



Herts Adviser

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Good news for Personal Independence Payment claimants!

Following two separate rulings resulting in a more generous interpretation of the criteria for personal independence payment (PIP), the Department for Work and Pensions (DWP) has begun to review 1.3m PIP claimants to check if they could qualify for higher payments under the new rules. Claimants could benefit if they need supervision while performing daily living activities or getting around outdoors, or if they need to be accompanied when following journeys due to overwhelming psychological distress.

What are the new rules about safety and supervision?

There is a change to the way DWP considers whether claimants can complete activities safely and whether they need supervision. This follows the Upper Tribunal decision in [RJ, GMcL and CS v SSWP \(PIP\)](#). When assessing whether a person can carry out an activity safely, the decision maker must consider both the likelihood of harm occurring, and the severity and nature of the harm that might occur. Claimants **don't** have to show that dangerous events occur on most days. This new interpretation of the rules takes effect from 9 March 2017.

New guidance from the DWP, [ADM Memo 15/18](#), explains this in more detail and gives examples. In one example, a claimant who has seizures which are infrequent (once every six months) but potentially life-threatening is deemed to need supervision during activities such as cooking, eating, bathing, and following journeys, and will therefore qualify for PIP daily living component.

The new guidance says that recovery periods from events such as a seizure will not normally cause a risk to safety when carrying out daily living activities at home, but there may be a greater risk for the mobility descriptors than for the daily living activities.



Review of all PIP claims



Universal credit update



ESA arrears due



Industrial injuries benefits

What are the new rules about overwhelming psychological distress?

The Upper Tribunal decision [MH v SSWP \(PIP\) \[2016\] UKUT 531\(AAC\)](#) held that the effects of overwhelming psychological distress must be considered when assessing a claimant's ability to plan and follow a journey. This changes the PIP rules with effect from 28 November 2016, but until now the DWP has not been fully implementing the Upper Tribunal's ruling.

The new DWP guidance, [ADM Memo 16/18](#), explains the DWP's interpretation of the law, and they will now look again at entitlement to mobility component to identify claimants who are being paid less than they should be. Claimants with conditions such as panic attacks, anxiety, agoraphobia and autism could be due increased payments.

How will existing PIP claimants be affected?

The DWP will review all existing PIP claimants to identify people who are entitled to a higher rate of PIP as a result of the new rules. This will be a complex and lengthy exercise, partly because the changes in law are effective from different dates.

Claimants do not need to contact the DWP, but if they want their claim to be reviewed as soon as possible then they can ask the DWP to check their claim based on the new rules. If a claimant asks for their claim to be reviewed for another reason (for example, if their health has got worse) the DWP won't automatically review their previous entitlement based on the new rules, unless the claimant asks for that to happen.

Claimants will **not** need to attend face-to-face assessment as part of this review. No claimant should receive a reduction in benefit; awards will either be increased or unchanged. Claimants whose awards are increased following the review will be contacted to tell them of their new award. They will also receive arrears.

What about people who have had claims refused?

The DWP will also look again at claims decided on or after 28 November 2016 where they did not award PIP. Claimants do not need to contact the DWP – although if they have relevant evidence which they have not previously submitted, they can send it in.

All new PIP claims will be decided under the new rules, so people who have never claimed (or had an unsuccessful claim prior to 28 November 2016) may want to seek advice about whether they could now qualify if they have difficulties performing activities safely, need supervision, or if they have mobility problems due to psychological distress.

Review of claims for people with haemarthropathy

Separately, the DWP has also been reviewing all awards of PIP to claimants with haemarthropathy (a severe type of arthritis caused by bleeding into the joints due to haemophilia), because of a failure to give high enough awards in some cases. No claimant will have their award of PIP stopped or reduced as a result of the review and none will have to attend a face-to-face assessment.

Anyone with haemarthropathy who believes their case should be reviewed but hasn't yet heard from the DWP should phone 0800 121 4296.

Universal credit update

The Hertfordshire jobcentres which haven't yet gone 'full service' for universal credit (UC) will switch on the following dates:

- 3 October 2018 - Hertford, Letchworth and Stevenage
- 5 December 2018 – Hemel Hempstead and Borehamwood



To check precise postcodes, go to

<https://ucpostcode.entitledto.co.uk/ucdate>

The fact that a jobcentre goes 'full service' doesn't in itself mean a switch to UC.

