

PERSONAL INDEPENDENCE PAYMENT
MANDATORY RECONSIDERATION

NAME

ADDRESS

NINO
BENEFIT
Date

PIP

This MR has been prepared on behalf of X by Michelle Cardno (LLB HONS) Fightback4Justice Law Advocate and Amy Turnock. Fightback4justice Law Advocates on behalf of the claimant with full consent.

Please note that under The Equality Act 2010 section 20 additional time should be allowed as the claimant has a protected characteristic and failed to gather additional medical evidence in the strict time limit specified by DWP for this Mandatory Reconsideration this included the assessors report itself which was delayed in receipt.

We suggest that the DWP, in this case has put extra pressure on our client as a result of the deadline being set so rigidly and have failed to acknowledge the recent Upper Tier case law regarding Mandatory Reconsideration time limits, where the Upper Tier Judge specifically addressed this point, stating that the time should be up to 13 months from the date of the decision in order to treat a disabled person fairly and not limit their access to justice.

X was awarded higher rate DLA Care and Higher Rate DLA Mobility in XX because she needed constant supervision throughout the day and was a substantial danger to herself. She also needed attention throughout the night with bodily functions more than once a night or for a prolonged period. See evidence 10.

She was awarded mobility because she was virtually unable to walk considering the distance speed and manner without severe discomfort no more than 50 metres. See evidence 10.

It is hard to understand how the decision maker has reached an adverse decision to award just Given that her conditions are debilitating and progressive in nature and that she has not had any new treatment regime for the MS or undertaken a new drug program.

X has the following conditions:

Illnesses and disabilities

Relapsing and remitting Multiple Sclerosis – This is a lifelong condition which can affect the brain and/or spinal cord, causing a wide range of potential symptoms,

including problems with vision, arm or leg movement, sensation or balance. All of which she can experience since being diagnosed XX She is under the regular care of the MS nurse see evidence 12 and 23 indicating 3 monthly visits and Neurology Department see evidence 13 and GP summary notes on page 17 onwards. This causes excessive fatigue, arthralgia and widespread muscle pain and general MS symptoms and feelings of being unwell. Evidence 17 onwards. She recently changed to X see the letter dated XX by her Neurologist. Evidence 22
She last had an MRI on the XX see evidence 14 and sees the disease modifying therapy clinic for MS claimants. Evidence 15. She has spasms in her legs frequently and stiffness is discussed as worsening evidence 23.

Long Tortuous Colon – Chronic constipation under gastroenterology see evidence 16 and evidence 21 which shows she has a 5-year history of constipation and it has worsened recently see evidence 22

Intermittent depression and anxiety and has been under IAPT in the past see evidence 18 and 19 for counselling.

EDS

Medication and Treatment:

Movicol oral powder 13.8g sachets lemon & lime – Dissolve contents of one sachet in half a glass of water – Take every day.

Qufora IrriSedo Mini system irrigation set – 1 device

Qufora IrriSedo extension tube

Amitriptyline – 10mg tablets – 4 every night

Tecfidera – 120mg gastro- resistant capsules – One to be taken twice daily

Under the care of:

GP – XX Surgery – See evidence 1

Department of Neurology, MS support nurse – University Hospital, X – See evidence 6 & 7.

Department of Gastroenterology - University Hospital, X – Evidence 4

Facts of the case:

Despite a maximum award for DLA Care and Mobility, on changeover to PIP X has not been awarded enough points for the Daily Living nor Mobility component based on her ongoing needs from X March 2018. She scored 4 points for Daily Living and 4 points for mobility. X seeks an award for PIP of enhanced daily living and mobility and suggests that the removal of points is unjustifiable and disproportionate in this instance.

X has relapsing and remitting Multiple Sclerosis which causes her to experience a number of symptoms such as, tingling, numbness and spasms in her legs, her legs heavy when walking, and chronic fatigue. She uses a walking stick due to her symptoms from Multiple Sclerosis – See evidence 3. She also suffers from chronic constipation for which she now takes X for the constipation. After a Colonoscopy she was diagnosed with a long tortuous colon with melanosis coli. Because of the constipation she experiences discomfort in her stomach and pain. The severe constipation can last up to 10 days. She does not have good and bad days the symptoms are constant.

There are several points she wishes to raise with regards to the assessment report which we have listed below:

1. She does not drive a manual car; her husband has an automatic vehicle. DVLA are aware of her issues and we have included a letter from them as evidence. She also has a steer wheel grip and utilises taxis to work
2. Her condition is affected by temperature changes, this will mean that she is hot or cold her symptoms are more prominent.
3. She refutes some of the points on the MSO, she did not crouch down with ease, her left leg was rocking from side to side in the assessment and she had unsteadiness when asked to go on tip toes.
4. She refutes she stated she could walk around a supermarket in minimal time, nor did she state that she could walk to the end of the street which is not approximately 100 metres, this is strongly refuted and only walked a few steps in the home assessment so was not observed doing so in the assessment. This is a guess and not based on anything factually correct.

The following points are disputed;

Daily Living Component:

Activity 1: Preparing food, 2 point awarded, disputed seeking E

X must have her husband or friend prepare her food for her as it is not safe for her to do so herself. She has poor grip and cannot peel or chop vegetables safely. She has also burnt herself whilst trying to cook food herself – *See evidence 9*. Due to being fatigued and tired she loses focus and concentration. X experiences spasms in her legs which means she cannot stand for prolonged periods of time, this also causes her to have poor balance – *See evidence 8*.

Activity 2: Taking nutrition, 0 points awarded, disputed seeking D

X lacks the motivation to eat and needs prompting to eat as she suffers from chronic constipation – *See evidence 4*. The constipation leaves her feeling bloated so she chooses not to eat. As she has poor grip she must use light weight cutlery when eating but more significant is the fact that she needs encouraging to eat most days.

