

## **MANDATORY RECONSIDERATION**

**NAME**

**ADDRESS**

**NINO**

**BENEFIT**

**PIP**

This MR has been prepared on behalf of X by Michelle Cardno (LLB HONS) Fightback4Justice Law Advocate.

### **Illnesses and disabilities with evidence:**

#### **Ulcerative colitis**

Inflammatory Bowel Disease currently confirmed as in relapse state and chronic in nature see the letter from XXXXX Inflammatory Bowel Diseases. (Evidence 1)

Bowel incontinence (100%)

He has medication for his conditions see evidence 3

He was assessed in 2014 and 2015 and he was previously awarded standard rate mobility and daily living for PIP until the review form recently indicated his conditions had worsened considerably on the form and he was reassessed. The reviewed decision awarded just 4 points for daily living.

He is currently in the support group for ESA

Excessive fatigue is experienced most of the time also and he suffers from headaches regularly.

Pain from the IBD or other issues which are unconfirmed at present.

### **Facts of the case:**

His physical conditions are debilitating and are not going to improve with time.

X indicates many areas where he disagrees with the assessment report in which he has prepared us a statement of fact which is included with this letter, in his own words. He is disagreeing with both components.

X disputes the following descriptors:

#### **Activity 1 – Preparing Food awarded b disputed seeking e**

He cannot remain in a standing/sitting position because of the pain in his legs and fatigue he suffers on standing, his mum and sister prepare all his meals and he struggles with solid food. He has issues with his short-term memory and has had incidents in the past almost causing a fire. Sitting is a real issue for him due to the pain in his pelvic region.

#### **Activity 2: Taking nutrition: awarded 0 seeking b)**

Due to the severe issues with his IBD he does not eat standard food as it is difficult to process and he has lots of shakes which he tends to need help preparing due to the fatigue. Using the blender and hands is hard and it is clear cutting food is a real difficulty and he either avoids this or asks someone to do it for him.

#### **Activity 3 – Managing therapy or monitoring a health condition 0 points awarded disputed seeking b**

Needs either – to use an aid or appliance to be able to manage medication; or supervision, prompting or assistance to be able to manage medication or monitor a health condition (1 point) He uses a dosette box but has distractions from pain all the time and fatigue induced memory issues. He sometimes struggles to remove the pills from the packets or open lids, so requires assistance and or prompts most days from a reminder service or family.

#### **Activity 4 – Washing and Bathing e not disputed**

He cannot shower/bath without a seat because of the restrictions and pain and he has purchased a bath board which was evident at the assessment on page 3 of the report it is clear he would be unable to get in and out of a bath safely most times. He needs to use furniture to get in and out of the bath. He avoids standing and showering due to the difficulties he faces and fatigue and is at a heightened risk of fall being on his own undertaking this procedure. He must bathe every day or excessively due to the bowel accidents he experiences daily. He also has pelvic pain when bending, sitting or reaching up.

#### **Activity 5 Toileting: disputed seeking e**

X has difficulties managing his incontinence, he also must go to the toilet excessively and struggles with maintaining a safe standing and sitting position without support from something. See letter from Inflammatory Bowel Diseases nurse marked evidence 1. He has undergone infusion therapy see evidence 2. He needs the help of someone or an aid to help with the daily bowel accidents he has and is in a relapsing state according to his IBD nurse.

#### **Activity 6 Dressing and undressing seeking b**

He struggles to bend down to do his socks or pull up his trousers and often will give up.

#### **Activity 9: Engaging with others seeking b**

X is very conscious of the bowel incontinence he suffers from daily and worries about what others will think of him and is anxious around others.

#### **Activity 1 Mobility Planning a journey:**

He can plan if not too fatigued but unable to carry out a journey as he is so anxious about his bowel incontinence and where the toilets are, he suffers from chronic incontinence and this stops him going out of the house.

#### **Moving around disputed seeking c**

We believe that his conditions have not shown any sign of improvement, we feel that he satisfies the following descriptor: Can stand and then move no more than 50 metres either aided or unaided as suffers from pain and marked fatigue on doing so. He cannot do this reliably nor repeatedly and in a reasonable timescale.

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 **CP/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.*

Please note that walking is a real issue for X due to his pain and IBD. He is stoic in nature and on occasion does push himself, however he will suffer the consequences afterwards and be unable to do anything the same day nor often the day afterwards. He avoids going anywhere if he can since he will need to use a toilet at short notice and must clean himself up.

The fact that he walked 28 metres at the assessment after a rest in the waiting area does not illustrate that he can walk reliably and repeatedly more than 50m in our opinion and nor other test was conducted on X to illustrate the restrictions he has with any distance.

### **Conclusion:**

We conclude that because of the lack of justification in the boxes on the PA4 and pasted amount of information on the form and we submit that all of these factors illustrates that the PA4 is substandard and due diligence was not applied by the assessor who as a generalist nurse should have at least acknowledged the need for assistance even with aids when cooking or the help required to stand and sit once she has been sat on the toilet for a while we also suggest that he rushed during the assessment, which lead in turn led to him asking very closed questions in the assessment and not allowing our client the opportunity to expand on how each activity affects his afterwards, and ability to repeat the action reliably including walking, which he does rarely.

Finally, our client has overlapping conditions that are unlikely to show any marked signs of improvement over time, nor are they likely to "go away."

The assessor and decision maker do not appear to have discussed any fatigue other than in passing, this is common with his kind of condition, nor his ability to repeat the actions above safely and reliably and in a reasonable timescale. He has just a few hours' sleep a night and he would be expected to have marked fatigue given this information and with the IBD.

Additional evidence (Evidence 4) is a patient print out from the GP confirming his condition and medication and referral.

Additional evidence marked evidence 5 is a photo of his bath board.

We trust you will peruse the evidence and increase X points to allow for the award to at least be the same as the previous award he was given prior to the review.

Regards

Michelle Cardno (Llb Hons)