When an area goes full service, **new** claims for the 'legacy benefits', i.e. income support, income-based jobseeker's allowance, income-related employment and support allowance, housing benefit and tax credits, will be abolished and replaced by UC. One exception to this is those claiming UC for the first time with three or more children. They will be directed to claim legacy benefits until at least 31 January 2019. From this autumn, that will be extended to people getting the severe disability premium as part of the legacy benefit – see separate article.

Existing UC claimants will have to switch to online claims. They will be contacted within a few months of their area going full service and be told to reapply for UC online. **If they don't respond, their UC will stop.** They won't have to serve a new waiting period or delay in payment.

Existing claimants already getting legacy benefits will be gradually transferred over to UC, either through 'natural migration' (being required to apply for universal credit as a result of changes in circumstances) or 'managed migration' (when the DWP moves them to UC). The migration process is now expected to be completed by March 2023.

Learn more about universal credit

- The MAU universal credit factsheet is at www.hertfordshire.gov.uk/benefits
- If you support service users affected by UC, you may want to consider attending the Money Advice Unit's UC training courses. Tel 01438 843456 or email moneyadvice.unit@hertfordshire.gov.uk for details.
- You can also phone MAU's advice line (for professionals only, tel 01438 843444) with any queries
- Information about UC and the applications process is available on the government website www.understandinguniversalcredit.gov.uk

DWP error on ESA corrected; some claimants to get more than £25,000

The Department for Work and Pensions (DWP) has finally agreed to pay full arrears to claimants who were underpaid employment and support allowance (ESA) when converting from incapacity benefit. Many claimants in this situation were not properly assessed to check their entitlement to income-related ESA, and received only contributory ESA.



Following a report from the Public Accounts Committee - which criticised the DWP for multiple failings in its handling of the migration of incapacity benefit claimants to ESA and highlighted that claimants are missing out on up to £150 million - the Secretary of State for Work and Pensions Esther McVey has made a written statement to the House of Commons as follows:

“The Department has analysed the relationship between “official error” and section 27 of the Social Security Act 1998 in regulating how and to what extent arrears can be paid. As a result of the conclusions of this analysis, we will now be paying arrears to those affected back to their date of conversion to ESA. My Department will be contacting all those identified as potentially affected as planned. Once an individual is contacted, and the relevant information gathered, they can expect to receive appropriate payment within 12 weeks.

Where we have already paid arrears from 21 October 2014 we will review the case again and pay any additional arrears that are due prior to that date.”

This will particularly benefit claimants who qualify for a severe disability premium as part of income-related ESA. Some will be entitled to arrears of over £25,000.

Claimants who think that they may be due arrears should contact the DWP on 0800 169 0310. If they have not previously been assessed for income-related ESA, they will need to complete a form ESA3. Claimants should seek advice if in doubt.

Blue badge criteria widened

The government has announced that the criteria for disabled parking badges will be expanded early in 2019, to enable some people with mental health problems, learning disabilities or autism to qualify.

Under the new rules, people will qualify for a blue badge if they cannot undertake a journey without there being a risk of serious harm to their health or safety or that of any other person; cannot undertake a journey without it causing them very considerable psychological distress (including automatic entitlement to those who score 10 points under the planning and following journeys activity of personal independence payment because they are unable to undertake any journey because it would cause overwhelming psychological distress); or have very considerable difficulty when walking (both the physical act and experience of walking).

Shop 'til you drop?

During assessments for personal independence payment (PIP), claimants are often asked about how they cope with shopping. If a claimant has reported difficulty with walking but then says that they can walk around a supermarket to do their shopping, the DWP may use that as justification for refusing to pay PIP mobility component.



However, the DWP shouldn't automatically refuse to pay mobility component just because the claimant goes shopping. There are many factors that should be considered when assessing a claimant's ability to 'move around' as part of a PIP claim.

- Some claimants with fluctuating conditions can only cope with going shopping on a good day. The PIP assessment is generally supposed to look at the person's ability on the majority of days, not just on good days.
- An upper tribunal decision (DT v SSWP (PIP) [2016] UKUT 240 (AAC)) made clear that the 'moving around' activity in a PIP assessment should look at ability to walk on normal **outdoor** surfaces such as a pavement, including stepping up and down kerbs (though not including steep slopes or flights of steps). A person may be able to cope with walking on a smooth supermarket floor, but struggle when walking on a typical pavement with irregularities and textured areas, and dealing with kerbs.

The upper tribunal decision CDLA/12551/1996 also contrasts ability to walk in a supermarket with ability to walk outdoors.

