

# Guide to Medical Evidence

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## Introduction

Doctors are frequently requested to provide information about their patients from a variety of sources, e.g. employers, government agencies and regulatory bodies. In the UK, GPs receive the most requests as it is they who hold the most comprehensive records. Provision of information may take the form of a report, a certificate, a statement or letter, or completion of a form.

Most requests for information present no problem but occasional difficulties may arise, where there are conflicts of interest or unreasonable expectations about the information the doctor may hold and problems about payment. Examples where doctors provide medical evidence are:

- Legal - child protection reports, Mental Health Act recommendations, proceedings to advance patient care, Notification of infectious diseases, death and cremation certificates, evidence of injuries for criminal proceedings.
- Employment - Fitness for Work Certificates or fitness to engage in a certain occupation.
- Evidence for Entitlement to State Benefits - DWP medical assessment forms or reports for entitlement to benefits such as DLA, PIP, ESA, AA, Exemptions from paying prescriptions.
- Local Authorities - housing support letters. The above list is by no means exhaustive but this guide is specifically aimed to help people with the provision of medical evidence to support claims for medically assessed benefits provided by the Department for Works and Pensions (DWP).

## **The importance of medical evidence Medical Evidence**

Supporting medical evidence can make a crucial difference to the success of certain benefit related claims or appeals, for example Employment Support Allowance (ESA) and Personal Independence Payment (PIP) which is currently being rolled out to replace Disability Living Allowance (DLA).

During the application process for these benefits the DWP does not automatically contact a claimant's GP or any other healthcare professional and will only do so if it considers it necessary. In the majority of cases people claiming benefits are expected to obtain their own supporting evidence.

Decision makers at the DWP and assessors who carry out face-to-face assessments may have little knowledge of the patient's illness and are unlikely to have any specialist knowledge. Face-to-face assessments may be short, and in some cases, decisions are made without the patient being assessed in person at all.

In cases where people struggle to self-report, good quality evidence is even more imperative to give the assessor a more accurate picture of a person's condition thus medical evidence supplied by a GP or other health professional is vital in helping assessors understand how a patient is affected by their illness or disability.

## **What Constitutes Medical Evidence?**

Medical evidence can encompass a variety of information, for example:

- Prescriptions.
- Care plans.
- Information from professionals such as a GP, hospital doctor, specialist nurse, occupational therapist, physiotherapist, social worker, support worker or counsellor.
- Other relevant information - e.g. X rays, diary kept to record on a daily basis how the illness affects the person.

## **Obtaining Medical Evidence**

The DWP suggests that you only send evidence that you already have since getting further evidence could slow down your claim and in some cases you may have to pay for medical evidence, whereas the DWP can request and pay for this evidence if they think it's needed.

The first point of call for medical information to support a benefit application is normally the person's GP. GPs, for example, have a statutory obligation to issue a Statement of Fitness for Work (see Appendix A) for the purposes of Social Security or obtaining Standard Sickness Payments (SSP). When it comes to matters such as letters of support outlining a client's illness, it is important to note that NHS GPs are under no obligation to provide such evidence to their patients or to provide it free of charge. Such provision is at the discretion of the GP.

They do have a statutory obligation to provide medical evidence if requested by healthcare professionals contracted on behalf of the DWP and there are procedures and forms that facilitate this requirement. If a claimant is unable to get other forms of medical evidence directly from their GP they should, when completing the benefit application form, give reasons why they believe that the DWP should obtain further evidence directly from their GP. In other cases, medical evidence may be sought from other relevant health professionals and support workers as noted earlier. If you wish to write to your GP or other health professional for support, a helpful letter template may be found in Appendix B.

## Requesting Medical Records

Although GPs may reserve the right not to provide such evidence to their patients, they are, however, legally obliged to allow access to a patient's medical records under both the 2012 NHS Charter of Rights and Responsibilities and the Data Protection Act 1988. Patients may wish, therefore, to request access to their medical records as they may contain evidence to support their claim to benefits.

If you want to see your health records - submit your request in writing or by email to your GP or other relevant health professional, stating the dates of the records you wish to see when you apply. The health records manager, GP or other healthcare professional will decide whether your request can be approved. They can refuse your request if, for example, they believe that:

- Any information in the records would be likely to cause serious harm to the patient or to another person.
- Details about third parties might be removed from the records.

