the information you've provided, they'll attempt to contact you by telephone up to a maximum of three times to notify you and subsequently discuss this with you.

No requirement for a mandatory reconsideration request for most ESA cases

There's no requirement for a mandatory reconsideration to be carried out in certain Employment and Support Allowance (ESA) cases. As a result of a

High Court decision in July 2020 mandatory reconsideration has been discontinued for claimants who have been found 'fit for work' following a work capability assessment. If this applies to you, you can go straight to appeal. This is not the case for all claimants and a mandatory reconsideration will still be required for decisions such as disallowance due to failure to return a questionnaire or failure to attend a work capability assessment.

Time limit

The time limit to request a mandatory reconsideration is one calendar month from the date of the original decision letter. If there are special circumstances, the DM may be able to extend this time limit. A late request will only be granted if it is reasonable and there are special circumstances.

THE DECISION

Once the mandatory reconsideration is complete, the decision maker will provide a **Mandatory Reconsideration Notice (MRN)** that will include the appeal rights and the appeals process. The MRN is very important as, if you wish to appeal following a mandatory reconsideration, it must be included with the appeal application. If the MRN is not included in the appeal request, the appeal form will be returned.

It's important to remember that if there has been no mandatory reconsideration request then the decision can't be appealed.

(Remember though, that the majority of ESA cases won't require a mandatory reconsideration, they can go straight to appeal after the initial decision.)

If you're not happy with the outcome of the mandatory reconsideration, then you may wish to appeal to the tribunal.

How to appeal

The appeal must be:

- In writing(including online)

- On the appropriate form, normally SSCS1, that can be obtained from <https://www.gov.uk/government/collections/social-security-and-child-support-forms>
- Within the time limit (normally one calendar month) from date of mandatory reconsideration letter
- Must have the mandatory reconsideration decision attached (unless it's an ESA case that doesn't require a mandatory reconsideration).

You should send the SSCS1 to the address on the form (Glasgow for Scotland). In this pack we're referring to benefits administered by the DWP, for example Universal Credit, Personal Independence Payment, Employment and Support Allowance. See appendix A for how to appeal other benefits not administered by the DWP.

The information to provide when appealing

It's not enough to simply say that you don't agree with the decision, you must explain why you think it's wrong. Wherever possible, it may be helpful to include supporting information and evidence along with the appeal. This may help change your decision before the appeal. The aim is to get the decision changed right up to the day before your appeal, if possible. There's space on the SSCS1 to include some information (if you had completed a mandatory reconsideration request, this may be exactly the same information). On the next page there are a few examples of information provided on an SSCS1.

EXAMPLES

'The DWP said that I have been overpaid because I failed to disclose that my wife was working part-time, but I wrote to them as soon as she started work and told them how much she would be earning.'

'I have been informed that I cannot get the daily living component of PIP, but I disagree with this decision because it does not take into account the full extent of my condition and difficulties. I need a lot of help due to my incontinence of the bowel and bladder.'

Or here is a more detailed example (UC), which gives more information about what is wrong with the decision and why:

'I have been awarded no points for coping with social engagement. However, I believe I should have been awarded 15 points for this activity. The health professional has not taken into account the information in my claim pack. In my pack I explained that I cannot deal with other people at all unless they are involved in my healthcare in a professional capacity. The only person I have any contact with is my mental health support worker who visits me once a week and phones me twice a week to ensure I am safe and that I am taking my medication. I cannot engage with others at all without experiencing distress, anxiety and paranoia. When I have been expected to see other people, such as having to attend the medical assessment, my mental health has gone downhill and I have become destructive within my home due to the distress it causes me. The assessor has not made any record of these difficulties in the report, so I believe the decision maker has not had all the relevant evidence available to them to make an accurate decision.

