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The Best Possible

Ways To Challenge a PIP Medical Report

Over 50 Grounds of Appeal With Sample Texts

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Why and how to challenge a PIP medical report

If you don't get an award of Personal Independence Payment (PIP), or if the award is lower than you think it should be, then you may wish to challenge the decision using the mandatory reconsideration and appeal process. Always try to get advice if you do consider challenging a decision, especially if you have been awarded any rate of PIP, because your award could go down instead of up. You can find out more about the mandatory reconsideration and appeal process in the Benefits and Work guides.

By challenging the medical report as part of your reconsideration or appeal, you are trying to undermine its credibility and persuade the tribunal that they should attach little or no weight to some or all of it.

Don't overdo it

But one thing to bear in mind is that just because there are a large number of possible challenges in this guide, that doesn't mean it's a good idea to try them all. Indeed, just one challenge, if it's a good one, may be enough to persuade the tribunal that the report is not to be trusted. On the other hand, write a submission, or try to present on the day, twenty different challenges to a medical report and you may find the tribunal becoming extremely impatient and less willing to listen fairly to your arguments.

Choose what you think are your strongest challenges to make in detail and, if there are lots of others that you really think are worth making, then make them in as condensed a fashion as you possibly can.

How to put your arguments

Although you can make your challenges verbally or in writing at the reconsideration stage, it is much better if you do in in writing If the decision is not changed on mandatory reconsideration (MR) this will provide the basis for a written submission to a tribunal. This simply means sending them a letter setting out some, or all, of the case you wish to present. It doesn't have to be in formal language and the briefer your submission is the better. This is particularly the case as panel members don't actually get paid for reading the case papers before a hearing – so make you submission too long and it may not get read at all.

Alternatively, you can just turn up on the day and argue your case without having submitted anything in writing beforehand.

You can read more about appeal tactics and how to present your case in our guide to PIP appeals. You can also download sample submissions.

Challenging the way the evidence was collected

The person who carries out your PIP medical is usually referred to as a health professional (HP). They may be a doctor, a nurse, a physiotherapist, an occupational therapist or another sort of registered medical professional.

When a health professional carries out a medical they are collecting and recording evidence for the decision maker – also called a case manager - to use when assessing your eligibility for PIP. If the HP doesn't collect the evidence properly then it will make their report less reliable.

Was it the wrong sort of assessment?

Was the assessment a telephone one when a face-to-face one would have produced more reliable evidence, or vice versa?

Sample text

"I requested a face-to-face assessment because my autism spectrum disorder makes it very difficult for me to communicate effectively on the telephone. However, I was obliged to have a telephone assessment which I found impossible to take part properly in. I became extremely anxious at hearing a stranger asking me questions and gave the shortest answers I could in order to end the call as quickly as possible. Rather than explain how difficult I find many activities, including communicating, I simply gave 'Yes' or 'No' answers wherever possible. As a result the health professional's report is based on only partial evidence."

Sample text

"I requested a telephone assessment or home visit because my arthritis and anxiety make it extremely difficult for me to undertake any kind of journey. However, I was obliged to attend an assessment centre, which required me to travel for over an hour in each direction using public transport. I took additional pain relief medication as this was the only way that I could manage the journey. Even so, I was exhausted and in considerable pain by the time I got to the assessment centre, where I had to wait for over an hour in a very uncomfortable chair to be seen. The effects of the medication, fatigue, pain and anxiety meant that I was unable to properly understand some of the questions I was being asked or give detailed answers. As a result the health professional's report is based on only partial and unreliable evidence."

Was the health professional (HP) on time?

Did the health professional (HP) arrive punctually if you had an assessment at home? Or was your appointment at the assessment centre on time? If not, did this affect whether you were able to give accurate information?

Sample text

"The health professional arrived half an hour early, so that my carer was not there for much of the medical. In particular, they were not there to help me talk about my typical day. I have great difficulty in talking to strangers and there was a lot of information that the HP should have had that she didn't get because she arrived so early."

Sample text

"They were running very late at the assessment centre and I ended up waiting over an hour to be seen. To make things worse there wasn't a toilet available. So by the time I actually had my assessment I was exhausted and in considerable distress

because I suffer from bladder urgency. I just wanted it to be over as quickly as possible and so did not answer questions as fully as I would have done if the assessment had been on time. As a result, the evidence in the report is not reliable"

Did the health professional (HP) give you time to answer all their questions?

Did the HP hurry you to give your answers or say that they would come back to a certain issue and then not do so?

Sample text

"The health professional seemed in a terrible rush and got very impatient when I tried to explain things to her. She would interrupt me or say 'We'll come back to that' and then she never did. I thought that if I went on too much she would just get cross with me and that would affect what she wrote about me. As a result, there were lots of things that should have been in the medical report but weren't."

Did the health professional (HP) ask leading or closed questions?

Did the HP ask questions in such a way as to suggest the 'correct' answer? Many people find it difficult to give accurate evidence in these circumstances, particularly if they are alone.

Sample text

"I found it very difficult to give accurate information because of the way the health professional asked questions. For example, the health professional said to me 'You can manage to get to the toilet alright, can't you?' and 'You wouldn't have any problem with taking medication, would you?' I didn't feel able to explain to him the difficulties I had when they clearly thought I shouldn't have any at all, so I just said 'I suppose so.' I knew it wasn't right but I felt he would just think I was a fraud if I didn't agree with him. As a result, the medical evidence from the health professional is not very accurate."

Did the health professional (HP) write down everything you told them?

