PERSONAL INDEPENDENCE PAYMENT MANDATORY RECONSIDERATION

NAME
ADDRESS
NINO
BENEFIT
DATE

This MR has been completed on behalf of x by Chloe Hamilton and Michelle Cardno LLB Hons fightback4justice Law Advocates on behalf of the claimant with full consent. Form of Authority enclosed.

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 is challenging the mobility component of PIP and is happy with the daily living component of 8 points, DWP have acknowledged his need for an aid in activity 1, 4, 5, 6 and awarded just 4 points for mobility which he disputes. x works because JCP got him back to work, he bundles money together whilst sitting down mostly and does have adjustments in place. He has a chair to sit down when he needs to nobody is assigned this chair and it is for his exclusive use, he has a special back rest and also can move around when needed and take breaks.

x has the following conditions:

Anxiety and Depression, this was diagnosed in x, he has previously had talking therapy but could not make it to some of the appointment’s due to his conditions, he experiences feelings of very low moods and needs a lot of prompting and encouraging to manage his mental health issues. He becomes upset very easily and struggles to control his emotions, he becomes very stressed and can also become very stressed out as a result of his mental and physical health conditions. He is medicated on x for this which is a dual-purpose drug known for its anti-depressant qualities – **evidence 1.** This is in line with the BMA guidance despite the SSWP stating that he is not on medication for his anxiety/depression.

Stomach Polyps, diagnosed in x, he experiences heartburn, this has been reviewed by GP.

Fractured Facet Joints, diagnosed in x by a Consultant spinal surgeon, he experiences constant excruciating pain which reduces his mobility greatly and restrictions as a result of this **– evidence 8.** His standing tolerance is reduced hence the chair at work.

Sciatica, he experiences poor sleep as a result of the chronic pain, he has twitching to the legs along with cramping to the legs. In **evidence 6** his GP explains the following **"*You will remember this x year-old gentleman who had back surgery in April this year. He complains of worsening sciatica in his left leg and has noticed some slight loss of power. Because of the pain in his back we have had to increase his MST to 40mgs bd and his x to 30mgs at night. In view of this worsening symptoms I would be grateful if you could review him sooner than planned in Outpatients."***

ACL ligament Reconstruction, he has had this done twice however, it has not been affective, his surgeon wants him to have this done again but he will not have use of his legs following the procedure and he does not want to lose his mobility for 8 weeks especially due to the fact that the last 2 have not relieved any of his mobility issues or pain. He is on a maximum dose of pain relief medication **(evidence 2)** so there is no further help or pain relief that can be prescribed. He experiences pain, his knees give way, he falls, his joints can pop out of their sockets, he has swelling at times, his knees lock and he also experience's creaking and cracking to the knees. He has attended A&E in the past due to the severity of the pain. – **evidence 3 & evidence 4.** See **evidence 5**, a letter written by his Consultant Orthopaedic Spinal Surgeon which explains the following "***He is already under the pain clinic, I think it is reasonable to CT scan him to see the extent of the fusion but even if it shows it hasn't fully fused with the lack of movement on the pedicle screws I am unsure as to whether anterior surgery and revision surgery is really likely to make a difference to him and he will have to consider this quite carefully*.**" See **evidence 11** for full outline of what the operation entailed. Please also see **evidence 14.**

In a letter written by his GP he states the following **evidence 7**: "*This x-year-old man has had problems with his back for years, however over the past few weeks it has become much worse. He has pain which is worse with movement. There is radiation pain to the backs of his thighs. On examination lumbar flexion is restricted and painful*."