I include a copy of my most recent review with my psychiatrist which gives much more information about my mental health and therefore this evidence should be given more weight than the report from the assessor. Throughout the medical assessment I was so anxious and distressed I could not concentrate. The assessor has noted that I coped well with the interview but at the time all I could think about was getting through the questions so that I could leave as quickly as possible. The assessment took only 13 minutes which I believe indicates that it was not carried out thoroughly or accurately.'

As mentioned earlier, this third example would make a good mandatory reconsideration request.

The time limit for appealing

The time limit for lodging an appeal is within one calendar month of the Mandatory Reconsideration Notice (MRN). If you are outside the time limit, you can ask for an extension. The absolute time limit is 13 months. This should be done as soon as possible, and you should explain why the appeal is late and why there's a good case. Examples of these are:

- The person who is appealing (**the appellant**), their spouse or a dependant has died of or suffered a serious illness.
- The person who is appealing (**the appellant**) is not resident in the UK.
- Normal postal services were disrupted.
- Other special circumstances that are '*wholly exceptional*' can be demonstrated.

The appeal will not be accepted if you simply say you were not aware of time limits

A late appeal will only be allowed where it has a reasonable prospect of success, and it's in the '*interests of justice*' for it to be allowed – which means that the decision maker or tribunal Judge thinks it's fair to allow the late appeal.

Once an appeal has been lodged

Once the appeal has been received by the tribunal service, Her Majesty's Courts & Tribunal Service (HMCTS), you'll receive an acknowledgement of receipt of the appeal. HMCTS will then send an enquiry form that can be used to confirm that you still wish to go ahead with the appeal and to indicate whether it'll be a paper or oral hearing. This enquiry form should be returned within 14 days. If you don't reply to this enquiry form, HMCTS will assume the appeal has been withdrawn. Where possible an oral hearing should be requested due to the increased success rate.

If you have requested a paper hearing, the tribunal will make a decision on the paperwork only – without you present they may not be aware of all the relevant evidence. Paper hearings are listed (scheduled) without prior notification, **so it is important when sending the paperwork to request**

that the hearing does not take place until a full written submission, and any relevant evidence, has been sent.

The Secretary of State's Response

The DWP will also receive notification of the appeal from HMCTS. Appeals are dealt with by **Appeals Officers** – who are specialist decision makers. They will look at the decision again to see if they can change it prior to tribunal. If the Appeals Officer cannot change the decision, they will prepare the **Secretary of State's Response**. This is often referred to as the **Decision maker's (DM's) Response**. This explains the reasons why the decision cannot be changed. For the rest of this pack, we will refer to this as the DM's Response.

The DM's Response will form part of the bundle of papers you will receive after the appeal has been lodged. This is the first place you can begin to look to build arguments for your case. The appeal bundle is explained in the next section.

The tribunal date

Normally, the next correspondence you'll receive will be either further evidence or a letter informing you of the appeal date. When the date has been fixed, you, your representative (if you have one) and the tribunal members will be notified. HMCTS will usually provide two weeks' notice although you can, if you wish, agree to less.

If the date you receive is not convenient, you may be able to request a **postponement**. You must do so in writing to the Tribunal Clerk giving sufficient reasons. Tribunal clerks and legally qualified panel members have the power to grant, or refuse, a request for postponement.

Preparing for the appeal

The objective of your appeal

Your main objective is to convince the First-tier Tribunal to allow your appeal and decide in your favour. The argument you put forward to the Tribunal is your **submission**.

The First-tier Tribunal will then have to weigh up what you have said in your submission against what is said in the DM's Response. In doing so, they must follow a logical process of reasoning. Failure to do so could mean that they are wrong in law.

The appeal papers (bundle)

You will receive quite a thick 'bundle' of papers which contains all of the information and evidence surrounding your appeal. At the start of the bundle will be the DM's Response.

The DM's Response

Section 1: Your personal details

Section 2: The schedule of evidence. This lists all the paperwork/evidence included in the bundle. This includes your original application, any evidence you submitted, the GP factual report, the medical assessment, the original decision, your mandatory reconsideration request and the mandatory reconsideration notice (MRN). This forms a 'contents' for the bundle if you're looking for something specifically.