- The decision maker should consider not just the distance a person can walk, but whether they can walk that distance **reliably**. Walking speed, the need to rest and sit down, and pain are all relevant. For example, a person may need to rest for a significant period at the end of each aisle. Or they may be in severe discomfort but have to continue because they have nobody to help them. If a claimant is a risk of falls or injury while walking, or if the effort of walking a short distance leaves them exhausted and needing to rest for a long time afterwards, that should also be taken into account.
- For some claimants, cold, heat, rain, breezes or traffic fumes may make things more difficult when walking outdoors as opposed to indoors. However, to qualify for PIP mobility component the claimant has to show that they have difficulties most days, not just in unusual weather conditions.

The Money Advice Unit recently helped a claimant with severe spinal problems, who had been refused PIP mobility component because he had told the assessor that he was able to walk around a supermarket. In fact, he did this with significant difficulty, and he would not have been able to safely walk outdoors and negotiate kerbs. We used some of the above arguments and obtained new medical evidence from the claimant's GP. This resulted in an award of enhanced rate mobility component, meaning that the claimant now has an extra £59.75 per week to spend.

Loss of disability premiums when claiming universal credit ruled unlawful human rights discrimination

The High Court has ruled that two severely disabled men who had their benefits dramatically reduced when they moved local authority and were required to claim universal credit (UC) were unlawfully discriminated against.

Before moving, both the claimants' benefits included the severe disability premium (SDP) and enhanced disability premium (EDP), which are aimed at meeting the additional needs of severely disabled people on means-tested benefits who are living alone with no carer. Neither the SDP nor EDP is available under UC.

Both claimants moved to 'full service' UC areas, which meant that, in order to get help with housing costs, they were required to make a claim for UC. They each saw a drop in their income of around £178 a month, as the transitional protection scheme for people moving from legacy benefits to UC doesn't start until July 2019.

On 14 June 2018, the High Court held that the implementation of UC and the absence of any 'top up' payments for this vulnerable group constituted discrimination contrary to the European Convention on Human Rights.

One week before the High Court's judgment, the Secretary of State for Work and Pensions, committed the Government to ensuring that no severely disabled person in receipt of the SDP will be made to move onto UC until transitional protection is in place. She also committed to compensating those, like the claimants, who had lost out previously.

Regulations have been drafted to say that claimants who receive an existing benefit including SDP will not be able to claim UC. Instead, rather than naturally migrate to UC, they will be able to remain on their existing benefit or make a claim for an alternative legacy benefit if they have a change of circumstances. There will also be a transitional payment within UC for claimants who have already naturally migrated to UC, and prior to that migration had qualified for SDP as part of their legacy benefit award. This payment can be 'backdated' to the start of the UC award if certain conditions are met, and is based broadly on the amount of SDP that the claimant was receiving prior to natural migration.

The government is carrying out a public consultation on the UC migration process and transitional protection; for more information see <https://tinyurl.com/y9m2kzko>



Video recording of PIP assessments

The Department for Work and Pensions has announced that they will trial video recording of face-to-face PIP assessments, with a view to expanding this nationally. The Money Advice Unit has encountered many cases where claimants have said that the health professional's written report does not give a full or accurate record of what happened at the assessment. In that type of case, it could be very useful to be able to access a video recording. Currently claimants are allowed to make their own audio recordings of assessments, but only if they provide their own recording equipment which can produce two simultaneous copies on cassette or CD. Details of how the proposed video recording system will work have not yet been announced.

Online PIP appeals

If a claimant is unhappy with a decision on their personal independence (PIP) claim and has had a mandatory reconsideration, it is now possible for them to start an appeal online. The online 'submit your appeal' service is already available in south east England (including Hertfordshire) and the Midlands, and will be rolled out to other parts of England and Wales by October 2018.

You can access the new service using the link at www.gov.uk/appeal-benefit-decision/submit-appeal. Scroll down the page to Section headed '*Submit Your Appeal*' and click on the green '*Start Now*' button to appeal.

Once the appeal is submitted, it is registered on the case management system by the next working day and transmitted electronically the same day to the Department for Work and Pensions.

Youtube videos about PIP

The Department for Work and Pensions has produced five videos about personal independence payment (PIP), which are available on [YouTube](https://www.youtube.com). The videos cover five key stages in the claim process and each video can be watched as a standalone film or in sequence. Audio, subtitles and a BSL translation are available on all five videos.

Submitting fit notes online

ESA claimants who need to send in fit notes (medical certificates) can now do this electronically from their mobile phone or computer, as an alternative to posting them. The digital Send Your Fit Note service allows claimants to send photos of their fit notes to the Department for Work and Pensions.