The HP doesn't have to agree with what you tell them, but they should write it down and then, if necessary explain why they don't agree. But what they mustn't do is simply ignore evidence that you give, because they don't agree with it.

Sample text

"I told the health professional that I often don't dress until almost lunchtime because my joints are so stiff and painful in the morning due to my arthritis. I would obviously prefer to dress first thing in the morning as I always used to before my condition became so severe. However, the health professional has just written that I am able to dress without help"

Was the assessment too lengthy?

PIP medicals seem to vary a great deal in length, with many being under half an hour and some being over two hours long. Does your condition mean that you suffer from fatigue or get confused and that the longer a medical assessment goes on the less reliable your answers are likely to be?

Sample text

"The medical took much longer than I expected. The health professional was with me for almost two hours. This was much too long for me to be able to maintain concentration and as a result my answers became briefer and more confused as the

medical progressed. I did explain to the health professional how tired I get and that I was having difficulty. But he just kept saying "Not much longer now" and carried on. In the end, I was just keeping my answers as short as possible to try and get it over with. I think I should have been warned how long the medical would take and asked if I would be able to cope. I don't think the information I gave the health professional was reliable and I would ask the tribunal not to place any weight on the HP's report."

Was the assessment too short?

Did the HP spend so little time with you that you were unable to give all the evidence you wanted to?

Sample text

"My medical lasted only 21 minutes, even though the HP was told that my condition has many symptoms and varies in how it affects me. I have multiple and complicated health needs arising out Fibromyalgia and Post-traumatic stress disorder. I had a diary with me for the month before the assessment, about my walking difficulties, but the HP browsed through it briefly, without considering the contents. I enclose a copy of this now. The HP appeared to be rushing me with my answers which I found very distracting and I feel that the report is incomplete because of insufficient time taken to ask questions and record my answers."

Was the medical at a time of day when you are not at your best?

Because of your condition, are there times of the day when you are less able to deal with the physical or mental strain of being medically examined?

Sample text

"The medical was in the afternoon. I am always very tired after lunch and I was having great difficulty concentrating. I wanted an examination in the morning, but they wouldn't change my appointment. My answers weren't very accurate as a result."

Was the venue unsuitable?

We have heard of medicals taking place in all sorts of questionable, or just clearly unsuitable venues, including a film studio and an office building with very thin walls. If your medical took place somewhere unsuitable this may affect the reliability of the report.

Sample text

"The assessment centre was just the ground floor of an office building shared with several businesses. There appeared to be a training session going on in the next room. I could hear what they were saying and it made me worried that they could also hear me. Also, there was a great deal of noisy laughter which I found very off-putting as I tried to talk about very sensitive and personal health issues. As a result, the information I gave was far from complete."

How far did you have to travel to the venue?

Guidance suggests that you should not have to travel more than 90 minutes each way to your medical. This appears to be based on travelling by car. It could well take longer by public transport.

Sample Text

"When I received my appointment, I explained that it would be a long way to travel, and asked that it be moved to a closer venue, or take place at my house, but they wouldn't agree to this. On the day I was very worried about the journey, anxious about getting there on time and whether I would be able to find the venue. By the time I arrived I was very nervous and wasn't able to answer the questions properly."

Did anything else happen that affected the standard of the medical?

If anything else occurred that affected your ability to give accurate evidence to the HP then consider telling the tribunal about it. The kind of issues that might be relevant include:

- The HP was very abrupt, making it difficult for you to talk to them.
- The HP kept taking calls on their mobile and this upset you and prevented you from concentrating.
- The HP's first language was not English and you had difficulty understanding them, or they had problems understanding you.
- The HP brought someone with them and you felt awkward about giving details of your condition in front of them.
- The HP was male and you had specifically requested that you were visited by a female, or vice versa, and you were unable to speak openly to the HP as a result.
- The HP appeared very sceptical about whether your health condition, for example, CFS/ME, really exists at all. His comments or body language made it difficult for you to speak freely to him.
- The HP offered suggestions about what treatment you should receive or how you should manage your condition and this made you suspect that he thought you should be able to manage better than you do.

Challenging the way the evidence has been presented

By this we mean flaws in the way the report has been completed by the HP. This includes things such as writing in the first person instead of the third or using unexplained medical terms and abbreviations. On their own these may not be particularly damning, but if an HP has made a number of procedural errors then this may raise questions about the HP's ability to do their job.

Has the HP failed to follow basic procedures in completing the report?

The DWP often argue that disability analysis is a specialised discipline and that the HP has been trained to assess people's needs in a way that other doctors haven't. But if the HP can't even get basic procedures correct then it may be reasonable to argue that the HP does not have sufficient training or expertise in this area to make their report a reliable one.

Sample text

"The decision maker has said in their submission that the HP is an expert in disability analysis. However, the HP has made a number of basic errors in the procedure for completing the report, as set out below. I would ask the tribunal to consider whether, as a result, the content of the report can be relied upon."

Does the report contradict itself?

If the report contradicts itself then clearly it cannot be reliable where it does so. Look carefully for examples where the HP seems to be saying two different things. If there

is just one contradiction try to point out its importance and the effect it may have had on the rest of the report. If there are several contradictions, or one major one, then argue that the entire report is so flawed that it should not be relied upon.

Contradictions could appear anywhere in the report. For example, in one place it may say that you experience 'severe' pain and in another that your pain is moderate.

Did the HP write in the third person where required?

The report should be written in the third person, not the first. ('He cannot get upstairs unaided' rather than 'I cannot get upstairs unaided'.) Only where the HP is giving their own opinion should the first person be used. On its own, failure to write in the third person is not particularly damning. But if there are other procedural flaws in the report it raises questions about how well the HP has been trained.