Section 3: The decision you are appealing against. This is a summary of the original decision by the DM.

Section 4: The facts of the case. When you made your claim, the reasons you gave for your claim, and further steps in the process up to this point, with dates.

Section 5: The Response. This can be fairly lengthy and includes references to legislation (Acts and Regulations) Please don't worry about these too much, think of them as the rules of the benefit and they are simply stating what rules they are referring to. It also covers what you said in your appeal request and

then addresses all the areas of the appeal. So, for example for Universal Credit work capability the DM would consider all of the activities a claimant stated they had difficulty with and explain their findings for each. This section ends with the DM making a recommendation to the tribunal.

The rest of the bundle

The rest of the bundle contains all the documents relating to the appeal (your claim pack/medical reports/further evidence etc). At first when you receive the papers you may find them daunting. Remember the schedule of evidence mentioned above, as this acts as a contents page for the bundle.

It's recommended that you read through the papers carefully. You should note down any facts that are wrong or that contradict each other, any statements that are not backed up by facts or any other points with which you disagree. Here are some areas to look out for with sickness and disability cases:

- mistakes in the facts stated by the DM. Did the DM overlook or misinterpret any facts?
- are there any errors in the official medical reports? For example, has the medical assessor stated that you were observed doing something you didn't actually demonstrate?
- unsubstantiated statements such as 'in the opinion of the Secretary of State' or questions of 'reasonableness'. For example, 'in the opinion of the Secretary of State the claimant is able to dress themselves', even although you have stated that if you were to dress yourself it would take an hour, you couldn't wear anything with a button or zip and you would be so exhausted afterwards you would have to lie down.
- unjustified assertions. For example, 'the client can smoke 20 cigarettes per day which requires a certain degree of fine motor movement', without questioning how the client manages this. Look out for statements like, 'the client is able to do x, so they **should** be able to do y'.
- instances in which the DM may not have considered all of the evidence available when making the decision; for example, referring only to the official medical assessment report and dismissing your own evidence in the application without giving good reason.

The importance of evidence

It may be a good idea to start collecting evidence. This can be used to support your arguments or to counter what has been said by the decision maker.

Evidence can be important in an appeal as it can be used to support your case. It can also be used to establish any facts that are in dispute, or to back up (corroborate) what you have said in your claim pack/appeal.

It can take quite a long time to get the evidence you need, so it's a good idea to start collecting it as early as possible.

Have a think about what evidence you might need to look for. You may already have plenty of evidence within the bundle, and it might just be a case of pointing the tribunal to this evidence as the DM has ignored it. Now you have the full bundle in front of you, you may be able to pinpoint what might be useful to collect. Please don't run out and get lots of additional evidence unless it's really required.

The following people may be able to provide useful evidence to help your appeal:

- GPs or other health practitioners
- Specialist or consultants
- Social Workers, health visitors
- Teachers
- Educational psychologists, councillors, therapist
- Support workers
- Carers, family, friends

Some doctors may charge for providing this evidence although you may be eligible to claim legal aid.

You should try to send any evidence you have to the Tribunal Service as early as possible. This will give them enough time to consider it. You can take evidence with you to the tribunal on the day of the hearing although this may result in the case being adjourned if the tribunal judge does not feel they have been given enough time to consider it.

Make sure you read over any evidence before using it, to ensure it is helpful to your case.

There could be several months between the date of the decision and the date of the hearing. Therefore, you should try to make sure that the evidence you get relates to the period the tribunal will be considering.

The First Tier Tribunal can only look at your condition as it was at the time of the decision you are appealing - Not at the time when you are appearing before them.