Claimants can access the service at www.gov.uk/send-fit-note



Stay at home parents could be losing out on pensions if they do not register for child benefit

Registering for child benefit builds up entitlement to the state pension for parents of children under 12 who do not pay national insurance (NI) contributions.

Parents who were in receipt of child benefit in January 2013 - when the high earners' tax charge (on people earning over £50,000) was introduced - continue to get NI credits even if they opted out of receiving the benefit. However, parents who have started a family since that date, who may have seen no advantage in registering for child benefit due to the tax charge - for example, where there is a high earning and a stay at home parent - could be missing out on the NI credits required for a full state pension.

NI credits can be transferred to a non-employed parent or carer if the earning parent or carer has been the child benefit claimant.

There is a risk - to any household with one person earning and one person not earning but undertaking childcare commitments - that if the sole earner claims child benefit, the non-earner, with childcare commitments, forgoes NI credits and, therefore, their entitlement to a full future state pension. Parents can transfer NI credits between themselves without transferring who receives the money.



Money Advice Unit success story

A grandmother approached the Money Advice Unit as she required help with completing her granddaughter's disability living allowance (DLA) application.

We assisted with the application but unfortunately the benefit was not granted. We provided lots of information and support on the process of challenging a decision. At first this was a daunting experience but with our support the grandmother decided to go ahead. We assisted with putting forward a mandatory reconsideration but unfortunately the outcome remained the same and no award for DLA was given. The grandmother felt deflated and extremely frustrated about this and could not face having to challenge this further.

Step by step we went through the appeal process and reassured her that we can support her along the way so she would not be alone. She agreed to proceed with the appeal, and we assisted with putting forward an appeal submission. It was a lengthy wait for the tribunal hearing and a very difficult time for the family.

Following the hearing an award of DLA was granted at the highest rate of care (£85.60 per week) and lower rate mobility (£22.65 per week). This was backdated and a sum of £8091.85 was paid. In addition to this the grandmother received an increase in tax credits of £88.20 per week with a backdated amount of £1800. She was overwhelmed with the outcome and extremely grateful for our support.

Exemption from work capability reassessments

Most claimants who are receiving employment and support allowance (ESA) have their claims reassessed periodically. The same applies to those claiming universal credit who have been found to have limited capability for work (or limited capability for work related activity.)

The DWP has released new guidance about which categories of claimant will be **exempt** from having their condition reassessed. Claimants will be exempt if:

- they have been placed in the ESA support group, or are claiming UC and the DWP has accepted that they have limited capability for work-related activity *and*
- they have a severe, lifelong disability, illness or health condition *and*
- they are unlikely to ever be able to move into work

To be exempt from reassessment under these rules, claimants must have an “unambiguous condition” which is expected to affect them for the rest of their lives to the extent that they satisfy at least one of the descriptors in the ‘limited capability for work’ assessment. Examples of conditions which may enable a claimant to qualify include motor neurone disease (MND), severe and progressive forms of multiple sclerosis (MS), Parkinson’s, dementia, chromosomal conditions, Huntington’s, severe irreversible cardiorespiratory failure, and severe acquired brain injury.

Claimants will be told if they will not be reassessed following their work capability assessment.

Links to the DWP guidance are available at <https://tinyurl.com/y7pe3dpo>



PIP claimants with severe conditions

In a similar vein to the above, new guidance coming into effect soon will mean that some severely disabled claimants getting personal independence payment (PIP) will be reassessed less frequently and will not have to attend further face-to-face assessments. The new policy will benefit PIP claimants who have severe or progressive conditions and receive enhanced rates of PIP. They will receive an ongoing award of PIP with a ‘light touch’ review every 10 years.

As yet, there is no definition of what will constitute a severe or progressive condition, and the DWP has not confirmed the procedure for ‘light touch’ reviews. Claimants who are exempt from ESA reassessments will not necessarily benefit from the new rules on PIP assessment (and vice versa).

Industrial injuries benefits

Recently the Money Advice Unit has advised several claimants who have been missing out on industrial injuries benefits. Sometimes people miss out because of misconceptions. For example, many people do not realise that:



- Industrial injuries benefits aren't only for people with physical injuries or physical diseases. They can sometimes be payable to people who have a psychological injury or mental health problem resulting from something that happened in the course of their work.
- It is not necessary to show that your employer was at fault in any way. (If your employer was at fault, you could seek advice about claiming compensation from them for personal injury as well, but that is a separate issue.)
- Benefit can sometimes be paid based on incidents which occurred when working from home, or travelling between workplaces.
- Industrial injuries benefits can be paid to people who are still working, as well as to those who are not working, unable to work or have retired.
- Industrial injuries disablement benefit can be paid at the same time as other benefits such as contributory employment and support allowance, state pension or personal independence payment.