Does the report contain terms that are not explained?

HPs are told to explain any medical terms they use, for the benefit of the decision maker, who is not medically trained. Failure to do so may mean that the decision maker didn't understand parts of the report. Whilst the tribunal is going to make up its own mind about your eligibility, this is a relevant procedural issue. If it is added to other procedural failings you may be able to argue that the HP does not appear to have been sufficiently well trained in how to write these reports.

In the DWP's "PIP Assessment Guide" to providers carrying out assessments, it states:

Attempts to express medical terms in non-technical language can often be difficult and confusing. It is usually preferable to use medical language to describe medical issues and then to explain what they mean.

The functional implications of any findings must be explained in the summary justification. For example, "the claimant has reduced shoulder movement – this means that he needs to use an aid to dress and undress and wash and bathe."

The guide also warns against using medical jargon:

Medical jargon should be distinguished from technical medical language. Jargon is medical slang, or shorthand such as:

"SOB++ JVP↑ Ankle oed. R=L AF ∆ ?CCF"

Such jargon may not be understood by the CM (Case Manager) or the next HP to read it and should be avoided."

Sample text

"The following medical terms appear in the report without any explanation of what they are or what their significance may be in terms of my ability to carry out everyday activities:

[list terms]

HPs are instructed to explain all medical terms to the decision maker. The failure of this HP to do so is another example of her failure to follow proper procedures."

Challenging the 'evidence considered alongside the consultation findings' section

Has the HP considered all the evidence submitted?

Has all the evidence that you submitted and all that the DWP have collected, such as a GP factual report form, been listed in the 'evidence considered alongside the consultation findings' section?

If not, then the HP may have failed to base their advice on all the evidence available to them and this may seriously affect the reliability of their report.

Sample text

"I submitted a letter from my occupational therapist giving details of the sensory processing issues I have and how these affect everyday activities. But the report is not listed in the 'evidence considered' section or mentioned anywhere else in the consultation report from. If the person who examined me was not aware of these issues then I do not consider that their report can be relied upon."

Has the HP read and made use of all the evidence submitted?

Even if the HP listed all the evidence correctly, is it clear that they have read it and used it in their report where appropriate? Simply listing an item of evidence, such as a GP's letter, but then never referring to it even in relation to activities where it contains relevant evidence is not acceptable. The HP does not have to agree with your consultant or GP about how far you can walk, for example, but they do have to explain why they disagree.

Sample text

"My main health problem is my back injury. But I also have Crohn's disease and a letter from my consultant was included in the list of evidence considered by the HP. The letter explained that my Crohn's disease has not been effectively controlled by medication with the result that I suffer from severe bowel urgency, making it difficult for me to go outdoors alone and also severely limiting my social life and resulting in me becoming quite depressed and solitary. Yet the HP did not mention this letter at all when finding that I could engage with other people and plan and follow journeys."

Challenging the History section

In the History section of the report, the HP gathers evidence from you about your condition, how it affects you and what treatment you have had. It has sections covering:

- A history of your conditions, this should include a list of all your health conditions and details of recent hospital visits and tests.
- Your current medication and any treatment.
- Your social and occupational history, including who you live with and your current or former job.
- A functional history, including how you spend a typical day and night and any hobbies and interests you have. This section should also include details of how your condition varies and the effect of factors such as pain, fatigue and breathlessness. Any aids or appliances you use should also be listed in this section.

Most of the evidence in this section should be about what you told the health professional, not their opinions – they get the chance to say what they think later in the report.

Has the HP listed all your health conditions and impairments?

Do you a condition which affects your mobility or ability to carry out daily living activities, but which the HP did not include in the 'History of conditions' in the report?

If the HP appears not to have been aware of this condition at all then that will be a very serious failing in the medical report. If it is clear that the HP was aware of the condition because they have mentioned it elsewhere in the report, it may still be worth raising the issue as evidence of a lack of proper diligence in completing the report.

Sample text

"The HP has not listed all the conditions which have an effect upon my ability to carry out everyday activities. The HP did not list my thyroid condition, even though I have had treatment for this and it is still not resolved. I would ask the tribunal to attach little weight to the medical report as it is based on incomplete evidence."

Is the HP's summary of your medical history detailed and accurate?

In the 'History of conditions' section, the HP should have given details of such things as:

- When your conditions began.
- How they have progressed.
- What types of treatment you've had and whether it has been effective.
- What investigations or treatments are planned for the future.

Has the HP given an accurate picture of your condition? Or is there information missing, such as details of emergency admissions to hospital, which would show the seriousness of your condition?

Sample text

"The HP has not listed all of my stays in hospital, even though I told her about them. The frequency of my hospital stays is very important because it shows how severe my condition is. I am concerned that the HP will, therefore, have misled themselves and the decision maker about the severity of my condition. I would ask the tribunal to attach little weight to the medical report as it is based on incomplete evidence."

Has the HP included all your medication and treatments?

On its own, failure to list an item of medication in the 'Current medication and treatment' section may not be very serious. This will depend, however, on what the medication is and what it is for. Some medication would only be taken by people with a serious condition and thus failure to be aware of it may have misled the HP into thinking your condition was not severe.

The HP should list 'over the counter' medication you use as well as prescribed medication. They should also list any changes to your medication since you filled in your questionnaire or provided supporting evidence.

Any prescribed therapies, such as physiotherapy, should be listed with details of length and frequency and how effective they are.