Preparing a written submission for your appeal

It can be helpful to prepare a written summary of your case to give to the tribunal for your appeal. This is called a **written submission**. Though most tribunals like to receive a submission, there is no legal requirement for you to provide one. Try to provide the submission seven days before the hearing to allow the tribunal members to read it in advance. It can also be an effective way of putting your case before the First-tier Tribunal and can:

- Enable you to focus on the main issues
- Help you remember the main points
- Encourage the tribunal to concentrate on the main issues of your appeal
- Provide you with your own record of your appeal
- Minimise any possibility of you not getting your points across in the hearing (for example, by freezing or getting tongue-tied)
- Enable you to raise issues with the tribunal panel
- Help you properly structure your arguments and evidence

It can help to split your submission into sections, here is an idea of how you might do that:

- Include all details at the start. This would include name, national insurance number (NINO), tribunal reference number, hearing date and time, venue and date of the decision being challenged.

- Explain the decision appealed. This tells the tribunal what you are asking them to consider. What you are appealing against and how many points you scored.
- Clarify the facts and the relevant background to the claim, a potted history. It is important to try and get the tribunal to understand the situation surrounding the claim.
- Any undisputed scores. Point out any points you were awarded that you think are correct.
- Each disputed activity in turn. Explain why you think the decision is wrong and what the right decision is. Note down the descriptor or decision you think is wrong, what the correct descriptor or decision is, what error the DM has made, if applicable, what error the healthcare professional (HP) has made, what evidence is in the paperwork to support the case, and any further evidence you wish to add. You can also make points about the evidence the DM has used. Maybe it was a very short assessment by generalist nurse, which was used in preference to your own evidence which was provided by a consultant who has known you for some time and has knowledge of your condition and how it affects you.
- Answer any points raised in the Secretary of State's written response or make any general points about the use of evidence.
- A conclusion. What points should have been awarded, or what decision should have been reached.

A framework you could use for writing a submission, followed by an example PIP submission are given in appendix B

Tribunal procedures

Covid-19

The information given in this section is based on face-to-face tribunal hearings. During the Covid-19 pandemic many tribunals have been heard via telephone or video calling. You will be informed in advance of your hearing how it will be carried out.

Also, during this time, where possible, tribunal judges have been assessing cases without a hearing, making a decision based only on the documents. If the tribunal judge assesses your case based on the documents, they'll send you a provisional decision. If you don't agree with the provisional decision, tell the tribunal you would like a hearing instead.

Arriving at the tribunal venue

When you arrive, the first person you'll normally see is the receptionist/clerk. The clerk should explain the tribunal procedure to you. You can discuss reimbursing any travel costs with the clerk. They'll also take any extra papers/evidence you've brought with you for the panel. When the tribunal are ready to start, the clerk will escort you to the hearing room. You will be asked to sit in the middle seat in the room.

The First-tier Tribunal members

Those present at the tribunal usually sit around a single table with the tribunal members on one side. You as the appellant, your representative if you have one, and any witnesses on the other. The DWP's representative, known as the Presenting Officer may also sit on your side of the table. The Presenting Officer's main role is as adviser to the tribunal and they should assist the tribunal to arrive at the correct legal decision. However, there is often no Presenting Officer at the hearing.

The clerk to the tribunal is often present, but their functions are solely administrative, and they take no part in the proceedings

Depending upon your appeal, the panel will consist of either one, two or three members. There is a Tribunal Judge who is a legally qualified panel member on all tribunal panels. It is normally their role to chair the hearing.

Below are some examples of tribunal composition:

- ESA appeals require a tribunal judge and a medically-qualified panel member
- PIP/DLA appeals require a three-member tribunal, a tribunal judge, a doctor and a person with experience of disability
- JSA appeals are heard by a tribunal judge sitting alone
- UC appeals will be heard by a tribunal judge sitting alone or with a doctor, depending on what is being appealed.

Support for you

You may wish to take a friend or family member into the hearing. Generally, they can go in either as an **observer** or a **witness**. If the person wishes to go in as an observer, they will not normally be allowed to take part in the proceedings, although the tribunal may ask them questions. If they wish to be a witness, the First-tier Tribunal will hear all the information you have to provide and will then invite your witness into the room to give evidence, for example of how your disability affects you on a daily basis.