Activity 3: Managing treatments, 0 points awarded, disputed seeking D

X has poor concentration due to being fatigued, she receives her medication in a pre-filled blister pack from the pharmacy with the days noted on there, even with the pre-filled blister packs she can still forget to take her medication – *See evidence 6*. She is currently trialing medication which has been prescribed by her Multiple Sclerosis nurse. She finds it difficult to manage her treatment and her husband must help to hold the tube and pump as she finds it difficult because of the weakness in her hands and remind her to take the medication when required. She is also trialing home irrigation at present and requires help with this as cannot hold the pump when her grip is weak.

Activity 4: Washing and bathing, 2 points awarded, disputed seeking E

X needs assistance to get in and out of the bath. Her husband must help her to get in and out of the bath for the majority of the time. She sits at the side of the bath and her husband helps her swing her legs over into the bath tub due to them feeling heavy. She cannot reliably and safely exit the bath and lift herself out and into the water without this assistance in doing so. There is no aid available without her need to step into the bath itself.

Activity 5: Managing toilet needs, 0 points awarded, disputed seeking B or D

X struggles when getting on and off the toilet as she experiences spasms in her legs and she feels stiff when sitting for a while so struggles to pull herself back up after using the toilet – *See evidence 8*. She must use the radiator which is located next to her toilet as an aid when getting on and off the toilet. X has chronic constipation and must take Picolax to help her go to the toilet – *See evidence 1 and 7*.

She therefore requires something to hold or another person when maintaining a safe standing and sitting position. She is also trialing home irrigation at present and requires help with this as cannot hold the pump when her grip is weak.

the DM had failed to consider whether there was a substantial risk to health and whether the risk could be ameliorated by a significant amount by medication or reasonable adjustments with activity 1, 3 and 4.

Supervision requirement risk of harm X needs supervision to be able to do tasks safely at times. She tends to self-neglect and has a history of self-starvation and alcohol addiction – she therefore satisfies the need for supervision under Regulation 4 and *RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ (PIP) [2017] UKUT 105 (AAC)*. The case law stipulates that the decision maker must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in this case. Both the likelihood of the harm occurring, and the severity of the consequences are relevant.

Unlawful changes re activity 11- Planning a journey Please see recent case *RF v Secretary of State for Work and Pensions [2017] EWHC 3375 (Admin)* which held that the amendments to Activity 11 were unlawful, and that the descriptor can encompass psychological distress.

Mobility

2.Moving around: 4 points awarded, disputing seeking D or E

Due to X Multiple Sclerosis she experiences difficulties when mobilising due to the pain and fatigue and if she can manage it on occasion it is with detriment to everything else she must do that day. She has no energy left to complete a return journey if she did walk 50 metres and this is reflective in her old award of higher rate DLA mobility.

She experiences spasms in her legs, heaviness when walking and chronic fatigue, she also finds it difficult to stand for prolonged periods of time due to her poor balance and weightbearing is an issue. She must use a walking stick when it is necessary. Walking causes her pain and discomfort. When walking she will link arms with a friend or family member to prevent her from feeling anxious. She feels that she can walk 20-50 metres before she starts to become tired and needs to rest or take a breath, but this is not reliably. X must walk slowly at her own pace.

After sitting or lying in bed she becomes stiffer and it takes her a while to get moving again – *See evidence 8*. This can also result in her taking more than twice as long as someone without her conditions to do this distance reliably. Moving around will leave her fatigued and tired and she must rest afterwards. X experiences chronic constipation which also affects her ability to move around, the chronic constipation causes her discomfort in her stomach and the constipation can last up to 10 days, but the symptoms are present every day.

We also suggest that an award of more than a year would be more appropriate given that her conditions are unlikely to change much in the next year. The fact that she is

being assessed a year early would cause too much stress, given that her conditions is affected by her stress level it would be more apt to award for a longer period than indicated by the health care professional. The assessor acknowledged on the one hand that she has a condition which demonstrates a slow deterioration affecting her ability to carry out her functional activities leading to the award changing in the future, however this contradicts the statement given above and does not appear to make sense.

The following caselaw applies;

Please note that pushing oneself to mobilise on occasion has been discussed by Judge Markus in the 2016 case: The undefined term 'to an acceptable standard' has been considered in many cases particularly in relation to how pain affects the ability to complete an activity reliably. In the unpublished case of **CPIP/2377/2015** *the effects of pain, its severity and frequency, and the extent of any rests, are all considered relevant to the question of whether a claimant can complete a mobility descriptor 'to an acceptable standard'. The effects of pain are also considered in [2016] UKUT 326 (AAC) where Judge Markus holds that even if someone may be able to carry out an activity repeatedly and within a reasonable time, they still may not be able to complete it 'to an acceptable standard' if they do so with difficulties such as pain or breathlessness.*

We also ask that you consider the following: *[2016] UKUT 194 (AAC) CPIP/181/2016*

Where a Claimant may be able to establish a need for prompting even if able to perform a specific task when there is impetus to do so.

Both apply to X and the fact that she manages to work part time in a job she has adjustments in place for, should not detriment her ability to gain a PIP award should she be entitled. Pip is by its very nature an in work benefit and the fact that she had a previous award for DLA should be taken into account, although the descriptors are different from PIP some of the descriptors DO overlap, the cooking test, uses the grip as an illustration, she was told that she required supervision to do daily living tasks for DLA yet this was ignored in her PIP assessment.

Regards

Miss Michelle Cardno LLB (Hons)
Prepared on instruction and on behalf of X