

PERSONAL INDEPENDENCE PAYMENT MANDATORY RECONSIDERATION

NAME

ADDRESS

NINO

BENEFIT

PIP

DATE

This MR has been prepared on behalf of X by Katie Wright, Fightback4Justice Law Advocate.

Illnesses and disabilities with evidence:

X suffers from a number of debilitating conditions. She was diagnosed with **Fibromyalgia** in XX – see evidence 2. This causes severe widespread pain, as well as dizziness, Fibro fog and ‘flu-like symptoms’ – see evidence 3. She also has pain in her hands – see evidence 3. Flare ups can be devastating and impede on X ability to function at all. This is coupled with **Chronic Fatigue Syndrome** – see evidence 2 - she also suffers from **Post-Exertion Malaise**. The combination of brain fog and fatigue means that X cognition is limited as she becomes confused and is liable to forget things.

She also suffers from **Uterine Adenomyosis** – see evidence 1. This causes extremely painful and heavy menstruation and exacerbates the symptoms of Fibromyalgia. Having menstruating for up to two weeks puts additional strain upon X ability to carry out daily activities.

She takes numerous medications for her pain and associated symptoms of Fibromyalgia, including Omeprazole 20mg, Pregablin 25mg, Tramadol 50mg. She also takes Tranexamic Acid 1000mg for menstrual pain, and Zopiclone 3.75mg for sleeping. See prescription list – evidence 4. She is on numerous pain medications – not ‘low pain relief’ as the HCP describes.

She is also under the regular care of Rheumatology as her ongoing pain is so severe, and she has also received Physiotherapy since X – she now attends the Neuro Therapy centre for people with neurological conditions. See evidence 7. Upon moving to XX recently for better family support, she is in the process of being referred to local health services – she is building new medical contacts and it should not be inferred that she is not under the care of specialists.

She lives with her husband and is very reliant upon him. She uses a Dosette box – see evidence 9 – which he loads for her. She also has a makeshift bed set up downstairs for the days when she cannot make it upstairs to bed owing to pain – see evidence 8. She would struggle to use aids with a handle – ie. handrails or walking sticks because of the pain in her hands.

Facts of the case:

X numerous conditions are extremely debilitating and are not going to improve with time. The combination of her physical conditions and her mental health problems create an overall

picture of health which is very poor. X is often overwhelmed by pain and fatigue and afflicted by mental illness, she struggles to function in daily activities.

She has been on sick leave from her position at XXX since X on an employment protection scheme, however this runs out at the start of X – see evidence 6. She has been continually found unfit for work – see evidence 5. She does not think she will ever be able to return to work.

X has advised us of numerous places where she disagrees with the assessment. It is of particular concern that the HCP has reported throughout that 'no restrictions' were observed in the MSK, yet a full physical assessment was not carried out as the HCP conceded that X was visibly in a lot of pain and should "go home to rest". Only the grip test was carried out, which was reported as normal, yet X maintains that her grip was weak and it was extremely painful regardless.

Additionally, it is disappointing that the HCP asked mainly leading questions and did not give X the proper opportunity to explain the effects of her conditions, particularly about her 'bad days'. This is therefore a flagrant misrepresentation of X abilities which undermines her physical limitations. It should be noted that, at best, X has 4 bad days a week, although this is often more, particularly when menstruating. The HCP has acknowledged this when saying that X drives on good days, 3 times a week, but this is not reflected throughout the report.

X disputes the following descriptors:

1. **Preparing food:** 0 points awarded, disputed seeking c

X is able to use a microwave to prepare simple meals but using utensils etc. is problematic owing to widespread pain caused by Fibromyalgia. Additionally, harm may come to X in the kitchen if she is overcome by pain or lapses in concentration. She relies largely upon her husband to cook for her but is able to make simple meals in the microwave. The HCP has relied upon the pinch test in the MSK as evidence of X ability to grip – X was in severe pain whilst this was carried out and does not think she gripped adequately. Furthermore, ability (or lack thereof) to grip in a short test is not representative of lifting heavy pans or using potentially dangerous utensils. It is submitted that X overwhelming pain, fatigue and dizziness means that she cannot complete this activity to safely and reliably, to an acceptable standard, and is able only to use a microwave.

2. **Taking nutrition:** 0 points awarded, disputed seeking b

X needs to use large-handled cutlery to eat, as this is easier to grip owing to pain in her hands. She also needs to drink out of bottles rather than glasses, as pain in her hands and muscle spasms can cause her to spill. Evidence as to X ability to grip is not representative of prolonged use of utensils, nor does it take into account the pain and fatigue caused by extensive activity. It is submitted that X is unable to complete this descriptor to an acceptable standard without the use of aids.

3. **Managing therapy or monitoring a health condition:** 0 points awarded, disputed seeking b

X relies upon a Dosette box prepared by her husband to be able to take her medication reliably – see evidence 9. She takes several different medications and can easily become confused by Fibro fog and fatigue, and is liable to forget to take her medicine. The HCP's observation of her 'good' memory and cognition during a short minute assessment does not accurately reflect her long term difficulties with having to remember numerous medications on a day-to-day basis. Likewise, the HCP's reliance upon X ability to recall her medical history is not applicable, as she actually needed notes and prompts from husband to be able to do this. X needs an aid to be able to manage her medication reliably, repeatedly and to an acceptable standard.

