

## **MANDATORY RECONSIDERATION**

### **PIP**

**NAME****ADDRESS****NINO  
BENEFIT****PIP****DATE**

This MR has been prepared on behalf of X by Michelle Cardno (LLB HONS) Fightback4Justice Law Advocate and Mr. G.P. Ashworth. SBStJ, BA (Hons) RGN, NDN cert, Cert Ed.

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

**Chronic Fatigue Syndrome** (Finally diagnosed X) continuing care undertaken by his GP. He suffers extreme exhaustion after attempting only minor household tasks resulting in him having to rest for many hours per day, in either his bed or chair. He is able to only mobilise around the ground floor of his parents' cottage, due to the total exhaustion and pains he suffers in his abdomen and limbs most days. X is under the care of the Chronic Fatigue Syndrome / Myalgic Encephalomyelitis Service

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

X Chronic Fatigue is extremely debilitating and is unlikely to improve in the near future. On assessment, he was awarded only 6 points on the daily living component and 4 for mobility. He is disputing both components.

Our client disputes the following descriptors:

#### **1. Preparing food: 2 points awarded seeking F**

He cannot remain in a standing/sitting position because of the pain. He cannot cut food with a knife or use a fork, due to the weakness in his hands and finds it difficult to eat "healthy" food that his parents make, as he 'cannot face it' due to the long periods of time he spends resting, (up to 20 hours per day.) He will now only eat when he is really hungry, and this could be at anytime, day or night, and he only eats 'ready meals' e.g. pizzas etc. His parents buy these for him, in order that he can reheat in a halogen oven. His mother bought him this, believing it to be safest option and to reduce further injury to self and others in the household.

#### **2. Taking nutrition: 0 points awarded seeking B.**

As previously stated, X has difficulty using cutlery, as it is painful, he therefore now predominantly eats food with his fingers. Despite his varied eating times, his parents continue to tempt him with a variety of foods and must encourage and prompt him to eat.

#### **3. Managing therapy or monitoring a health condition. 0 points awarded seeking C**

X is prescribed medication, however, due to his memory issues and brain fog he forgets to take them as he finds they tend not work and make him nauseous, he therefore needs his parent's encouragement to take them.

He uses hot water bottles for abdominal pain, and on occasion has burnt his abdomen, which still bears the scar from that incident.

His parents must take X to any appointments e.g. his G.P. as he could not go on his own and his medical care would be severely compromised. They have to make and organise his appointments for him and

encourage him to attend. Sometimes this can be impossible due to his exhausted state, so many appointments must be cancelled and remade.

### **7. Communicating verbally: 0 points awarded seeking C.**

X and his mother (his appointee) strongly refute the accuracy of the report in this descriptor.

It is well documented that patients with CFS/ ME suffer from brain fog, loss of concentration, memory impairment and difficulty with speech, especially being unable to think of the correct word to use. Unfortunately, X suffers significantly with all these symptoms and needs the assistance of his parents when he has to speak to others, so much so that he avoids social contact as much as possible, he never goes out alone, due to anxiety and fear of being overwhelmed. His mother or father have to remind him when he goes "blank" and explain things to him frequently.

During the assessment at his home, his mother was present throughout, had to prompt her son to answer the assessors' questions and explained his problems and that X loses the thread of conversations, however, this was omitted from the assessor's report, and we feel this was detrimental in the award of points he so rightly deserved of this descriptor, by the decision maker. (See G.P. Summary June XX Evidence 2)

### **8. Reading and understanding signs, symbols and words: 0 points awarded seeking B**

One of the few distractions X can undertake from his illness is reading. He easily tires from any exertion including reading. To this end, the text size on both his computer and Kindle have been increased to allow him to read more easily. Also, the use of a Kindle has made reading easier as it is significantly lighter and easier to hold than a book, considering his weakened grip.

Any form of communication requiring answering questions e.g. the application for PIP, must be filled in by his mother with him in attendance due to his brain fog and poor memory recall. He requires his mother to explain what information is required in respect of the questions on the form.

### **9. Engaging with others face to face: 0 points awarded seeking C.**

X has lost his confidence and feels intimidated and panicked by strangers, crowds and people questioning him, as he cannot always express himself fully and goes blank. This has been observed by his parents and parents' friends. As his illness is not obvious to others, this has further reduced his self-esteem, increased his anxiety and added to his social isolation.