Sample text
"I am currently taking steroids for my condition but these have not been listed by the HP. I am concerned that the HP will, therefore, have misled themselves and the decision maker about the severity of my condition. I would ask the tribunal to attach little weight to the medical report as it is based on incomplete evidence."

Has the HP dealt with side effects?

Has the HP given details of any side affects you suffer as a result of taking your medication and explained their relevance to your claim? These should have been noted in the 'Current medication and treatment' section and taken into consideration by the HP in the rest of the report.

Sample text
"I told the HP that my diuretics seem to make me dizzy which puts me at an increased risk of falling. But this isn't mentioned in the HP's report."

Has the HP listed any other therapy that you received in the past?

As well as treatment you are currently receiving, it may be important that the HP asks about therapy you have received in the past which may demonstrate the seriousness of your condition.

Sample text
"I told the HP that I had attended the pain clinic, but no mention of this is made in his report. I am concerned that this may have given the decision maker the impression that I am exaggerating my back pain. I do not believe I would have been referred to the pain clinic if my specialist had not considered my condition to be genuine and severe."

Has the HP described your home accurately?

In the 'Social and occupational history' section of the report, the HP should record the type of accommodation you live in, whether it is accessible for you, if it has been adapted, details of whether you live alone and anything else relating to your environment that is relevant to your claim.

This might include:

- Steep stairs inside or leading to your home
- No banister
- Upstairs toilet only
- Grab rails fitted in toilet and bathroom
- Small kitchen with little room for a perching stool

Has the HP detailed any changes to your work life?

If you have had to give up work because of your condition the HP should have recorded this in the 'social and occupational history' section.

If you are still working, the HP should have asked about any changes that you may have made to your working life as a result of your condition. This could be different hours, different duties or reasonable adjustments in terms of things like aids or adaptations to your workplace.

Changes to your work life would not normally be made unless there were strong grounds for doing so, especially if it has involved expense or inconvenience for your employer. So this is important evidence and if the HP has missed it, that makes their report less reliable.

Has the HP written a sufficiently detailed functional history?

According to guidance, the functional history "*is an important part of the assessment process as it should provide the Case Manager with a clear picture of the claimant's day-to-day life."*

Although failure to use the 'typical day' approach is no longer listed as grounds for a report being considered unacceptable by the DWP, guidance to HPs still stresses the importance of a 'typical day' being included in the functional history.

However, in most of the recent reports we have seen, a 'typical day' is very seldom included. This may be because it is time consuming to collect the evidence. But its absence may give grounds for a challenge to the value of the assessment.

Guidance issued to assessment providers gives a lot of information about what should be in the typical day account.

The 'typical day' is a tool used to explore the claimant's perception of how they manage their daily living, and the nature and extent of the functional limitations resulting from their health condition or impairment. The HP should invite the claimant to talk through all the activities they carry out on a normal day, from when they get up to when they go to bed.

The functional history is the claimant's own perspective on how they manage the daily living and mobility activities. What functional limitations do they have as a result of their health condition or impairment? It is not the HP's opinion of what the claimant should be able to do. It should be recorded in the third person, and should make it clear that this is the claimant's story. For example, "He gets up at ... and says he can wash and dress without any difficulty"; "She states that she finds it difficult to lift heavy saucepans". Wherever possible, the record should contain specific examples to illustrate difficulty with activities. For example, "He finds buttons difficult and tends to wear clothes that can be pulled over his head"; "She can manage to feed herself but needs to have meat cut up for her".

The HP should explore all the PIP activity areas for daily living and mobility, focusing on the activities most likely to be affected by the claimant's condition. The HP should do this by using open-ended questions to begin with (such as "tell me about ..."), and not just by asking a series of closed questions (such as "can you wash yourself without help?"). The HP should encourage the claimant to expand their answer to explore how easy or difficult they find a task. Do they need help to carry it out or are they completely unable to do it and need someone else to do it for them? The HP should explore how long it takes the claimant to carry out a task and whether they experience any symptoms or side-effects such as pain, fatigue or anxiety, either during or after the activity. If help is given from another person, the HP should record the type of help, who gives it, how often and for how long.

The HP is also advised to ask about household tasks, shopping, caring for another person or a pet, hobbies and pastimes and whether you drive a vehicle in your current day-to-day life.

Has the HP covered the whole of your day in the sort of detail set out above or have they missed out issues or activities that the decision maker should have been made aware of? If the HP hasn't done a thorough and detailed job then the whole of their report may be unreliable, because it is dependent upon an accurate functional history.

Sample text
"The HP has recorded that I can get dressed; that I go to a poetry group; that I can make a meal for myself; that I can go to the local shop for bread and milk; that I can listen to the radio and watch a news programme in a typical day. However, I told the HP that I cannot do all of these things in one day and can struggle to do one of these in a day at times. The HP has not recorded that I cannot do all these things in one day."

Sample text
"The functional history does not include any sort of account of my 'typical day' even though their guidance tells HPs that: "The HP should invite the claimant to talk through all the activities they carry out on a normal day, from when they get up to when they go to bed." Instead, the HP has simply made a few comments under each of the different daily living and mobility activities. I do not consider that the HP collected enough evidence to allow the decision maker to come to an accurate decision about my entitlement to PIP."

Has the HP recorded accurate evidence about mobility in the functional history?

The HP is told that they can consider your shopping habits, ability to do housework, hobbies and pastimes - in the house and garden as well - when considering your mobility problems. Has the HP done this and, if so, does the report give an accurate picture of your mobility or is it based on incorrect assumptions?

