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Social Security Appeal Tribunals (official name: First-tier Tribunal (Social Entitlement Chamber)

This information applies to England, Scotland and Wales only

What you need to know

Introduction

The social security appeal tribunal exists because we live in a democracy. This means that if Department for Work and Pensions (DWP) officials decide you are not eligible for a benefit, there has to be an appeal to an independent legally constituted tribunal to see if that decision was right. If the tribunal did not exist then DWP officials would have the ultimate say in who got benefits, rather than Parliament. Parliament is elected and sets social security law and DWP officials are not elected and have to apply the laws exactly as provided by Parliament.

So your first thought when appealing should be, “Am I entitled to the benefit according to the laws that govern it?”. Only if the answer to that question is “yes” is it worth appealing. The tribunal cannot flex the law for you to either get it or not get it, it must apply the facts of your situation to the law and make a fair decision on that basis.

Occasionally, the facts and law are obscured by value judgements. For example, we find that conditions such as ADHD, fibromyalgia and obesity are far less likely to attract a Personal Independence Payment (PIP) award than, for example, permanent injuries, rare inherited diseases and sensory impairment, even though under the law there is no ranking of the worthiness of various conditions. It is only whether the impact of any condition meets the criteria for the benefit that counts.

The process

Before you appeal

Nowadays it is usually mandatory to ask the DWP to look again at a decision before you can appeal. This is referred to as "mandatory reconsideration". However, bearing in mind what we said in the introduction, the DWP cannot prevent an appeal simply by refusing to reconsider a decision. If it could it would render the appeal tribunal powerless and pointless. So you do not necessarily need a "mandatory reconsideration notice" to appeal. But you do usually need to ask the DWP to reconsider its position and wait a reasonable amount of time (which in law is unfortunately a long time – think months rather than weeks) for a response. The only exception to this is usually if the DWP doesn't tell you in the decision letter that you have to apply for mandatory reconsideration. In those unusual cases you can appeal straight-away.

Time limits

There is a one month time limit for both mandatory reconsideration and appeal. This can be extended to a maximum of 13 months (and in very exceptional cases potentially even longer), but you have to show continuous good cause for all the time you are late. This usually requires compelling medical evidence, but could also be evidence of, for example, being affected by bereavement, crime, or disaster.

Proceedings in the tribunal

Providing notice of an appeal

A "Notice of Appeal" must be provided. This is easiest done on-line via the reasonably user-friendly social security appeals portal: https://www.gov.uk/appeal-benefit-decision/submit-appeal .

You do not have to use this, however, and the appeals lodgement bureaucracy is all subject to reasonable adjustments. You can appeal by email or letter if you need to and information should

be provided in accessible formats. You must provide certain information required by the tribunal rules, hence it's advisable to use the portal or a form if you possibly can. You can find forms here, and also links to request accessible formats: https://www.gov.uk/government/publications/appeal-a-social-security-benefits-decision-form-sscs1

Your notice of appeal will be copied to the respondent, which is the Secretary of State for Work and Pensions (in practice DWP). You are the appellant. The respondent must provide a response to your appeal within one month. It can either lapse your appeal, which means pay you the benefit you are claiming, or resist the appeal and provide an explanation and all the evidence it used to reach the decision you are challenging. This is also subject to reasonable adjustments but the DWP is obsessed with sending standard paper bundles, or at very best large print paper bundles, regardless of need, so expect a battle if you need anything else. The DWP may contact you to settle your appeal by paying your benefit. If you agree to withdraw your appeal you can change your mind and appeal that decision within one month, or longer if it was impossible for you to act sooner.

Clearing up common confusion about tribunals

1. Existing award appeals are not banking what you've got and going for more, neither is appealing a lapsed appeal decision

Tribunals are entitled to find an award by the DWP to be over-generous and reduce or stop the award accordingly. The tribunal must provide you with a warning that if you continue you could lose benefit. Once that warning is issued you continue at your peril.

2. Tribunals are not a court

Since the Independent Tribunals Service and then The Appeals Service became part of His Majesty's Courts and Tribunals Service (HMCTS), it is sometimes thought that social security appeal tribunals are a formal court of law. Fortunately, they are more informal than courts. It has not helped that legally qualified chairs are now called "judges" and that tribunals are frequently held in magistrates court buildings and the like. But social security tribunals remain informal with a balance of probabilities test, not "beyond all reasonable doubt". The tribunal must investigate

your claim rather than you having to present your case perfectly. It must ask you pertinent questions to help you present your evidence.

3. Tribunals must make accommodations

The tribunal itself is exempt from Equality Act duties to make reasonable adjustments, but must make accommodations for appellants under common law fairness. The HMCTS bureaucracy is covered by the Equality Act. Accommodations can include remote hearings, breaks in hearings, providing communication support, deciding your appeal on documentary evidence without your personal participation etc.

4. The First-tier tribunal is not the end of the line and there is no limit on the number of further appeals

Sometimes hearings in the First-tier Tribunal go wrong. The panels are made up of human beings who make mistakes, like all of us.

When that happens there is a procedure to get your appeal back on track, but it is not easy to use and advice is recommended.

You usually have to identify a material error of law in the decision. It is not enough to just think it is wrong. A wrong decision without an error of law will usually stand. And a decision containing an error of law, but one that couldn't affect the outcome, will also stand.

You must act within a month (with extensions available in exceptional circumstances). The first stage is to apply for a statement of reasons. This is a more detailed explanation than the decision notice.

When you get this you can make an allegation of an error of law to the tribunal spelling out clearly what the error is and how it affected the outcome. Some examples include, not providing adequate reasons (note the word "adequate"), applying the law wrongly and ignoring important evidence (but the tribunal does not have to account for every single piece of evidence).

The usual procedure is the tribunal can then set the decision aside itself and order a rehearing, or give you or deny you permission to appeal to the Upper Tribunal. If the First-tier Tribunal

dismisses your appeal at this stage you can advance it directly to the Upper Tribunal within a month.

There is no limit to the number of challenges to wrong First-tier decisions. The process can continue until a fair and lawful decision is made. KDR has had incidents of multiple re-hearings for the same appeal due to multiple mistakes by the First-tier. Get advice quickly if you have lost your appeal and suspect an error of law remembering that further action must usually be within a month.

The tribunal cannot consider how you are when it hears your appeal, only how you were when the DWP disallowed your claim

By law the tribunal is prevented from considering any deterioration in your condition since the decision you are appealing against was made. So if you make the focus of your appeal how much worse you have got since the DWP disallowed your claim that is unlikely to be a successful approach. Instead, you have to think back to how you were struggling when you claimed the benefit. If you have medical evidence post-dating the DWP decision that sheds light on how you were at the time then that is useful for the tribunal. But anything that is about how you've got worse since the appealed decision was made is of no use. Medical evidence is increasingly vital. It's unlikely your claimed needs will be accepted unless they are supported by medical evidence.