If a third party is applying on behalf of you please note that information given to the GP in confidentiality will not be provided to the third party. There is usually a charge to see or get a copy of your records. The price is obtained from contacting your surgery, hospital or health authority.

If you are denied access you have a choice with regards to action. You can approach the Information Commissioner's Office if you think the organisation has breached the Data Protection Act by denying you access or you can, more usually, complain through the NHS complaints procedure.

## Making A Complaint About The NHS

You have the right to make a complaint about any aspect of NHS treatment using the NHS complaints procedure, including refusal of access to one's own records, provided you are a patient or a former patient of the practitioner or institution concerned. If complaining on behalf of someone else, the hospital or health practice must agree that you are a suitable representative

## **Time Limits For Making A Complaint**

You should make your complaint as soon as possible after the incident, and within 6 months from the date of the incident or within 6 months of you finding out you have a reason to complain (but no longer than 12 months after the event).

However, if a hospital or practice is unaware of the complaint, the 6 months limit starts from the time they first know about it as long as this is within 12 months of the date of the incident.

There is discretion in exceptional circumstances to waive the time limit where it would be unreasonable to expect you to have complained in time e.g. the suffering of grief or trauma.

## **First Stage - Local Resolution**

The first step in making a complaint, called Local Resolution, is to go to the practice or hospital concerned and ask for a copy of their complaints procedure. All NHS practices have someone who has responsibility for it. If your complaint is about primary care services (GPs and other family health services), the complaints manager can, if necessary, arrange for an independent conciliator to be brought in to help resolve the complaint.

## **Second Stage - Referral To The Ombudsman**

If your complaint is not resolved through local resolution you can refer the matter to the Public Services Ombudsman or seek a judicial review. Generally you have to send your complaint to the Ombudsman within a year from when the incident happened or you found out about it. If there are special circumstances, the Ombudsman may be able to extend the time limit

## **Judicial Review**

It may be possible to challenge the final decision on your complaint by seeking a judicial review which is a procedure which allows a court of law to review decisions made by public bodies. You will need to consult a solicitor if you plan to seek a judicial review.

## **Challenging a DWP benefits decision**

For anyone whose benefit application has been denied or withdrawn for failing medical assessment criteria, the following guidelines enable the client to challenge the decision made by the DWP.

Under new rules introduced on 28 October 2013 if the DWP make a decision about your benefits that you do not agree with, you may not appeal it immediately but may request that DWP reconsider it. You have one month from the decision date in which to do this. This process is called Mandatory Reconsideration.

If, after the DWP respond, you are still unhappy with the decision then you may appeal it by contacting Her Majesty's Court and Tribunal Service (HMCTS) - see below. It is important to stress that the DWP has not stipulated a time limit to complete mandatory reconsiderations.

If your ESA claim is disallowed under the work capability assessment you cannot be paid it during the mandatory reconsideration period. You will be forced to claim another benefit, such as Jobseeker's Allowance (JSA) if you are eligible or not claim any income replacement benefit at all.

If you are obligated to claim JSA please be aware that you will be expected to comply with preset job search expectations and failure to do so may lead to you be sanctioned (JSA payment being withheld).

## **Ten step guide for Mandatory Reconsiderations**

### **You receive your decision letter and decide that you want it reconsidered.**

You have 1 month from receiving your decision letter to ask the DWP to do this. It is important that you act on this as soon as possible. You can ask the DWP for a 'statement of reasons' for their decision but they must receive it within 1 month of you receiving your decision letter.

This extends your time limit for requesting a mandatory reconsideration to 1 month and 14 days from the date that you received your original decision letter. Alternatively, if the date on the written statement of reasons is more than 1 month later than the date on the original decision letter, then your time limit is extended to 14 days after the date on the written statement of reasons.

### **You contact the DWP and ask them to reconsider your benefit decision.**

The DWP's contact details should be on your decision letter. It is recommended that you ask for the reconsideration in writing. When replying keep a copy of your response and proof that it was posted within the strict 1 month time limit. You should include in your letter:

- Your full name, address and national insurance number.
- The date of the decision and a summary of the decision.
- A focussed explanation of why you think the decision is wrong. If you are asking for a reconsideration of benefits such as Employment and Support Allowance (ESA), Disability Living Allowance (DLA), Attendance Allowance (AA) or Personal Independence Payment (PIP) decision, then try and show how you meet the assessment criteria of the benefit.
- Any evidence backing the claim include with your letter.

