

Appealing a welfare benefits decision after brain injury



This publication is part of Headway's *welfare benefits after brain injury* series. To browse through our publications on a range of issues relating to brain injury and download these free-of-charge, visit www.headway.org.uk/information-library.

Introduction

The effects of brain injury can sometimes lead to brain injury survivors or their carers applying for welfare benefits. Unfortunately, the impact of brain injury may not be fully understood by benefits decision makers, and you may therefore feel that an unfair decision has been made on your eligibility.

This publication has been written to offer guidance on how to appeal a welfare benefits decision when applying for benefits after brain injury.

Rules for welfare benefits change regularly. You should always check the latest guidance at www.gov.uk/browse/benefits.

Steps to take before appealing a decision

If you disagree with a decision made about your benefits eligibility, there are a number of steps you can take to challenge this.

To start with, you should contact the Department for Work and Pensions (DWP) for an explanation of their decision. You can ask for this to be provided in writing or over the phone. To do this, contact the benefit office using the contact details on your decision letter.

Remember that there are strict limits for requesting an explanation. Details of this will be included in your decision letter.

A report would have been produced from your benefits assessment and sent to the decision maker. You can request a copy of this. For Personal Independence Payment this is called the consultation report form, while for new style ESA or Universal Credit, it is the assessment report form. Go through your report when it arrives, marking any errors or anything you disagree with.

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If you are not satisfied with the explanation provided by DWP, you can apply for a mandatory reconsideration. This is another consideration of your application by the DWP.

You can do this by contacting DWP using the details on your decision letter or by completing the Mandatory Reconsideration request form. This is available from the UK government website at www.gov.uk/government/publications/challenge-a-decision-made-by-the-department-for-work-and-pensions-dwp.

In most cases, you will need to follow these steps before you appeal. However, in some cases you might not have to. Your decision letter will tell you whether or not you can go straight to appealing.

How to appeal a decision

You can make an appeal by completing an online form from the UK government website at www.gov.uk/appeal-benefit-decision/submit-appeal. You can also download and complete a form called the Benefit appeal form - SSC1, available at www.gov.uk/government/publications/appeal-a-social-security-benefits-decision-form-sscs1.

If you are struggling with completing your appeal form or the appeals process, you can ask for a family member, friend or someone else to act as your representative. However, you will need to register them. Further guidance on this is available at www.gov.uk/appeal-benefit-decision/submit-appeal.

In your appeal form, you will need to provide:

- a copy of your mandatory reconsideration notice or decision letter;
- an explanation of why you disagree with the decision;
- your National Insurance number;
- your name and address.

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You will also need to sign and date the letter.

Some further points to consider when appealing:

- **Keep dated copies** of any application forms or decision letters relevant to your claim in one place.
- **Collect medical evidence** such as reports or letters from your GP relating to your brain injury, as these can be useful at any stage of applying or appealing for benefits.
- **Be aware of any time limits** within which you need to appeal. This is normally one month of the date on your mandatory reconsideration notice or decision letter. Make a note of important dates on a calendar and set alarms. If you miss the deadline because of the effects of your brain injury or because you are waiting for letters or reports to arrive, you may still be able to appeal but will need to explain why you missed the deadline.
- **Get specialist advice** before making an appeal. This is because, although the appeal may be successful, it may also lead to a reconsideration of your overall entitlement and leave you with less than before the appeal.
- **Contact the benefit appeals helpline** for help with any stage of the appeal process. Contact details are available at the end of this publication.

Reconsiderations regarding ESA

If you are waiting for a reconsideration for an ESA decision, you will not continue being paid while waiting for a mandatory reconsideration, so you should consider going straight to appeal. If you stop receiving ESA while waiting, you can apply for Universal Credit instead but you will not be able to return to ESA.

Preparing for your tribunal hearing

After submitting your appeal, you will get a letter by post with details of a **tribunal hearing**. The hearing is where your appeal will be discussed and decided by a judge and experts. They will be independent of DWP.

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You can choose whether to attend the hearing or not, and also whether someone attends with you.

It can take up to 6 months to have a hearing date. This time can be used to prepare for it. For instance:

- **Check the date** of your hearing and make sure that it suits you. If you cannot attend the date for a good reason, phone the court straight away to explain and reschedule.
- **Make a note of the date** of the hearing on a calendar, and set reminder alarms closer to the day.
- **Plan your route** to the hearing by checking the location, making travel arrangements, making arrangements in advance for any accessibility needs you may have at the hearing venue, and checking how long it will take to arrive. You will be expected to arrive on time for your hearing, so it might help to aim to arrive a little earlier than your given time.
- **Try to keep the days before and after the hearing date free** so that you have time to rest and prepare.
- **Gather your paperwork** (such as your application form, medical evidence and decision letters), and keep these in a safe, clearly labelled place. The tribunal should have already received copies of your evidence, but it can be helpful for you take your own copies along too.
- **Send on any outstanding evidence** that you have not already sent to the tribunal team as soon as possible.

Remember, there is no need to be nervous about the hearing. It is an opportunity for you to present your case and inform decision makers about the impact of your brain injury. The discussion will be informal and it will not be held in a court room full of people. You do not need to dress formally.

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At the hearing

You will have the opportunity to explain your appeal at the hearing. Consider also including details of any support you have needed to get to the hearing that day, such as any help you have needed with preparing paperwork, getting ready in the morning or travelling.

You will also be asked questions by a tribunal panel. Do not feel rushed to answer these questions. Inform the panel if it takes you longer to process information due to your brain injury, and ask for questions to be repeated if needed.

Answer questions as honestly as you can and don't be afraid to add information that you feel is relevant to the panel understanding the impact of your brain injury.

Remember that you may be able to reclaim some expenses such as for travel or loss of earnings related to your attendance. Keep a note of any related expenses and copies of receipts, and bring these to the hearing with you.

After the hearing

You might receive your decision straight after the hearing. However, in most cases this will take a number of weeks and will arrive in a letter through the post.

If your appeal is successful, you will start to receive your new payments and any backdated payments owed to you by the DWP.

If you lose your appeal, you can only challenge this if you have a legal basis, not just because you disagree with the tribunal's decision. To challenge the decision at this stage, you will need to appeal to the Upper Tribunal Administrative Chamber. You can also cancel the decision and begin the appeal process again - this is called getting a decision 'set aside'.

If you are continuing to appeal at this stage, it is advisable to contact Citizens Advice or a welfare benefits advisor for guidance on next steps.

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Useful contacts

Benefit appeals helpline

England and Wales: 0300 123 1142

For Welsh speakers: 0300 303 5170

Scotland: 0300 790 6234

www.gov.uk/appeal-benefit-decision/submit-appeal

Citizens Advice

Adviceline (England): 0800 144 8848

Advicelink (Wales): 0800 702 2020

Relay UK - if you can't hear or speak on the phone, you can type what you want to say: 18001 then 0800 144 8884

www.citizensadvice.org.uk

Turn2Us benefits *Find an Adviser* tool

www.advicefinder.turn2us.org.uk

Visit your local council's website to see whether they have a dedicated team to help with challenging benefit decisions and appeals. Find details of your local council at www.gov.uk/find-local-council.

Acknowledgements

Many thanks to Peter R., solicitor and welfare benefits advisor at Potter-Rees-Dolan Solicitors for his contribution to reviewing this publication.

Last reviewed 2024.

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