Sample text
"The HP has said that I can walk more than 200 metres as I shop at the large Asda superstore to do my household shopping. In fact, I told the HP that I cannot manage a weekly shop, so I go to the supermarket 3 times a week, getting a lift with a friend, and I walk around very slowly, leaning on the trolley and stopping for a few minutes in each aisle and pausing regularly as my chest is hurting with the exertion of walking. I sit down and rest on a seat afterwards until my friend collects me. I go to a different part of the shop at each visit. The HP has not noted on the report what I said."

Sample text
"The HP has stated that I walk my dog on a regular basis. I was asked if I walked my dog on a regular basis and I answered that 'I try to'. However, the HP did not ask me how often I can manage, how far I go, how often I rest and what I do if I can't get out."

Is the typical day account inappropriate in your case?

If the HP has written an account of your typical day, is it inappropriate in your case because you don't have one?

Sample text
"My condition varies so widely and unpredictably that there is no such thing as a typical day for me and any assessment based on such a concept is likely to be misleading. The extreme variability of my condition is part of what makes it so difficult to deal with."

Alternatively, you may experience rapid changes in your condition which mean that it is not your typical day that matters, but the untypical ones. For example, do you have mood swings meaning that your condition can change without you realising it and you may become a danger to yourself or other people as a result if no-one is monitoring your condition?

Has the HP accurately described the variability of your condition?

Variability is an extremely important issue. The Functional history section of the form is supposed to be *your* account of the variability of your condition, not the HP's opinion. Has the HP recorded accurately and in sufficient detail how your condition varies?

The HP is told in their guidance that they should ask:

" . . .the claimant what they can do on "good" days and "bad" days. How many "good" and "bad" days do they have over a period of time? For some conditions, different time periods will need to be considered, such as the potential impact of different times of the day. If a claimant is unable to complete an activity or needs support to do so at a point in the day when you would reasonably expect them to complete it, the need should be treated as existing for the whole of the day, even if it does not exist at other points in the day."

In the Functional history section the HP should also record factors such as the effects of pain, fatigue and breathlessness.

Did the HP take into account difficulty with kerbs?

According to DWP guidance, walking 'should be judged in relation to a type of surface normally expected out of doors such as pavements and roads on the flat and includes the consideration of kerbs.' Did the HP take into account any problems you have with kerbs?

Sample text
"I explained on my form that I often stumbled and fell due to the kerbs but the HP did not ask me about this and says that I can manage 200 metres without a fall. This is very rarely the case."

Did the HP take into account any walking aids you use?

Walking aids can include walking sticks, crutches and prostheses. The HP should have asked if you use any of these if you have mobility problems and noted your answer because they can affect how many points you score.

If you need a wheelchair to move around, that counts as not being able move around for the purposes of the PIP test.

Has the HP accurately described what effect activities have on you afterwards?

The HP's assessment should take into account the effect that any activity has on you afterwards. For example, you may be able to fulfil the 'Moving around' criteria one day, but the exertion of doing so means you are unable to do so the following day.

Sample text

"I am able to walk to the local shop and back, a distance of about 400 metres. But if I do so I will be exhausted the next day and will have difficulty even getting down the stairs to the kitchen. There would be no possibility of me walking anywhere for several days afterwards."

Did the HP ask whether you are able to use public transport?

The Guidance for HPs states:

"A person should only be considered able to follow an unfamiliar journey if they are capable of using public transport – the assessment of which should focus on ability rather than choice."

If you are only able to use public transport with the assistance of another person, or only able to travel on very familiar routes, this should be noted.

Sample text

"The HP has said that I attend the snooker club regularly. However, I wrote in my form that I am unable to understand which bus I need to get and what time it will come, so I have to ask my friend to come and collect me or come on the bus with me, as I would get confused and get on the wrong bus if I was alone."

Did the HP ask if you can plan a journey?

The HP should check if you are able to work out how to get somewhere and then follow that route for either a familiar or unfamiliar journey.

They should also check if you are able to work out a reasonable route, which may not always be the most direct route. For example, many individuals will plan a train journey that is slightly longer but involves fewer changes, or a car journey that is not the most direct but avoids difficult or busy roads and junctions.

Did the HP ask if you were able to ask others for directions?

The HP should consider whether you are likely to get lost. Clearly many people will get a little lost in unfamiliar locations and that is expected, but most are able to recover and eventually reach their destination. If you would get excessively lost, or are unable to recover from getting lost then you would be unable to complete the activity to an acceptable standard.

Sample text

"The HP said that I have good concentration and do not suffer from cognitive impairment and therefore I am able to ask for help if I get lost. In fact, because of my ME/CFS I can become very suddenly overwhelmingly fatigued when walking outdoors. I told the HP this. I can then become very 'foggy' and confused about where I am and where I'm going. I need someone with me to monitor my condition and help me to find somewhere to rest, recover and then continue walking".

Did the HP ask whether you can cope with small disruptions to travel?

The HP should consider what would happen to you if something unexpected should occur, such as roadworks or changed timetables, and whether you could cope.

Sample text

"The HP has said that I can ask someone for help if I can't understand the change to my bus route. However, the HP did not ask me what I would actually do if I needed help. I would get so upset and scared at the thought that I may not be able to get home that I would have a panic attack and find it difficult to breathe. I have collapsed due to a panic attack before, so I would not be able to go out without someone with me as I am not safe on my own if anything unexpected should happen."

Did the HP ask whether you become anxious when on unfamiliar routes?

Even if you are able to plan journeys and follow routes, the HP should ensure that you are able to take advantage of these abilities. So, for example, you may be too anxious to travel on unfamiliar routes because you suffer from bowel or bladder urgency leading to incontinence and always need to know where the nearest toilet is.