The procedure of the First-tier Tribunal

It is the Tribunal Judge of the First-tier Tribunal Panel who determines the procedure of the hearing. The hearing must be carried out in accordance with the rules of natural justice, which means:

- the hearing is conducted in an orderly manner
- each of the parties has the opportunity to state their case (including you)
- each of the parties is given the chance to ask questions
- the atmosphere of the hearing is friendly and not intimidating

It is the responsibility of the Tribunal Judge to ensure that this happens. The First-tier Tribunal should conduct itself in such a way that enables you to make best use of your opportunity to appeal.

In general, it can follow three main formats, which are:

1. You (the appellant) arguing your case first - then the Presenting Officer responding.
2. The Presenting Officer putting their case first - then you (the appellant) responding.

3. The First-tier Tribunal addressing the issues point-by-point with you (the appellant) and the Presenting Officer addressing each in turn.

Since the Presenting Officer often does not attend the hearing, it is more likely that the tribunal will just hear from you (the appellant).

First-tier Tribunals must balance the need for formal procedure and an informal atmosphere, and they must ask the relevant questions.

See Appendix C for an idea of the sort of questions you are likely to be asked in a Personal Independence Payment case.

Adjournment

In certain circumstances the First-tier Tribunal may decide to adjourn the hearing. This often occurs whenever they feel they require further information to come to a decision. It may involve a break in the hearing, or it being stopped completely (in which case you will receive a new date)

Some reasons for an adjournment include to:

1. request a medical examination be carried out if not already done so
2. enable you (the appellant) to obtain representation
3. get a Presenting Officer to attend
4. obtain further evidence and clarify certain facts
5. consider fresh evidence
6. seek legal advice

The First-tier Tribunal decision

Once all the evidence has been heard, the First-tier Tribunal will normally feel they have enough information to come to a decision. The Tribunal Judge usually asks everyone except the First-tier Tribunal members to leave the room. The First-tier Tribunal members will then discuss the case and arrive at their decision. Sometimes, if the First-tier Tribunal feel they need to clarify something, the parties will be recalled to the hearing room for further questioning. When the First-tier Tribunal has reached its final decision, they will ask the parties to return to the hearing room. The decision is then normally given out orally. You will also receive a written copy (Decision Notice) signed by the Tribunal Judge

Occasionally, the First Tier Tribunal may not be able to reach a decision straight after the hearing. If this is the case, the Decision Notice will be sent out as soon as is reasonably practicable (two to three days).

After the hearing

If your appeal has been successful

The decision will then be reported back to the relevant office that deals with your claim. This is so that you can receive any benefit, including arrears, that you're now entitled to. If there was a Presenting Officer at the appeal it's their duty to do this. However, this is mostly done by the tribunal clerk, who should send the decision within two working days. It might be a good idea to check with the relevant office that the decision has been received. It normally takes several weeks for the tribunal's decision to be implemented.

If the decision maker is considering appealing the decision, they have the right to suspend payment of your benefit. This doesn't occur very often though.

NB - an award of certain benefits at appeal may entitle you to other benefits too so, after a successful appeal, you should seek further advice on this from a CAB, or a welfare rights office

If your appeal hasn't been successful

There are still several options available after an unsuccessful appeal. In this pack we will look at:

- Applying to have the decision set aside
- Further appeal to the Upper Tribunal Chamber
- Making a fresh claim for benefit

Before deciding what to do next you should request:

- The full statement of written reasons for the tribunal's decision
- The Judge's record of proceedings

To get these, you must write to the tribunal clerk and request them within one calendar month from the date of the decision.

In practice, though, you'll probably feel you require more advice before pursuing the matter further.

