

Citizens Advice St Helens

Tribunal Information and Self-Help Pack



Introduction

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.

There are four main sections:

1. The Initial Stages of the Appeal
2. Preparing for the Appeal
3. Tribunal Procedures
4. After the Hearing

At the end of the pack there is information and examples on how to write an appeal submission and of the type of questions you might be asked at the hearing.

Please note: This pack is aimed at Personal Independence Payment (PIP) but the process is the same for Employment and Support Allowance (ESA).

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

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SECTION 1 - THE INITIAL STAGES OF THE APPEAL

How does the system work?

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.

How can a decision be challenged?

This page explains how to appeal to an independent tribunal if you're not happy with the DWP's reconsideration of the decision.

A decision can be challenged by first requesting a mandatory reconsideration and then if unsuccessful you can lodge an appeal. An appeal cannot be made until you receive the outcome of a mandatory reconsideration.

Who can challenge a decision?

This will usually be the person against a decision made on their own claim.

It can also be made by the following people:

- are the parent or guardian of a child who has made a claim
- have been appointed by the DWP to act for a person unable to deal with their claim, for example because of poor mental or physical health
- claimed PIP, DLA or Attendance Allowance for a person who is terminally ill
- been given permission by DWP to act for a claimant who has now died
- are not the benefit claimant but the DWP have decided that an overpayment, an advance or a hardship payment should be recovered from them

Requesting written reasons

Not all benefit decisions come with a full explanation of the decision. However, you can request a written explanation (known as a written statement of reasons) of the decision on your claim. You must do so within one calendar month of the date of the decision and not one month from the date you received it.

The statement of reasons should be sent out to you within 14 days of your request being received. If this takes any longer any related timescales can be extended. It will not normally include copies of medical reports and other evidence used, but you can request a copy. It is not necessary to request reasons however you may find it helpful when challenging the decision to know the basis on which it was made.

Rights of appeal

It is possible to appeal against most benefit decisions. When doing so, it must be remembered that:

- There is a strict time limit of one calendar month from the date at the top of the decision letter.
- You must provide reasons as to why you do not agree with the decision (ow).
- The appeal must be in writing, preferably on the appropriate form and include a copy of the mandatory reconsideration)

What is a Mandatory Reconsideration?

Mandatory reconsiderations provide you with the opportunity to discuss the disputed decision and provide any additional information to a DWP decision maker. This can be done by telephoning the appropriate DWP helpline or in writing to the address on the letter. If you decide to make the request over the telephone it is recommended that you note the date, time and with whom you spoke to ensure you can provide proof. It may therefore be best to do so in writing.

Providing information and evidence is key to getting your decision changed, therefore this is your chance to do so.

There is no time limit for the decision maker to make their decision therefore you may need to seek advice on which benefits you can claim during this period by contacting us. If the decision maker does not change the decision in your favour with the information you have provided they will attempt to contact you by telephone up to a maximum of three times to notify you and subsequently discuss this with you.

The decision maker will then send their decision to you in writing to formally notify you of the outcome of your mandatory reconsideration.

You cannot appeal until the outcome of this is known.

How to Appeal

The appeal must be:

- In writing
- On the appropriate form (normally form SSCS1) or online
- Within the time limit of one calendar month from date of mandatory reconsideration letter (this can be extended
- Must have the mandatory reconsideration decision attached.

It also allows you to state whether:

- If you wish to have a paper or oral hearing
- You have a representative
- Availability
- Any additional needs you may have
- If you agree to the hearing being heard at short notice

Form SSCS1 can be obtained from

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748554/sscs1-eng.pdf

When completed send to:

HMCTS SSCS Appeals Centre
PO Box 1203
BRADFORD
BD1 9WP

You can also appeal directly online for some benefits here

<https://www.gov.uk/appeal-benefit-decision/submit-appeal>

The time limit for appealing

The appeal must be made within one calendar month of the date of decision on the letter not when you received the letter confirming it. The time limits for appealing are very strict

Late appeals

If the time limit for appealing has passed you need permission to appeal. This can be difficult to get and no appeal can be allowed outside an absolute time limit. That is one year from the date that the time limit for appealing has expired. Which, in other words, means 13 months after the date the decision was sent out.

In addition to the information that must be provided on the appeal form, you will need to explain why the appeal is late. This should include any details of 'special circumstances'. 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 the time limits.

A late appeal will only be allowed where it has a reasonable prospect of success, and it is in the 'interests of justice' for it to be allowed.

However, the DWP can object to the reasons given.