Sample text

"The HP stated that I was 'orientated and able to concentrate'. But I told the HP that I am scared to go out to an unfamiliar place because I get very agitated around people I do not know and this can cause me to be extremely anxious and at times I can lash out, which can cause problems with strangers.

I tend to stay at home or stick to using my bike to go into my local village, which I know very well. I keep my head down and do not speak to anyone as I feel anxious and distressed outdoors around other people."

Has the HP considered the effects of discomfort, pain, fatigue & breathlessness?

While these symptoms may not necessarily stop you carrying out the activity in the first instance, they may show that you cannot do it as often as is required and that you should therefore score points for the activity in question.

Sample text

"I told the HP that because of ME/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. The effect is worse the day afterwards when I will have to stay in bed for most of the day due to exhaustion. If I have to travel any distance I will always get a lift or use a taxi. In supermarkets, my partner pushes me in one of the supermarket wheelchairs. My problems are worst in the late afternoon and evening, when I could not walk even 50 metres without being exhausted. The HP has not taken into account the effect of fatigue on walking."

Has the HP considered safety, including falls, when you walk?

The HP should consider whether there would be a substantial risk to you or to others if you went out alone. They should consider:

- Whether you could injure yourself as a result of being unaware of obstacles, for example due to a visual impairment.

- Whether you lack the ability to spot or deal with danger. For example, learning difficulties may mean you do not realise that you could get knocked down and injured as a result of running into the road.
- Whether you are at risk of falling and injuring yourself seriously because, for example, you have osteoporosis and could easily break a bone if you fall.

Sample text
"In relation to falls, the HP has simply stated 'No history of falls.' However, I did tell the HP that I had stumbled frequently both indoors and out and that I no longer go out alone for fear of falling. Because my condition has caused me to put on a great deal of weight and because of my age and the lack of strength in my arms I am very concerned that I would not be able to get up again if I did fall. I would ask the tribunal to attach no weight to the HP's findings in relation to falls because s/he has failed to record and take account of all the relevant evidence."

Did the HP record what sort of a day you were having?

In connection with variability, the HP should check with you what sort of day you are having on the day of the medical.

It's very important that the HP does this if their findings are to accurately reflect how your condition affects you most of the time. The report must not be simply a snapshot of how you were on the day of your medical

Sample text
"On the day of my appointment I was having one of my better days. However, the HP did not ask me what sort of day I was having. I believe that this is one of the reasons why the report suggests that I have less difficulty with activities such as washing and dressing than is really the case."

Challenging the Observations section

In the Observations section of the report, the HP comments on your general appearance and details any 'informal observations' they made, such as watching you walk from the waiting room or rise from sitting. They also give details, where appropriate of any physical or mental health examination that they carried out.

The Observations section of the report has the following sections:

General Appearance and Informal Observations
Mental state
Musculoskeletal system and/or Central Nervous System
Other relevant systems (e.g. Vision, Hearing, Cardiovascular, Respiratory etc)

Has the HP left any of the observations sections blank?

If the HP has not examined you, because they decided that a particular section was not relevant to your condition, then they must say so in that section and not just leave it blank.

Equally, if they have examined you in any functional area and not found anything abnormal, they should say so.

If a section is left blank, but it is relevant to your condition, then you can argue that the report is incomplete and should not be relied upon because the HP failed to examine you fully.

Are the HPs informal observations accurate?

'Informal' observations of how you do things may be made and noted down - for example how you walked to the consultation room. But very often the HP will make assumptions based on these observations without actually checking with you whether they are correct. For example, did they ask if you were in pain whilst walking or what the effect on you afterwards might be?

Sample text

"The HP has said that I walked down the corridor to the consultation without stopping or appearing to be in discomfort. 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 ME/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 10 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."

Are the HPs informal observations complete?

In addition, has the HP given details of everything that they observed, or should have observed whilst carrying out the medical? For example, the HP may say that they saw you walk from the front door to your chair but not mention that you stumbled or had to hold onto walls or furniture.

Sample text

"I stumbled and nearly fell when showing the HP into my living room. The HP was walking behind me and must have seen it happen, but he does not mention it in his report. The HP also says that he observed me rising from sitting but did not mention that it took me three attempts and that I had to hold onto the table to get myself up."

Has the HP included irrelevant or prejudicial personal descriptions?

In the general appearance box the HP should only record things that are relevant to your assessment. They should not refer to issues such as race, religion or sexuality, for example, or any description that might be considered prejudicial.

Sample text

"The HP wrote that I was wearing lots of gold jewellery. This wasn't relevant and may have prejudiced the decision maker against me by making them think that I must have a lot of money from an undisclosed source."

Sample text

"The HP has recorded that I was well groomed and smartly dressed. He did not ask me whether I had any help with this. In fact, I often do not get dressed until very late in the day and sometimes do not bathe for days if I am feeling low. On this occasion my partner encouraged, cajoled and helped me to make a special effort to look presentable because a doctor was visiting. The doctor's opinion of how my depression affects my ability to cope with everyday activities is based in part on this inaccurate assessment of my ability to dress and groom myself. I would ask the tribunal to place little weight on the HP's report because of this."

Did the HP carry out an adequate mental state examination?

If you have a mental health condition or a learning difficulty then this is a crucial part of the assessment.