Applying to have the decision set aside

Tribunals may correct or set aside any decision that they have arrived at. A 'set aside' cancels the original decision of the tribunal and new tribunal will then hear the case again. If you wish to apply for a set aside on procedural grounds, you must do so within one calendar month from either the date you were given or sent the decision notice or the full statement of written reasons for the tribunal's decision - whichever is the later.

The application should be made in writing to the tribunal clerk. The grounds for requesting a set aside are:

1. A relevant document was not received in the appropriate time by either of the relevant parties to the appeal
2. One of the relevant parties to the appeal was not present at the hearing

Appealing to the Upper Tribunal

It is likely that you will need to seek assistance to do this, and you should seek advice from a CAB, welfare rights office or solicitor.

It's not enough to simply say that you are appealing the tribunal's decision because you disagree with it. You can only appeal to the Upper Tribunal on a point of law. This means that you will have to identify some way in which the First-tier Tribunal has been wrong in law, for example:

- the law was wrongly interpreted
- the tribunal did not provide adequate reasons for the decision or give satisfactory findings of fact
- the decision is not supported by evidence
- The decision reached does not follow the findings of fact
- the tribunal breached the rules of natural justice. This means that the tribunal procedure was unfair to one of the parties, for example, the client was not allowed the opportunity to state their case fully, or was unreasonably refused a postponement.

Before an Upper Tribunal appeal can be made, you must first obtain leave to appeal. This is done by writing to the tribunal and sending it to the tribunal clerk with your reasons for appealing. This must be done within one calendar month of the date on which you were sent the reasons - not the date on which

you received them. The application is then passed on to a Tribunal Judge, who will decide whether or not to grant leave to appeal.

If the Judge refuses leave, you must apply directly to the Upper Tribunal for leave to appeal on form UT1. You will have one calendar month of being sent written notice of refusal of leave. If you are granted leave to appeal by either the Judge or Upper Tribunal, the procedures involved can be both lengthy and complicated. Therefore, you may wish to seek advice or assistance before proceeding further.

The Upper Tribunal can:

- Change the decision (whether by correction or substitution)
- Decide not to change the decision
- Set aside the decision (the decision is cancelled)

Submitting a fresh claim

Submitting a fresh claim for the benefit is something you may be able to do even if you are appealing further.

Appendix A – how to appeal benefits not administered by the DWP

Benefit	What to do
Child Benefit and Guardian Allowance	<p>Use form CH24A to ask the Child Benefit (HMRC) office to reconsider a Child Benefit or Guardian's Allowance decision. Details are in this link.</p> <p>https://www.gov.uk/government/publications/child-benefit-and-guardians-allowance-appeal-form</p>
Housing Benefit	Housing Benefit is handled by your local council - contact the council to question its decision and follow its appeals procedure.
Tax Credits	<p>You can use the online form or can send a postal form to HMRC. Details are in this link</p> <p>https://www.gov.uk/government/publications/child-tax-credit-and-working-tax-credit-appeal-form</p>
Social Security Scotland grants and payments including the new Child Disability Payment replacing Child DLA	Ask Social Security Scotland for a re-determination. This can be done by post (address is on the decision letter) or by phone 0800 182 2222.
Scottish Welfare Fund Crisis grant/Community Care Grant	Write to your local council and request a review
Social Fund Budgeting Loans	Write to Jobcentre Plus and ask for a review within 28 days of original decision

Appendix B – Submission examples

Below we've set out a framework you can use for creating a written submission.

ESA submission - template with some example text

1 Your details

It's worth including all the details below at the start of your submission so that you can be sure it gets to the right people. The date of the decision being challenged is useful to include because it helps remind you and the tribunal about the relevant date – if your condition changed after this date that won't be relevant to this appeal.

Name

Tribunal Ref No:

NINO:

Hearing: Date and Time

Venue:

Date of decision being challenged:

2 Introduction

What you are appealing against and how many points you scored.