If this happens, a tribunal will decide if the appeal can be accepted.

The procedure once an appeal has been lodged

You will receive a letter informing them that your appeal has been received.

A bundle of documents will be received at some point in the future.

The bundle will include a submission by the DWP providing details of the decision and as to why it was not allowed. It will include varying documents dependent upon the type of appeal. Examples are, a copy of the claim form, copy of any medical assessment, how an overpayment has occurred, and any other evidence used to determine the claim.

Appeals are dealt with by Appeals Officers – who are specialist decision makers. If the decision has not been reconsidered previously, they will look at it again to see if they can change it. If the Appeals Officer cannot change the decision (in most cases) they will prepare a full submission. This explains the reasons why the decision cannot be changed.

Copies of this are then sent to:

- You
- Any named representative
- Her Majesty's Court and Tribunal Service (HMCTS)

Normally, the next correspondence you will 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.

SECTION 2 - 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. You also have the opportunity to answer and ask questions at the appeal hearing.

The First Tier Tribunal will then have to weigh up what you have said in your submission and your answers on the day of the hearing against what is said in the decision maker's submission. 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

The Decision Maker's submission will be laid out as follows:

- Section 1 - Your personal details
- Section 2 - The decision you are appealing against
- Section 3 - The appeal (i.e. what you have said in the appeal form)
- Section 4 - The facts of the case
- Section 5 - The Decision Maker's submission (i.e. issues raised by the appeal)
- The law on which the decision was based and the reasons for the decision are then set out.

The rest of the papers contain 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. There is a schedule at the front of the bundle - named Relevant Information. This gives a description of the documents contained in the pack and the appropriate page numbers telling you where to find them. You may find this helpful as it acts as a list of contents and states where all the information is in the papers. It is 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.

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.

The importance of evidence

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 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. Please note there may be a cost to you involved in obtaining evidence. The Tribunal may adjourn to obtain such evidence but will be at no cost to you.

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

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 tribunal must look at all the evidence properly.

Evidence that can be helpful are letters, statements or reports from:

- GPs or other health practitioners
- Specialist or Consultants
- Social Workers, health visitors
- Teachers
- Educational psychologists, councillors, therapist
- Support workers

Remember some doctors may charge for providing this evidence.

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.

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. If doing so try to provide this 7 days prior to the hearing. 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
- To help you get your point across in the hearing
- Enable you to raise issues with the tribunal panel
- Help you properly structure your arguments and evidence

There is a specimen example of a submission in Appendix A

SECTION 3 - TRIBUNAL PROCEDURES

Arriving at the tribunal venue

When you arrive, the first person you will normally see is the receptionist/clerk. The clerk should explain the tribunal procedure to you. They will also take any extra papers/evidence you have 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. You can discuss reimbursing any travel costs with the clerk.

The First Tier Tribunal members

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.

Depending on which benefit you are appealing, the other members will be:

Employment & Support Allowance

2 members - a tribunal judge and a medically qualified panel member.

Attendance Allowance/Disability Living Allowance/Personal Independence Payment

3 members - a tribunal judge, a medically qualified panel member and a disability member.

Industrial Injuries Disablement Benefit or Severe Disablement Allowance

2 or 3 members - a tribunal judge and a medically qualified panel member. (This type of appeal normally involves a medical examination) a nurse is normally present to assist the medically qualified member of the panel.

In certain circumstances there may be a financially qualified panel member. The clerk to the tribunal is often present, but their functions are solely administrative and they take no part in the proceedings. A Presenting Officer (PO), also known as the Secretary of State's representative, may attend the hearing too. 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

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 of how your disability affects you

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 that are:

- You (the appellant) arguing your case first and then the Presenting Officer responding.
- The Presenting Officer putting their case first and then you (the appellant) responding.
- 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. They must ask the relevant questions of your appeal

See Appendix B for an idea of the sort of questions you are likely to be asked

The First Tier Tribunal need not consider any issues that are not raised by your appeal, though it is often possible to raise new matters after the appeal has been submitted

Adjournments

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)

Examples of reasons for an adjournment are to:

- request a medical examination be carried out if not already done so.
- enable you (the appellant) obtain representation
- get a Presenting Officer to attend
- obtain further evidence and clarify certain facts

- consider fresh evidence
- seek legal advice

The First Tier Tribunal's 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, it will be sent out as soon as is reasonably practicable (2-3 days).