During his assessment the assessor failed to fully appreciate the mental health aspect of his illness and the negative effects on his health in general. i.e. Social isolation, anxiety, inability to cope with public transport, panic he feels in strange company etc. The assessor reported "did not report any significant functional problems with this activity" However, the questionnaire and PA4 prove otherwise. (See page 21 PA4 and page 27 on the initial PIP application form.)

X had to really push himself to try to answer the assessor's questions, and was prompted by his mother, despite the comments of the assessor. The whole experience had a detrimental effect on him, leaving him totally exhausted for the rest of the week; despite having rested all the previous day to enable him to undertake the assessment.

X will not go out alone and his friends have only contacted by text in the last 6 months. When medical appointments are made, it is not unusual for them to be cancelled and then further appointments made due to his condition

### **9. Making Budgeting decisions: 0 points awarded seeking C.**

When X was at college, he could not cope with his finances, resulting in him accruing a large overdraft which his parents had to pay off. He cannot deal with bills himself, due to his poor memory, and his mother has become his appointee, and deals with his finances for him. He currently has no income, just a small allowance his parents give him. His mother and X work out what he requires

together and he will try to budget for these purchases (usually Kindle books) but he often gets brain fog and forgets where he is up too.

### **11. Planning & following journeys: 0 points awarded seeking B**

As X has become somewhat socially isolated over the last 2 years due to his CFS which has significantly reduced his mobility. The task of going out has become more and more difficult due to the profound exhaustion, mental anxiety it causes and the fear of having to communicate with others during the outing. He now does not go out other than to his medical appointments accompanied by his parents in their car. He must be prompted to do this. As previously stated, he never goes out alone, he must have support. On a good day, X could plan a simple journey, however, timetables confuse him and, he cannot tolerate the public nor public transport, as it causes him to become overly anxious and stressed. He could not follow a map as he becomes disorientated and therefore could not execute the journey.

### **12. Moving around: 4 Points awarded, seeking C.**

X lives on the ground floor of his parent's cottage, with easy access to the bathroom and kitchen from his bedroom. (It is 14 steps to the bathroom) This has been done to remove the need to climb or descend stairs which further exhaust him. He can also access the garden which he likes to sit in when he is able (20 steps in total). These distances cause him to become exhausted and his legs ache requiring him to rest for at least 10 minutes. Repeating the exercise repeatedly, reliably and in a timely manner is usually impossible.

We believe that his condition has not shown any sign of improvement, we feel that he satisfies the following descriptor: Can stand and then move no more than 20-50 metres unaided as he suffers from pain and marked fatigue in his body especially his legs and abdomen.

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.

The following case law should also apply:

***Supervision requirement risk of harm X needs supervision to be able to manage day to day. He suffers from chronic fatigue. He tends to self-neglect and requires must supervision and prompting to ensure he is safe and looks after himself. He 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 the 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.***

Please note that X is a young man on occasion does push himself, however he will suffer the consequences afterwards and be unable to do anything the same day or for days afterwards, which will have a detrimental affect his mental well-being especially self-esteem and self-respect.

### **Conclusion:**

We conclude that all of these factors listed above illustrate that the PA4 is substandard and due diligence was not applied by the assessor, who as a nurse should have at least acknowledged health issues X suffers, which the assessor appears to have disregarded in his award of points.

We would also like to bring to your attention: -

- The assessor ignored the comments of his mother when she tried to expand on X social isolation and anxiety.
- Incorrectly and repeatedly reported that X had not been prescribed any medication in the last 18 months. (see Evidence 1)
- Incorrectly reported that X needed no prompting from his parents. When his mother noted she had prompted X several times.
- Incorrectly reported that “the claimant did not report significant functional problem with communication in their questionnaire or at consultation” (see page 22 & 23 of 40 initial questionnaire) Also the assessor reported on the PA4 (page 7) “He feels he can miss things”

It is highly unlikely that a Mental Health nurse has the appropriate clinical skills and clinical knowledge to make an effective health assessment on a client suffering from CFS and this may be why the point award was so low.

Finally, our client is unlikely to show any marked signs of improvement soon. The assessor and decision maker do not appear to have discussed in any detail the effects of his CFS, or his ability to repeat these actions safely, reliably and in a reasonable timescale.

Regards

Michelle Cardno (LLb Hons) & Gerard Ashworth SBStJ, B.A. (Hons) RGN, NDN cert, Cert Ed  
Prepared on instruction and on behalf of XXXX