Following a medical assessment, I have been found capable of work and am now appealing against that decision. I was awarded 6 points

3 Potted history – optional

I am 58 years old. I suffer from arthritis in my arms, legs and spine. I have worked all my adult life. For the last 10 years I have worked in a national trust shop. But I finally had to stop this year as I was taking so much time off sick and my doctor agreed that I could no longer continue.

4 Undisputed scores

Any points awarded that you think are correct

I was awarded 6 points for 'cannot raise either arm above head height as if to reach for something'. I consider this to be the correct score for this activity.

5 Each disputed activity in detail

Explain in detail why you think the decision is wrong and what the right decision is for a disputed activity by using steps 5a-e below. Then repeat 5 a-e for each additional activity you want to dispute.

5a Descriptor you think is incorrect.

5b What you think the correct descriptor is

5c What error the HP or DM has made

5d What evidence is in the papers to support you

5e Any further evidence you want to add including any Upper Tribunal decisions relevant to this activity you wish to quote.

MOBILISING

I was awarded 0 points for mobilising.

I believe that the correct descriptor is 1(a) (i) Cannot mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion which scores 15 points.

The HP has based their assessment of my walking ability on what I can manage around the home and at a supermarket without asking me how I actually manage.

In fact, I actually lean on a trolley and stop three times down each aisle to rest and do not cover the whole supermarket in one trip.

I explained the difficulties I had with walking in the claim pack, at pages 35-37 of the appeal papers, and this made it clear that I could only walk 20 metres without stopping and that I am in pain all the time when I walk.

I am also enclosing a letter from my consultant which states that my arthritis is not well controlled by drugs and that I am likely to be in significant pain when walking.

6 Any general points about the evidence

The person who carried out my medical was with me for only 20 minutes. They are a generalist nurse with no specialist knowledge of arthritis. My GP and my consultant, who both support my claim, have known me for at least 20 years.

7 Conclusion

I believe that I should have been awarded 21 points and that I should have been placed in the support group because descriptor 1(i) of the support group activities applies.

I further believe that finding me fit for work poses a substantial risk to my physical health, in that I experience such high levels of pain following any walking activity (which would be required for any job) that I have to rest for long periods of time afterwards. I believe that there are no "reasonable adjustments" that could be made that would relieve me of this risk to my health.

PIP submission

Name

Tribunal Ref No:

NINO:

Hearing: Date and Time

Venue:

Date of decision I am appealing:

PIP Appeal submission

1 Introduction

I am appealing against the decision to award me the standard rate of the daily living component of PIP and nothing for mobilising. I was awarded 10 points for daily living, which takes into account my lack of motivation and my anxiety. However, my difficulties have been underestimated. I will set these out below.

2 Potted history – optional

I am 55 years old and have Chronic Fatigue Syndrome and Anxiety (a state of hyper-arousal). I last worked in an office 10 years ago but kept reducing my hours until I could no longer work. I spend my days doing very little because, if I over-exert myself, I cannot manage even the basics. I lack the energy and motivation to look after myself and hardly ever venture outdoors due to overwhelming fatigue and anxiety.

3 Undisputed scores

Needs supervision or prompting to be able to wash or bathe - 2 points

Needs prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed - 2 points

Needs prompting to be able to engage with other people - 2 points

Needs prompting or assistance to be able to make complex budgeting decisions - 2 points

Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant - 4 points

4 Each disputed activity in detail

Preparing Food

I have been awarded 2 points for my problems with preparing food as the HP says the descriptor; 'cannot cook a simple meal using a conventional cooker but is able to do so using a microwave', applies.

However, I believe I should have been awarded 8 points for this activity. This is because I 'cannot prepare and cook food'. I am not able to do this because of fatigue. I do eat ready-meals that can be warmed in a microwave, but sometimes this is too much effort, so I eat sandwiches, toast or noodles. Very often, I will just eat cereal as anything else is too tiring to prepare and involves planning. On the rare occasion that I have attempted to prepare a meal from scratch, I have given up as the task is overwhelming for me and I cannot plan the steps needed to complete it.