4. **Washing and bathing**: 0 points awarded, disputed seeking b
X requires an aid to be able to wash or bathe. She makes use of a walk in shower. She leans against the wall whilst showering as he finds it difficult to stand for prolonged periods owing to widespread pain (though especially in her back), fatigue and dizziness – see evidence 3. X experiences severe pain when weight bearing and struggles to mobilise, as proven by the fact that the HCP deemed her unable to complete most elements of the MSK. Although she simply has to rely on the side of the shower as an aid to support her, this still constitutes an aid as it helps her overcome the consequences of her impaired ability to stand and weight bear when carrying out the activity – please see case **2016 UKUT 197 AAC**. X cannot complete the activity safely, reliably and repeatedly without the use of an aid.

5. **Managing toileting needs or incontinence**: 0 points awarded, disputed seeking b
X leans on the walls and other bathroom appliances ie. sink to help her sit and stand from the toilet without incurring excessive discomfort. This is owing to widespread pain and fatigue. The HCP has failed to recognise this in her conclusion that X stood and sat down with ease at the assessment; X would like it noted that she actually had to choose seats in the waiting room and assessment room with arms so that she could support herself and even this aggravated her pain. The MSK was not completed owing to X visible pain and fatigue. It is therefore reasonable to conclude that X needs to use an aid to be able to manage her toilet needs safely and reliably, to an acceptable standard.

6. **Dressing and undressing**: 0 points awarded, disputed seeking e
X requires assistance to be able to dress her upper body owing to her widespread pain and particular pain in her back, shoulders and upper body – see evidence 3 and her issues with mobility. She relies upon her husband to help her put clothes over her head on good days and needs slip on shoes etc; on bad days she will not dress at all. X was unable to complete the MSK owing to the pain and fatigue it would cause, which the HCP admitted. Her ignorance of the effects of pain on X and her misstatements of X abilities undermine X condition and demonstrate a lack of understanding of its severity. X relies on the assistance of others to be able to complete this activity reliably, repeatedly and to an acceptable standard.

7. **Not disputed**

8. **Not disputed**

9. **Engaging with others** – 0 points awarded, disputed seeking c
X requires social support to be able to socialise with others, even close friends. She suffers with anxiety when socialising and struggles with the fact that others don't understand her disabilities; she does not want people to judge her. She can also get her words muddled owing to Fibro fog and struggles to follow conversations, this makes her embarrassed and reluctant to enter any social situation. She struggles with appointments and has to have support with her; she relied upon her husband to prompt her throughout her assessment.

10. **Making budgeting decisions** – 0 points awarded, disputed seeking b
X needs prompting and assistance to be able to make complex budgeting decisions. She used to work in X but she has been unable to work there for over X years because of conditions – this demonstrates how severe the implications of her disabilities are as she would usually have been adept at budgeting decisions. Her dizziness, fatigue and Fibro fog leads her to become confused. She was not able to relay her medical history at the assessment as the HCP reports – she needed notes and her husband to prompt her. She therefore cannot make complex budgeting decisions to an acceptable standard.

11. **Planning a journey:** 0 points awarded, disputed seeking b

X suffers from anxiety when socialising and also becomes confused owing to Fibro fog and fatigue; this adds to her mental distress. She is often reluctant to leave the house as she is conscious of her disabilities and needs prompting to do so. Although she does drive on good days, this is for less than half the time – as conceded by the HCP in her functional history. If something was to go wrong on her journey ie. a diversion or traffic jam, this would distress X. The majority of time she relies on help from her close family for lifts etc. She requires prompting to be able to undertake journeys repeatedly, safely and to an acceptable standard.

12.Moving around: 0 Points awarded, disputed seeking d

X is able to move no more than 50 metres owing to widespread pain and fatigue – see evidence 2, 3. She would use an aid such as a walking stick, but struggles with these because of the pain in her hands. The HCP observed that X was able to walk into the assessment room at a slow pace, but doesn't acknowledge the after effects of X exerting herself, such as fatigue and severe pain. The HCP also mis-states that X receives no specialist input for her condition, yet she is under the regular care of Rheumatology and is now just being referred to her local health service having recently moved to the area.

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.**

X will inevitably experience pain upon mobilising, and experiences extreme fatigue. Furthermore, she is stoic in nature and will push herself, but will suffer the after effects and will be unable to function for days afterwards.

The case of **CPIP/139/2016** confirms that the PIP moving around test must take in ability to negotiate kerbs etc.:

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, taking into account 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 moving around out of doors. "

It must be noted that X is prone to falls and struggles with kerbs and other obstacles. On the day of the assessment, she had recently fallen down some stairs and had a large cut on her chin, which the HCP has made no reference to despite this being unusual for an adult woman – see evidence 10.

It is submitted that X cannot walk more than 50 metres reliably, repeatedly, safely or in a timely manner owing to her widespread pain and fatigue which limit her mobility. She therefore cannot complete this activity to an acceptable standard.

Conclusion:

We conclude that all of these factors illustrate that the PA4 report is substandard and due diligence was not applied by the assessor, who as a Nurse, should have at least understood the extensive implications of X overlapping conditions. Statements are repeated throughout the report which would suggest that little attention was applied to the functional impact of X disabilities upon individual activities.

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". She is debilitated on a daily basis and the absence of any award denies her any chance of independence or the support which she needs.

Regards