

## **WRITTEN SUBMISSION**

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National Insurance Number:

**Tribunal Reference Number: SC**

1. This submission has been prepared based on the evidence and instructions provided by X in respect of her Personal Independence Payment appeal.

### **Summary:**

2. X has a history of **Fibromyalgia** causing chronic pain, fatigue and fibro fog, **Degeneration of lumbar spine, Osteoarthritis, Asthma**. She also suffers from **Schizoaffective Disorder and Depression**.
3. She is under the care of her GP who confirms that she is struggling with day to day living and mobilising (pg 171), Mental Health Services, Adult Social Care and Physiotherapy.
4. She has a Social worker who she sees 2-3 times per week. They have assessed her as needing 3 hours per week to help with personal care (pg 246/269).
5. The X county council health and care services report confirms that X does require support over 24 hours including overnight support. (pg 259)
6. X was previously awarded 9 points for daily living and 4 points for mobility She reported a deterioration in her condition on the XXXX
7. This decision is a supersession so we would respectfully request that the panel initially considers its power to reinstate the earlier decision until its original end date of xxx (page C) Applying TH v Secretary of State for Work and Pensions (PIP): [2017] UKUT 231 (AAC) here.
8. We would also request that the panel considers extending and increasing the award, taking the below factors into consideration.
9. **Facts of the case:** It is submitted that she has difficulties with:
  - 10. 1 Preparing food: 2016 Awarded 2 for Aid and Appliance. Seeking E.**
    1. She requires assistance due to weakness in arms, tingles & pins and needles. She is forgetful, becomes easily confused, is liable to leave things cooking and cause an accident. This is confirmed in the X County Council Health and Care Services report care report (pg 259) We would respectfully request that the panel considers CPIP/1599/2016 in relation to this descriptor- whereby the risk of harm need not be 'more likely than not' when assessing safety under regulation 4.
  - 11. 2 Taking nutrition: Seeking D**

She requires prompting to eat due to low motivation and self-neglect. She has run out of food many times because she forgets to purchase any food.

**12. 3 Managing medication: 2016 Awarded 1 for aid Not Disputed**

**13. 4 Washing/Bathing: 2016 Awarded 2 for aid and appliance. Seeking C – however this will not change the number of points awarded and has been included for completeness.**

Needs prompting and encouraging due to low motivation and extreme fatigue This is confirmed in the X County Council Health and Care Services report care report (pg 259)

**14. 5 Managing toilet needs: 2016 Awarded 2 for aid and appliance. Seeking D**

She needs help to clean herself when changing her pads due to chronic back pain, stiffness and lacks range of movement.

**15. 6 Dressing and undressing: 2016 Awarded 2 for aid and appliance. Seeking C/D/E**

She requires prompting and encouraging to dress. It takes her an extremely long time to dress so She usually stays in her nightwear most days. This is confirmed in the X county council health and care services report care report (pg 259)

**16. 7 Communicating verbally: Seeking D**

She disassociates causing complete mental shut down. This leaves her confused and forgetful afterwards. She is often limited in what she can understand. Her social worker confirms that she has difficulty with word finding and holding and maintaining conversation. (pg 304)

**17. 8 Reading and understanding: Not Disputed**

**18. 9 Engaging with other people: Seeking C**

She avoids going out at all times due to extreme anxiety. She becomes easily disorientated and is at the risk of disassociating It is confirmed that she is socially isolated due to her conditions in the X county council health and care services report care report (pg 259)

**19. 10 Making budgeting decisions: Seeking C**

The CAB help her to manage her debts and household bills (pg 301). She often doesn't pay her rent on time and often forgets to buy food. She has had to visit food banks as result of not remembering to save money back to purchase food. Her reliance upon food vouchers is confirmed in the X a county council health and care services report care report (pg 259)

**20.**

**11**

**Planning & following journeys: Seeking E - [2017] EWHC 3375**

Her social worker confirms that she Suffers with short term memory loss, and episodes of paranoid thinking alongside high levels of anxiety (pg 304). She becomes easily disorientated and is at the risk of disassociating It is confirmed that she is socially isolated due to her conditions in the X county council health and care services report care report (pg 259). We would respectfully request that the panel considers CPIP/1599/2016 in relation to this descriptor- whereby the risk of harm need not be 'more likely than not' when assessing safety under regulation 4.

**21. 12 Moving around: 2016 Awarded 4 50-200m Seeking E**

In February X it was recorded that she could mobilise 'a few hundred' (it is not clear if this is feet, yards or meters) (Pg 302).

22. However, since this date, her mobility has got much worse and her social worker confirms that she is only able to mobilises 20-30 yards before sitting, on bad days cannot leave home (pg 304)

23. She has been assessed as requiring a blue badge due to her poor mobility (pg 310)
24. She uses a crutch when mobilising outside of the house and utilises the furniture and walls around her home.

**We feel here that the following case law will apply:**

25. Pushing oneself to mobilise on occasion has been discussed by Judge Markus in the 2016 case: 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.
26. CPIP/139/2016: PIP moving around test must take in ability to negotiate kerbs: In accepting the Secretary of State's concession, Judge Rowley holds that: "To move around outdoors one must generally walk along pavements and roads. It is a rare pavement which is as level as a bowling green. To my mind, the decision maker or tribunal must contemplate a reasonably flat pavement or road surface, considering the usual rise and fall one would normally encounter." He adds that that when assessing a claimant's ability to move around, regard must be had to his or her ability to cope with kerbs: "After all, a person would normally expect to have to step up and down from the pavement while moving around out of doors." Please note that kerbs are a real issue for X

**Conclusion:**

27. The Appellant submits that most of the evidence considered by the decision maker rested on the HCP report. We submit the report that the HCP wrote was incorrect and that the HCP erred and did not complete the assessment form fully and correctly.
28. At page 179 the HCP confirms that she has used previous PA4's when considering her decision. We have been assured by ATOS / IAS that this should not be happening and each case should be looked at on its individual merits.
29. We do not feel that the HCP, who is a generalist nurse, understands the complexities of the conditions X suffers from, which were discussed at length at the assessment.
30. We therefore submit that the HCP inadvertently misled the decision maker by omission. We request that the evidence given orally to the panel, supported by the medical evidence submitted above, is given more weight when considering the appellant's entitlement to PIP.
31. Digitally signed by X