Claimants must have been employed, (not self-employed or a volunteer). The rules are complex, and there are several different types of industrial injuries benefits available, payable at different rates. Potential claimants should therefore seek advice. For more information see www.gov.uk or phone 0800 121 8379.

Happy retirement to Team Manager Sheila Bowles

Sheila Bowles, one of the Money Advice Unit's Team Managers, has retired after 29 years at the MAU. Sheila, who also helped manage the Blue Badge Service during her time at Hertfordshire County Council, will be fondly remembered and much missed by colleagues within the council and partner organisations.





Help for people affected by cancer

The Hertfordshire Macmillan Benefits Advice Service has been up and running since March 2017. The service has helped over 1300 people affected by cancer and has raised more than four and a quarter million pounds in extra benefits to help them cope with the cost of cancer. Most referrals come from local hospitals, clinical nurse specialists and Macmillan information and support centre staff and volunteers. Our advisers are very flexible and can help people face to face in local hospitals and hospices, over the phone or by carrying out home visits as necessary.

We can help cancer patients and their families/carers at the following stages:

- diagnosis
- treatment (and up to six months post treatment)
- palliative care
- end of life

To make a referral, phone 01438 843456 or email macmillan.benefitsadvice@hertfordshire.gov.uk

Money Advice Unit success story

Mrs X was referred to us, distraught after receiving letters from both the Pension Service and the housing benefit department advising her that her benefits had stopped.

It appears the Pension Service knew of the property she owned with her husband but had only recently decided to treat it as capital. The housing benefit office followed the decision of the Pension Service and terminated her housing benefit.

Mrs X's husband, severely disabled, lives in the marital home while Mrs X lives in a rented property in sheltered accommodation where she is provided with care for her own disabilities. Mrs X could not afford to live in her rented property without the housing benefit and could not afford to live on her own small pension alone, which was topped up with pension credit. She did not feel able to move back to the marital home for various reasons.

We argued that the capital from the former marital home should not be taken into account as the couple were neither separated nor estranged. On reconsideration the decisions were not changed and two appeals were lodged. Shortly afterwards, before the hearing, we received a revised decision from the Pension Service agreeing with our legal argument and lapsing the appeal. A few days later the housing benefit department revised their decision in line with that of the Pension Service.

This resulted in a very relieved client who is now able to continue to live in her home with the care that she needs.

Query from the MAU advice line

Every working day, the Money Advice Unit answers queries from statutory and voluntary organisations on our advice line on 01438 843444. This advice line is for professionals only.

Most queries to the advice line are regarding disability benefits or family benefits. However we are receiving an increasing number of enquiries about universal credit too.



Question

I'm helping one of my service users with an appeal after she was refused personal independence payment (PIP), and I'm going to attend the appeal tribunal hearing with her. I know that the tribunal members are independent of the Department for Work and Pensions (DWP), but will someone from the DWP be there too? Will they be arguing against us and saying that my service user shouldn't get PIP?

Answer

The DWP sometimes sends a representative, called a presenting officer, to an appeal tribunal hearing. The proportion of hearings attended by a presenting officer is increasing; the DWP aims to move towards sending presenting officers to half of all first-tier tribunal hearings for PIP appeals.

If there is a presenting officer at the hearing, it won't be the same person who made the decision being appealed against. Their role could include summarising the DWP's case and providing information about earlier claims for the same benefit, or information about claims for other benefits. They can refer to evidence in the appeal bundle and can ask the claimant questions. However, they won't necessarily be arguing against the claimant. They may make points in the claimant's favour or agree with some of the points the claimant (or their representative) is making. For example, a MAU adviser recently attended a tribunal with a claimant who had been refused PIP, and the presenting officer told the tribunal members that they thought the claimant met the criteria for standard rate mobility component.

When attending appeals, claimants and representatives should be prepared to put forward evidence and explain why they meet the criteria for the benefit in question, whether or not a presenting officer is at the hearing. However, the procedure for social security appeal tribunals is supposed to be inquisitorial rather than adversarial, so claimants should not be made to feel that they are on trial.

Presenting officers can also report back to the DWP on issues arising at tribunal hearings, for example if certain aspects of DWP decisions are being regularly overturned by tribunals.

Up-to-date versions of MAU's benefit factsheets,
including our universal credit factsheet,
are available at www.hertfordshire.gov.uk/benefits