I could not make a meal to an acceptable standard, within a reasonable timescale, and I would not be able to repeat the activity due to fatigue. The HP has stated that I use a microwave to warm up meals and I do not believe he has taken into account that I do not cook a simple meal but one that has been already prepared and cooked. I believe that the HP's account is incomplete without this additional information.

My psychologist has written a letter, which I submitted with my claim, and this details my anxiety and hyper arousal. In this, he states that I cannot look after myself adequately at times without help, as I find most tasks overwhelming due to my anxiety and my fatigue.

Moving around

I have not been awarded any points for moving around. Although I can stand and then move more than 50 metres, I cannot move more than 200 metres, either aided or unaided. I should have been awarded 4 points for this descriptor.

The HP has stated that I was observed to walk to the consultation room with no problem. I did manage to walk that short distance, but the HP has used this snapshot to form a picture of my mobility difficulties. I had taken more painkillers than usual in order to do this, and because I have CFS, I had to go to bed as soon as I got home due to the extreme fatigue and could not leave the house due to pain and exhaustion for 5 days after the medical. I stayed in bed most days, only getting up to go to the toilet or to get a drink and snack from the kitchen.

The HP has not taken into account the effect of fatigue. I told the HP that because of CFS I get fatigued very easily. I can move slowly from room to room indoors, but if I walk outdoors more than about 100 - 150 metres I become very fatigued. If I have to travel any distance, I will always get a lift or use a taxi. The HP has not taken into account the effect of fatigue on walking.

My GP has written in her letter that I get fatigued after minimal exertion and have to rest for days after.

6 Conclusion

I believe that I should have been awarded 16 points for daily living if the correct descriptor for 'preparing food' is taken into account, and that I should therefore be entitled to PIP daily living component at the enhanced rate.

I believe that I qualify for the standard rate for mobilising, as I should have been awarded 4 points for 'moving around', which added to the 4 points for 'planning and following journeys' would give a total of 8 points for this descriptor.

I believe that the HP has only taken my anxiety into account but not the effects of fatigue on every day activities and whether they can be carried out to an acceptable standard.

Appendix C – Questions you might be asked at a tribunal hearing (PIP)

It is quite common for one member of the First-tier Tribunal to take a leading, or dominant, role with regard to questioning you during the appeal. Sometimes the Tribunal Judge takes the leading role but, equally, there are times when either the Medical Member or Disability Member will carry out most of the questioning.

In the main, questions revolve around three areas:

1. Your medical condition
2. Your mobility
3. Your attention and supervision needs

The following questions are the examples of the type of questions you are likely to hear the tribunal ask:

Medical condition

- What medication you take, and how often you take it
- Any medical aids or gadgets you have the use of
- Your doctor's diagnosis (ie. who you saw/what action was taken)
- Pain, difficulties or problems you face and where these are felt
- Other treatments or help you are getting in connection with your condition
- If there are any other associated problems

Mobility

- What your house is like, and how you get about it, for example are there any stairs?
- Any effects or difficulties faced whilst walking, for example breathlessness
- How often you go outdoors, where you go to and how far you can walk

- Whether you must stop whilst outdoors walking, and why you have to do so
- How you got to the tribunal on the day
- If you need someone to be with you whilst going outdoors and, if so, why
- Any falls, stumbles, dizzy spells or collapses you have had
- If you feel any pain or discomfort whilst walking outdoors

Attention and supervision needs

- If you are able to prepare a cooked meal for one and, if not, why not
- Who cooks meals for you?
- If there were nobody there to cook a meal for you, what you would do
- Whether you have any special aids or equipment to help
- How you get to the toilet and if you require help to do so
- If you need help to wash yourself, bathe or look after your appearance
- Whether you need help to get into the bath or shower
- If you need help to get to the toilet, if so, why
- Whether someone helps you look after yourself and why they must do so
- If anyone who lives with you helps you and in what way