In a letter written by a Locum Specialist Registrar to Mr , he explains x the following: **"*At present he complains of pain in the lower and occasionally in his right leg, this is more so when he stands up or when he is ascending or descending stairs. The pain in the back has not had any improvements at present on MST. He still continues to use a single crutch and it finds it difficult to even hold it for long periods of time."*** – **evidence 9.**

In **evidence 10** his Radiology investigations state: "***There is mild loss of normal disc height with loss of normal disc signal at L4/L5 with a small posterior tear, at this level there is a small midline posterior disc protrusion which is mildly indenting the thecal sac but not compressing the exiting nerve roots or the nerve roots within the thecal sac"***

Facts of the case: x has several aids in place around the home to help with his mobility needs, he has a perching stool, hand rails going up the stairs, a bed raiser, grab rails around the bathroom and a step to get into the shower, he also needs help from his wife to support him with all aspects of his daily living.
x struggles with weakness and pain which is widespread throughout his back and legs, this impacts him daily and although he tries to push through and keep some of

his independence this is not without great difficulty and payback afterwards. He struggles with weakness and pain in the knees, his knees give way with no warning and he also stumbles with little or no warning, he is a constant risk to himself due to the weakness in the knees, pain and occasional swelling. x has a mobility badge and will only drive short distances because he is unable to use public transport safely.

x not only struggles with physical conditions but also mental health conditions, he needs prompting and reminding to do things like manage his medication, this is done by his wife.

x was previously awarded DLA at the Standard rate of care of daily living and the Enhanced rate of mobility, we feel that he still meets the criteria for the enhanced rate of mobility for PIP there appears to be no consideration given to the speed and manner of which he walks, nor his inability to repeat this distance given the payback pain he experiences in his back mostly.

Disputed Descriptors
Planning a Journey: Seeking b - 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. Despite the fact he travels by car, points should have been considered for his inability to negotiate public transport, as per handbook, it is not enough that a person can plan a journey before attempting it, it is whether they can actually get to the destination safely whether that be public transport, or in the safety of his own car, which he considers his safe place.
He has anxiety which would mean that undertaking the journey on a train or public bus would be difficult for him owing to psychological distress caused from the risk to his health and the social anxiety he faces in any social setting.

Moving Around, disputed, awarded b, seeking e - x struggles with overwhelming chronic widespread pain, joints pain and weakness, he also has instability to the knee joints and overwhelming spinal pain impacting his ability to mobilise to a safe standard, this is worsened the further that he walks, he avoids walking any distance so that he does not become too worn out, he will rest as and when he can and needs to stop soon after starting due to the pain and weakness that he struggles with to both knees, please see below, statements from several specialist letters which outline his mobility issues and pain,

x explains how he must stop regularly when he is walking due to pain and weakness, he has been provided aids through the Occupational Therapy such as a walking stick. There is nothing more that can be done about his back and leg pain, the only option is a further operation however there is a chance that this will not be successful as the previous 2 have not been, he is reluctant to take this route as he will be completely immobile for more than 8 weeks.

x walks at a very slow pace, he will inevitably experience pain upon mobilising, and experiences extreme pain afterwards. Furthermore, he is stoic in nature and will push himself to manage very short distance even despite the debilitating pain and weakness but will suffer the after effects and will be unable to function for days afterwards and ultimately unable to work.

As PIP is an in-work benefit, we request the decision maker address the fact that x is stoic, he is trying his very hardest to remain in the workplace and he is being hindered by the fact, that the very benefit that is supposed to support him has been refused, because he works 5 days a week. Is this not the real reason PIP was put into force?

The following case law should apply

it is submitted that the new PIP guidelines issued on 2/11/2017 and case *RJ, GMcL and CS v Secretary of State for Work and Pensions v RJ (*PIP) [2017] UKUT 105 (AAC) should apply as he experiences falls and is often unstable and unsafe and is vulnerable as a result.

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.*

Conclusion

We submit that the assessment report is not fit for purpose. The assessor has clearly not considered the severity of his leg and back pain, nor have they investigated the fact that he is very unstable on his feet. We feel that the extensive evidence supporting his mobility needs and previous back operations have not been considered when making the decision nor has his previous award of DLA been considered when giving him his award for the mobility.

He submits further evidence that was not considered the first time, along with a prescription list outlining his medication which includes x 40mg daily and x x 10mg. These are considered for moderate to severe pain levels. He also submits his ESA85 assessment report from x and observations on his degenerative conditions.

Regards,
Chloe Hamilton and Michelle Cardno LLB Hons
Prepared on instruction and on behalf of x