FOR STAFF AND STAKEHOLDERS

CITY OF WOLVERHAMPTON COUNCIL

Benefits Bulletin

PIP Ending Award Early…

25th January 2018

Issue 12

Background…

The regulations surrounding Personal Independence Payment (PIP) provide that:

- a person's award to the 'daily living component' and/or 'mobility component' may be determined afresh for 'any reason' and 'at any time'; and
- that an award may be 'superseded' where a new Healthcare Professional report has been obtained.

Regulation 11 of the Social Security (Personal Independence Payment) Regulations 2013
Regulation 26(1)(a) of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013

Given this it is perhaps not at all surprising that the Department for Work and Pensions (DWP) are:

- sending people, a 'PIP Award Review' form to complete; and
- expecting them to attend a new medical with a Healthcare Professional

well ahead of the expiry date of their existing award.

What is more, also unsurprisingly, the DWP are then considering people's award afresh as though it were a new claim and in many cases simply ending their awards early.

When people are challenging such decisions First-tier Tribunals have simply been dealing with the appeal in the same way - in effect treating the renewal claim as a fresh claim and proceeding by seeking to determine whether or not, on the latest information available, the person meets the qualifying conditions for the 'daily living component' and/or the 'mobility component'.

Are things really as straight forward as this?

Since the introduction of the Social Security Act 1998 there have been rules which prevent the disturbing of a decision on benefit entitlement made by the DWP (outside of mandatory reconsideration) unless there are grounds for doing so by way of a:

- **revision** if there was some 'official error' as a result of something the DWP did or did not do; or
- **supersession** because since the decision was made there has been a relevant change in the claimant's circumstances

In final analysis an award to PIP may only be ended early if grounds for **REVISION** or **SUPERSESSION** are established. Neither the DWP nor a First-tier Tribunal are allowed to simply end an award early by simply reaching a different view on an entitlement to that of the original decision even where the claimant has completed a 'PIP Award Review' form and/or there has been a new Healthcare Professional report.

There have been a number of Upper Tribunal decisions surrounding this and linked themes.

The Case Law…

TH v SSWP ([2017] UKUT 231 (AAC) - CPIP/2621/2016 dated 2.6.2017 - Upper Tribunal Judge Nicholas Wikeley) involved a case where well ahead of the actual PIP renewal date the claimant notified the DWP that their condition had 'got worse' as he had been advised to report any change of circumstance and did not want to get into trouble for not doing so. Following this the DWP asked him to complete a new PIP questionnaire and sent him for fresh medical with a Healthcare Professional.

The DWP then told the claimant that based upon the latest information he no longer qualified for PIP because he scored zero points for the 'daily living component' and zero points for the 'mobility component'. The claimant appealed but his appeal was refused. He then appealed to the Upper Tribunal. It was the decision of the Upper Tribunal that the decision of the First-tier Tribunal was flawed. This is because the First-tier Tribunal failed to identify whether grounds existed for superseding the decision on the existing PIP award by way of supersession.

The Upper Tribunal Judge held that it was not simply sufficient for the First-tier Tribunal to assume that because there was a new Healthcare Professional report there were automatic grounds for superseding the original award by way of supersession. The Upper Tribunal Judge held that equally the First-tier Tribunal should not have assumed that the new Healthcare Professional report 'in some way trumped the first' by virtue of being more recent.

The Upper Tribunal Judge held that the 'lesson' was clear (as held in ***KB v SSWP*** - see below) - whilst the DWP had the power to look into an existing award it could only end it (or end it early) if there were grounds for supersession.

The Upper Tribunal Judge made clear that, as difficult a job as it was, it was the duty of First-tier Tribunal to consider the claimant's circumstances as they were at the time of the original PIP award and his circumstances as they were at the time when the DWP removed his award and see whether there were grounds for supersession. The matters for consideration were: Had there been a relevant change in his health condition? If there had, did this result in the claimant being entitled to a reduced (or increased) award of PIP.

The findings in this decision were approved in ***GA v SSWP*** ([2017] UKUT 416 (AAC) - CPIP/863/2017 dated 13.10.2017) by Upper Tribunal Judge Kate Markus QC.

KB v SSWP ([2016] UKUT 537 (AAC) - CPIP/1623/2016 dated 2.6.2017 - Upper Tribunal Judge John Mesher) involved a case where the claimant had originally been awarded PIP from June 2013 to June 2016. However, in 2015 she was asked to attend another Healthcare Professional medical the findings of which were that whilst she still had bad days, her health had 'improved' a lot and she could not score any points for PIP. When the new report was received by the DWP a decision was made that based upon the evidence contained in the new medical report the claimant's PIP award should be ended.

When the case went to appeal, the First-tier Tribunal held that the claimant was no longer entitled to PIP. In doing so, it stated that in PIP cases, unlike Disability Living Allowance cases, there was no duty to identify grounds for supersession when reviewing an existing award.