The guidance to HPs is that:

"The mental function assessment should be tailored to individual claimants and may include appearance and behaviour, speech, mood, depersonalisation/derealisation, thought, perception, cognitive function, insight and addictions. Where cognitive difficulties are a common symptom of a relevant condition, they should be assessed"

However, HPs will also have had training in disability analysis where they will have learned that all the following make up an accurate mental state examination:

Appearance – nutritional state, age, grooming, presentation, dress
Behaviour – eye contact, facial expression, rapport, movements, posture
Speech – tone, volume, rate, content, appropriateness
Mood – subjective vs. objective, self-harm ideas, temperament, irritability
Cognition – Orientation, attention, concentration, memory
Intellect – intelligence, logical thinking, educational needs, learning tasks
Insight – understanding of illness, its severity and treatment
Addictive Behaviour – intoxication/confusion, disinhibition, physical effect
Abnormal Thoughts – obsessions, compulsions, ruminations
Abnormal Perceptions – hallucinations, depersonalisation, derealisation."

If the HP does not make a record of something in this list that you feel is relevant to your condition and how it relates to the descriptors for PIP, you can challenge the accuracy of the report.

Sample text:
"I told the HP that I had to take extra medication this morning to cope with attending the medical assessment. My partner also had to accompany me because I was too distressed to attend on my own. I also told the HP that I had been awake all night worrying about going to the assessment, however no record was made of this. The HP has recorded that I was able to engage with him, but has failed to record how anxious I felt about the assessment when I told him. I don't believe that his comments accurately reflect the difficulties I have with my anxiety".

Are you threatening or aggressive towards other people?

If you are threatening or aggressive towards other people, then this may mean you need someone with you when carrying out some of the activities in the test.

For example, because of your condition, you may be verbally aggressive towards other people and this may result in a danger to yourself if you are not accompanied. Or, again because of your condition, you may be physically aggressive towards other people and need accompanying to prevent danger to others. If the HP failed to ask you about this, or failed to give details here, make sure you tell the tribunal either in a written submission or at your hearing and point out the HP's failure to record vital evidence.

Have you ever harmed yourself or attempted suicide?

If so, this may be very relevant to your assessment as it may mean you need someone to monitor your health condition.

Sample text
I told the HP that I have attempted suicide in the past and have frequent thoughts of harming myself. However, there is no mention of this anywhere in the report. I would ask the tribunal to attach little weight to the evidence provided by the HP because this was not taken into account.

Did the HP record details of your speech problems?

If your speech is affected by your condition, the HP should note what effect that has on your ability to communicate with others. This could be especially important if the HP had to ask you to repeat yourself several times throughout the assessment, as this would indicate that they had difficulty understanding your speech.

This should be noted in the report and if not, you can argue that the HP has been thorough and accurate in their assessment of your functional ability.

Did the HP use charts to test your vision?

Did the HP use a Snellen chart or near vision charts to test your vision? If not, how did they test your vision and was the method reliable?

Did the HP comment on your weight?

When considering cardiovascular and respiratory issues did the HP comment on your weight? If the comments are in any way judgemental or inaccurate they can be used to challenge the impartiality of the report. For example, you may have gained weight due to an inability to exercise caused by joint and muscle pain, but the HP might infer that lack of exercise is a lifestyle choice.

Did the HP carry out an examination of your limbs and joints?

Where appropriate, the HP should consider the range of movement and power in joints such as neck, shoulders, elbows, wrists, hands, hips, knees and ankles.

If any of the movements caused you pain or discomfort and you told the HP, or if you were unable to attempt them because they would cause you pain, this should be recorded accurately. If the HP has failed to record any pain or discomfort you experienced, you can challenge the accuracy of the report and dispute the decision that has been made as a result of this inaccuracy.

Did the HP report on reduced sensations?

Has the HP made accurate and complete comments about any problems you have that are influenced by your central nervous system?

If you have reduced sensations, for example, or experience pain or fatigue, these should be noted by the HP. The effects of those on your ability to carry out daily living activities and to mobilise safely should be included within the report.

Challenging the Health professional's opinion section

The Health professional's opinion section of the report form is where the HP gives *their* opinion about how your condition affects you. In other words, the HP is free to disagree with what you say.

If you can show that the evidence in this section is unreliable then you have gone a long way towards showing that the entire report is unreliable, so it's worth taking some trouble over.

Has the HP fully justified their choice of descriptors?

The HPs choices should be justified with reference to:

- clinical findings
- observed behaviour
- history
- other evidence connected with the claim, including your questionnaire and any additional evidence

It is not sufficient for the HP just to express their opinion as if it was fact without any justification at all. The HP must also show that they have taken account of factors such as:

- anxiety,
- pain,
- fatigue,
- breathlessness,
- variability,
- the ability to carry out tasks safely
- reliably
- repeatedly and
- at a reasonable speed

In addition, they must also address any contradictions in the evidence. If, for example, your consultant says you can't walk more than 10 metres without severe pain, but the HP choses a descriptor that says you can move more than 50 metres, they need to explain why they disagree.

Can you clearly understand from the health professional's opinion section why the HP chose the descriptors (points) that they did in your case? Have they made it clear what evidence they relied on to reach their conclusions in such a way that a decision maker can check and decide whether or not they agree with them?

If not, then these are grounds for challenging the reliability of the report.

Sample text
"The HP has said that I 'can prepare and cook a simple meal unaided'. However, the HP states earlier that I can make a meal for myself only if I use a microwave. As dyspraxia is part of my autism, it is not safe for me to use a cooker or a hob. The HP has not justified their choice of descriptor for 'Preparing food'. The HP should have chosen 'Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave' or explained why they were disagreeing with the evidence in their own report."

Sample text
"I said on my claim form that I could get out of a car and go into a local shop if I lean on a wall and stop regularly. The HP has not noted this and has instead said that I can walk to the local shop from the car park which is over 200 metres away."