SECTION 4 - AFTER THE HEARING

If you have won your appeal

The decision must then be reported back to the relevant office that deals with your claim. This is so that you can receive any arrears and benefits to which you are now entitled. If there was a Presenting Officer at the appeal it is their duty to do so. However, this is mostly done by the tribunal clerk, who should send the decision within 2 working days. It might be a good idea to check with the relevant office that it has arrived. 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 does not 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 us.

If you have lost your appeal

There are still several options available after an unsuccessful appeal. Those that will be discussed in this booklet are:

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

It may be wise to seek advice if you have lost your appeal as there are other options. 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. The time limit for doing this is one calendar month from the date of the decision.

In practice, however, you will probably feel you require more advice before pursuing the matter further.

APPENDIX A - SUBMISSION FOR PERSONAL INDEPENDENCE PAYMENT APPEAL

Name:

Reference Number:

Nat. Ins. Number:

Date of Appeal:

Personal Profile

It is a good idea to put in here short facts informing the panel of; the background to your circumstances and difficulties; the current problems and conditions you have; any operations or examinations relevant to your appeal.

Also, you should briefly explain to the tribunal why you are appealing and outline the decision you are asking them to reach (i.e. an award of the Daily Living Component and the Mobility component at the desired rate).

Remember: This should be how you were at the time of the decision

Medication

You should list; all the medication you are taking; dosages; what the medication is for and the regularity of which you take it.

Mobility

In this section you should detail any difficulties you have with your mobility and getting around. You should include any problems you have in relation to:

- How often you must stop while walking and why you must do so
- Whether or not you must hold onto something when walking or when you have stopped
- How much pain you experience and where you feel it
- How long you must rest for when you have stopped and why you must do so
- Whether or not you require a walking aid (i.e. walking stick/frame)
- Any falls, stumbles or trips you have when walking on pavements/steps/uneven ground/slopes
- Whether or not you stagger or lose balance
- If you cannot follow directions or get lost when going outdoors (particularly unfamiliar places)
- Any difficulties you have coping with traffic or feeling unsafe in crowds

Daily Living

In this section you should detail any difficulties you have with attending to your bodily functions and any care needs you may have. You should include any problems you have in relation to any of the following:

Preparing Food - needing prompting or encouragement to cook a simple meal, use a conventional cooker, cook above waist height, stand at cooker, chop food, need supervision or assistance, need to use any special appliances to aid you cooking.

Eating and drinking - needing encouragement to eat; selecting ingredients; peeling/chopping/cooking vegetables; cutting/eating food; opening tins; making sure food is not out of date; coping with hot pots/pans.

Managing Treatments - prompting or reminding, supervision or assistance, use of appliances such as a dossett box, accompanying to treatments

Washing and Bathing - needing prompting; washing face/hands/body; cleaning teeth; getting into/out of bath or shower; requiring supervision to take a bath/shower; brushing/combing hair; shaving; putting

Going to the toilet - suffering from loss of bladder/bowel control bed wetting changing clothes; any mishaps/not making the toilet; help needed changing urine bag/using bedpan getting to toilet during night, wiping after toilet.

Dressing and undressing - prompting, reminding assistance with dressing, help to use appliance such as shoe horn, needs to be told when to dress and appropriate clothing

Communicating - needs prompting, assistance, needs to use an appliance

Reading - needs to use appliance, prompting, have difficulty understanding text, cannot see text, someone to read your letters to you and explaining them.

Mixing with other people - needs prompting to engage with people, needs social support, cannot speak to unfamiliar people because of anxiety, has difficulty relating to people

Making budgeting decisions - need prompting, encouragement, support or assistance to deal with finances such as bills and banking, cannot carry out simple arithmetic calculations, cannot manage own finances.

Other matters

You should use this section to outline any other matters you think would help your appeal that you have not included earlier. If you have had any accidents or have nearly caused harm to yourself (i.e. falls or stumbles), it is a good idea to give details here. It is important to note that, although no rules exist to limit the size your submission should be, if you intend to present it to the tribunal on the day of your hearing the first tier tribunal members will have limited time to read it and take in what it says.

A submission that is too long might result in your hearing being postponed or adjourned, therefore, you should try to limit it to around 1-2 sides of A4.

It is advisable to send the submission 7 days before the appeal hearing

APPENDIX B – PERSONAL INDEPENDENCE PAYMENT- APPEAL TRIBUNAL QUESTIONING

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:

- Your medical condition.
- Your mobility.
- 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 (i.e. who you saw/action 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 (i.e. are there any stairs?)
- Any effects or difficulties faced whilst walking (e.g. 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 look after yourself and why they must do so?
- If anyone who lives with you helps you and in which way