The Upper Tribunal held that whilst regulations exist to enable the DWP to reconsider a PIP award:

- at any time and for any reason (and in doing so expect a claimant to complete a PIP questionnaire and attend a medical with a Healthcare professional); and
- at the point when a new Healthcare Professional report is received

this was not the same as allowing a supersession to take place at any time and for any reason. The Upper Tribunal held that it is only when grounds for supersession (i.e. a change of circumstances) are then made out (e.g. upon study of the evidence) that the DWP may begin to reassess a person's actual award and entitlement.

MR v SSWP ([2017] UKUT 46 (AAC) - CPIP/3556/2016 dated 2.2.2017 - Upper Tribunal Judge Wikeley) dealt with a case similar in kind, one where the live issue was that the DWP were attempting to end the claimant's entitlement to PIP part way through the life of an existing award - in this case an award by an earlier First-tier Tribunal. The Upper Tribunal commented that the history of the case was 'really quite scary' and a 'sorry tale'. It held that the First-tier Tribunal who had most recently dealt with the case 'plainly failed' to deal with the 'elementary but essential task' of dealing with the 'grounds for supersession' principle. It confirmed the view held in **KB v SSWP** (see above) that the DWP cannot simply change a PIP award decision simply when it feels like it.

PM v SSWP ([2017] UKUT 37 (AAC) - CPIP/3556/2016 dated 26.1.2017 - Upper Tribunal Judge Wikeley) involved another case where both the DWP and the First-tier Tribunal were involved in the removal of an existing award of PIP before the end of the original award. As in ***MR v SSWP*** the award being removed was one made by a previous First-tier Tribunal. In this case the Upper Tribunal stated that this was 'yet another case' in which an attempt to remove the claimant's PIP was not dealt with adequately either by the DWP or the First-tier Tribunal now dealing with the claimant's appeal. The Upper Tribunal confirmed that the First-tier Tribunal had a duty to satisfy itself that grounds for supersession existed.

SF v SSWP ([2016] UKUT 481 (AAC) - CPIP/1693/2016 dated 28.10.2016 - Upper Tribunal Judge Wikeley) involved a case where the claimant had been awarded PIP up until June 2016. However, in June 2015 the DWP decided to review the award as part of the pre-planned renewal process. After obtaining a completed PIP questionnaire from the claimant and a fresh Healthcare Professional report the DWP decided in September 2015 that the claimant scored zero points for the 'daily living component' and 'mobility component' was therefore no longer entitled to PIP from that date. The claimant sought to challenge the decision. He attended an appeal hearing in March 2016 but the First-tier Tribunal dismissed his case. Whilst being damming of the submission of the DWP for its approach in treating the appeal as though it was an appeal against a decision refusing a new claim (as opposed to a renewal claim) and critical of the First-tier Tribunal for its failure to identify grounds for supersession the Upper Tribunal found further error in the decision of the First-tier Tribunal. This error related to the fact that the First-tier Tribunal did not provide 'adequate reasons' for its decision. See below.

BB v SSWP ([2017] UKUT 506 (AAC) - CPIP/2589/2017 dated 21.12.2017 - Upper Tribunal Judge Hemingway) raised another important point in these types of cases. It involved a case where the claimant had originally been awarded PIP for both the 'daily living component' and 'mobility component' for the period 2.10.2014 to 23.6.2015.

When the claimant made a further claim under the normal renewal procedures it was decided by the DWP to award the 'daily living component' but not the 'mobility component' from 24.6.2015. The claimant appealed against this decision but his appeal was refused by a First-tier Tribunal.

In reviewing the decision of the First-tier Tribunal the Upper Tribunal held that it contained a number of errors surrounding its findings in relation to the claimant's health and how this may have impacted on his ability to self-care. The Upper Tribunal also held that the decision of the First-tier Tribunal was fatally flawed because the First-tier Tribunal:

- made no effort to clarify the details of the original award and medical evidence upon which the decision was based (i.e. the original Healthcare Professional report); and

- failed to explain why it reached a decision which supported an award of the 'daily living component' when the claimant had originally been awarded the 'daily living component' and 'mobility component'

The Upper Tribunal held that in cases of this nature a copy of an earlier Healthcare Professional report (and any other medical evidence) should as a matter of routine be before a First-tier Tribunal. It held that whilst this was to be treated as a new claim (because it dealt with a period following the end of the original award) as a opposed to a review of an existing award (when grounds for supersession would be needed) any previous medical and adjudication history was irrelevant. The Upper Tribunal held that the First-tier Tribunal was disadvantaged by the lack of information before it. The Upper Tribunal held that at the very least such information would have helped it to explain why a different decision was reached on this occasion.

It was the decision of the Upper Tribunal that for these reasons the decision of the First-tier Tribunal should be set aside and the appeal be referred to a new First-tier Tribunal to consider afresh.

Reasons…

It is a fundamental principle in law that First-tier Tribunals should provide adequate reasons for the decisions made if an appellant asks for a 'full statement of reasons' (see below) after their appeal hearing. The legal standard should be that the reasons are legible and may be understood. The reasons should explain to the losing party why the appeal went against them.