Sample text
"The HP has written that as I see a Physiotherapist and the pain clinic about my back, that my condition is improving. However, my Rheumatologist has said that my

condition is deteriorating and that I require more regular infusions as my mobility is getting worse. The HP has not explained why they have disregarded this evidence."

Is there enough detail to justify the HP's choices?

In many reports we have seen, there is very little detail to justify the HP's opinion, either in this section or in the history section.

If the HP has given just one or two items of evidence to justify their choice but you gave a great deal more evidence in your questionnaire to support your choice, then point this out and ask that your choice be preferred because it is based on more detailed evidence.

Has the HP said where the evidence came from?

Some HPs are careful to explain where each item of evidence comes from. In particular, was it the claimant questionnaire or something allegedly said during the face-to-face interview?

Others, however, write things like:

'He reports that . . .' or 'Reported difficulties are consistent with . . .'

It's vital that the decision maker knows where the evidence came from.

Because if there is a contradiction between you said in your questionnaire and what you allegedly said at the assessment, for example, then this should be considered both by the health professional and by the decision maker.

The fact that, unlike Employment and Support Allowance, the PIP medical report does not have a section for setting out which options the claimant selected in their questionnaire makes it even easier for contradictions to be ignored.

Sample text

"In my questionnaire, I stated that "*I very seldom speak to anyone other than my partner and I very rarely have any contact with friends and family anymore and find it very distressing when I do*. The HP has stated *'He reports that he is able to talk to his parents and friends on the phone. This is not consistent with needing support to engage with other people.'*

It is clearly not accurate to say that I reported that I was able to talk to parents and friends when this is not what I said in my questionnaire. It is also not what I said at my assessment, but if the HP imagines it is, they should still have made it clear that this contradicts the evidence I gave in my questionnaire. In fact, I told the HP exactly the same thing that I said in my questionnaire – that I do speak to friends and family, but only rarely and it always distresses me greatly."

Has the HP wrongly considered impairment instead of disability?

The HP who visits you should have received training in disability assessment which stresses that it is disability rather than impairment that they should be considering.

This is especially relevant for conditions such as ME/CFS where the HP may claim that there is no evidence of muscle wasting and conclude that there is, therefore, little or no impairment of the limb function. Instead, the HP should have been looking at

the level of disability involved, i.e. how your condition actually affects your ability to use your limbs.

There is more information about the difference between impairment and disability in the training given to HPs:

Next it would be useful to consider the relationship between impairment and disability. We have all come across patients who have exactly the same disease process or impairment, but the degree of disability is completely different.

Consider two people of the same age, both one year after traumatic bilateral below knee amputations. One of these people is a very active sportsperson, extensively involved in local community life and who works full time. The other person now spends most of his time at home doing very little, because he now feels that he is unable to do anything.

Some of the differences can be identified in relation to personality and motivation, but also local environment, personal and emotional make up are important factors in response to the impairment.

Also, we must consider that diagnosis and age plays a role in the level of disability resulting from a similar impairment. If one of the people in the above example had bilateral below knee amputations as a result of vascular disease from lifelong smoking, then the situation would be different. The effects of age and any other disabilities would also have to be considered (if Chronic Obstructive Pulmonary Disease was also present).

Therefore, when making a disability assessment the 'Whole Person' and their environment must be considered.
Disability Analysis for New Entrants (Page 19. Pre-course Reading. Version 1. 28 September 2004. Medical Services Training and Development.)

Sample text
"The HP has stated that I have only slight impairment in my upper and lower limbs because there is no evidence of muscle wasting. However, many people like me with severe ME do not exhibit muscle wasting and yet have severe limitations on their ability to use their limbs because of the degree of fatigue and pain they experience. The HP has looked solely at what he considers to be impairment without taking into account the degree to which I am disabled by my condition. This is not in keeping with the training the HP should have received."

Challenging other issues

There are a number of other possible grounds on which you may wish to challenge the report, which we've set out below. But don't forget that this list isn't exhaustive: there may well be other issues you can raise that we haven't detailed here.

Has the HP accurately recorded the timing of the examination?

There is frequently a disagreement between claimants and HPs about how long the medical examination took. The times the HP says the examination started and ended are on the first page of the report. If the HP spent any more time writing up the report after they left you there is a separate box to record this on the last page of the report.

Do your times and the HP's times match? If the HP has claimed to have spent significantly more time with you than was actually the case, it is worth raising this as further evidence of the unreliability of the report.

Sample text
"The HP has recorded that the examination started at 11.50 and ended at 12.35. In fact, the HP collected me at 11.55, asked me to sit down, left the room (to make a quick call) and started asking me questions at about 12.03. The HP finished asking me questions at around 12.30, but sat writing for another 5 minutes before I could leave the room. The timing recorded is therefore not wholly accurate. I was looking at my watch throughout as my medication was due at 12.30 and I was starting to feel that I needed to take my tablets."

Has the HP given their professional qualification?

The HP has two opportunities to say what 'Type of professional' they are, once on the first page and once on the last page of the assessment form. In spite of the fact that they are instructed that they must do so, we know that some HPs are still refusing to say and just writing 'Health professional' in the box.

You can complain directly to Independent Assessment Services or Capita, who carry out the medicals on behalf of the DWP, if this happens in your case. In addition, you can ask that less weight be attached to the evidence of the HP than to any evidence given by your own health professionals, such as your GP or consultant, because the PIP assessor has not been willing to reveal their qualification. They may, for example, be a physiotherapist and you may have a mental health condition or a rare condition which they are unlikely to have encountered or have any understanding of.