### **A DWP decision maker will reconsider the decision.**

The DWP should acknowledge your request for reconsideration in writing and may phone you to ask questions about your claim and the decision, offering an opportunity for you to explain why you think the decision is wrong and submit further evidence.

## **The decision maker will write to you to let you know their decision.**

The DWP will send you two copies of a 'Mandatory Reconsideration Notice', which contains the reconsidered decision. Keep both copies safe, as you will need them if you decide to appeal the decision. If the DWP reverse their original decision, your benefits arrears will be back dated. If you disagree with the reconsidered decision, then you can appeal to the Social Security Tribunal: see steps five to ten below.

## **You have received the DWP's reconsidered decision and want to appeal it.**

You have 1 month to submit your appeal from the date on the mandatory reconsideration notice letter sent to you by the DWP. Similar rules apply as per step 1 above. You may wish to request help from your GP by using the appeal letter at Appendix C.

## **You lodge your appeal directly with the Tribunal Service.**

This can be done in writing or preferably by completion of a special form called the SSCS1 which contains all the information the Tribunal Service need to proceed with your appeal.

Once you have completed the form, attach a copy of your 'Mandatory Reconsideration Notice' together with any further supporting evidence and send it in to Her Majesty's Courts and Tribunal Service (HMCTS)

## **You have submitted your appeal to the Tribunal Service.**

The DWP will aim to respond within 28 days of the Tribunal Service telling them that you have appealed. You will receive written confirmation of this. If you have asked for an oral hearing, then you should also receive a notice of your hearing date from the Tribunal Service at least 14 days in advance of the hearing.

## **Preparing for your appeal.**

In advance of your hearing date make sure to:

- Write a submission - This is a way you can focus the tribunal on the reasons you want to make for why the reconsidered decision was wrong. If you are appealing an ESA, PIP, DLA or AA decision, then try to show how you meet the criteria of the benefit.
- Get supporting evidence - and send it in. You can submit supporting evidence at any point up until and including the day of the hearing.
- Make arrangements for the hearing - If you have communication needs (e.g. you need an interpreter), then tell the Tribunal Service in advance, as they will need to make arrangements. 9. Attending the Appeal Arrive on time. You can attend with a representative such as a support worker or friend to help your case but note that Legal Aid no longer exists for First Tier Tribunals thus you will not be able to request legal representation. The hearing will last around 30 minutes. DLA, PIP

and AA appeals will have a judge, a doctor and a 'disability member' (e.g. social worker, nurse, occupational therapist) on the panel. ESA appeals will be held in front of a judge and a doctor.

### **The Tribunal's decision.**

Usually, the tribunal will come to a decision on the day, but if not they will send out their decision by post. In the event your appeal is successful, benefit arrears are normally repaid within 4 and 6 weeks of the decision. You may wish to send a copy of the appeal decision letter straight to the relevant DWP office to speed up the process.

If you disagree with the tribunal decision, then ask for a written statement of reasons. If you intend to challenge a tribunal decision, then seek specialist benefit advice as soon as possible, as a challenge can only be done on the grounds of an 'error of law' and will necessitate appealing to an Upper Tribunal for which you are likely to require legal representation and may be entitled to legal aid.





Appendix B

To: (add name of professional).....

Address: (insert adress).....

Date:

Dear.....

RE:.....

I need to provide medical evidence concerning my illness/disability to the Department for Works and Pensions (DWP) by (insert date) regarding my current entitlement to (insert the name of the benefit) and I am writing to you to ask if you could kindly provide some evidence which would help my case.

Your help in regard to the matter would be greatly appreciated and I enclose a stamp addressed envelope for the return of your evidence to me. I would like to thank you for all your help in this matter and look forward to hearing from you.

Yours faithfully

Appendix C

To: (add name of professional).....

Address: (insert adress).....

Date:

Dear.....

RE:.....

I am appealing a decision made by the Department for Works and Pensions (DWP) on (insert date) regarding (insert the name of the benefit) and I am writing to you to ask if you could kindly provide some evidence which would help my case.

I need to appeal this decision by (insert appeal deadline) thus your help in regard to the matter would be greatly appreciated and I enclose a stamp addressed envelope for the return of your evidence to me.

I would like to thank you for all your help in this matter and look forward to hearing from you soon.

Yours faithfully