In ***KB v SSWP*** the Upper Tribunal dealt with a case where the claimant had originally been awarded the enhanced rate of the 'daily living component'. However, the DWP then completely removed this award. This decision was then upheld by a First-tier Tribunal. See above. The Upper Tribunal found error in the decision of the First-tier Tribunal because it had failed to deal with the supersession issue. However, that aside, the Upper Tribunal found further error because the First-tier Tribunal failed to provide adequate reasons for its decision. The Upper Tribunal held that from the decision of the First-tier Tribunal it looked like it had decided to refuse the claimant's appeal because it considered that her condition had improved considerably even though she might not have realised this. However, the Upper Tribunal held that '… the claimant was entitled to have that spelled out, if it was the tribunal's view, and not to have that view left to be inferred. On balance this is not a case where the reason for the difference in result was obvious enough that no further explanation was required.'

The Upper Tribunal, with reference to ***R(M)1/96***, confirmed that the need to provide adequate reasons was particularly relevant where the claimant has had a previous award and contends that his/her condition has remained the same, or worsened, since that award.

The Upper Tribunal held that an 'adverse decision' without understandable reasons in such circumstances is bound to lead to a feeling of injustice and while First-tier Tribunals can take different views on evidence, or reach different conclusions on the basis of further or more up to date evidence without being in error of law, it was a duty (without imposing too great a burden on them) to make sure that the reason for an apparent variation in the treatment of similar relevant facts appears from the record of their decision.

Full Statement of Reasons: At the conclusion of a First-tier Tribunal hearing an appellant will be provided with a 'Decision Notice' which will notify them of the outcome of their appeal. This will normally be given to the appellant at the end of any oral appeal hearing. However, the First-tier Tribunal might decide to have the Decision Notice sent by post to the appellant as is done in paper only hearings. The Decision Notice will formally convey the outcome of the appeal. Should an appellant want details of the reason for the decision of the First-tier Tribunal then they must write to the Tribunal Service asking for a 'Full Statement of Reasons'. The adequacy of the reasoning of the First-tier Tribunal will be judged on this. If a person wanted to appeal against the decision of a First-tier Tribunal to the Upper Tribunal then normally they will need to have obtained a Full Statement of Reasons. A request for a Full Statement of Reasons must be made within **one month** of the date on which the Decision Notice is provided or sent to the appellant, although this time limit can be extended if it may be considered 'fair and just' to do so.

Summary…

It is quite clear that this is an important matter. We have seen many cases where claimants have had their PIP awards cut short without the DWP or First-tier Tribunal following the correct legal procedures.

The regulations and case law on this subject establish that:

- a PIP award may only be cut short where there are grounds for supersession (or revision) because the claimant has had a relevant change of circumstance
- once it has been established that a relevant change of circumstance had taken place then the DWP or First-tier Tribunal may reassess a person's award
- a change of circumstance does not in itself establish that an award must be altered or removed
- in any type of PIP appeal (whether it is concerning the cutting short of an award or the renewal of an award) the DWP are obliged to provide the First-tier Tribunal with details of the original decision and available medical evidence relating to that award
- in any PIP appeal the DWP are obliged to confirm whether the appeal is against a decision on a new claim, against a decision on a renewal claim or a decision to cut short an existing award
- the claimant is entitled to an adequate explanation of the reasons for a decision of a First-tier Tribunal

Whilst not expressly stated in the above case law summaries, it is an established legal principle that any 'change of circumstance' must be a 'relevant change of circumstance'.

This does not mean that it must be one that is factually sufficient to alter entitlement to the 'daily living component' or 'mobility component'. All it need be is 'relevant' in terms that it might be sufficient to change an award.

So, for example, the fact that a person has moved home would not in itself necessarily be relevant. Whereas, the fact that a person's condition has starkly improved or they have undergone some remedial treatments or that the previous levels of their medication has been substantially reduced might be relevant.

Whilst not expressly stated in the above case law summaries contained herein, it is an established legal principle that should a First-tier Tribunal find that there has been a change of circumstance then the First-tier Tribunal is duty bound to state what the change of circumstance was (e.g. an improvement in health) and confirm the date from which the change took place. It is then from this date that an existing award of PIP may be altered.

Going to appeal…

In preparing for any PIP appeal a person should make sure/be sure of:

- the nature of the decision which is the subject of the appeal - is it a decision on a new claim, a decision to cut short an existing award or a decision not to renew an existing award
- that the full details of the decision that is the subject of the appeal are clearly stated in the DWP's submission
- their best interests in making a new claim at this stage - see Habib example below

If the decision that is the subject of the appeal is one to cut short an existing award then the DWP's submission should include:

- the date on which that decision was made
- the award period - the date from which PIP was awarded and the date the award was due to end
- the details of any medical evidence (including any Healthcare Professional report) upon which both the original award decision and the new decision were based

- the grounds upon which the DWP are relying for supersession e.g. change of circumstance

If the DWP's submission does not contain this information then the First-tier Tribunal can make a 'direction' that it be provided. If the information cannot be provided because it has been destroyed then the First-tier Tribunal can nonetheless proceed.

If the appeal concerns a decision of the DWP to cut short an award then the potential outcome depends on whether or not it is considered that a change of circumstance has taken place. If it is considered that there has been no **change of circumstance** then the First-tier Tribunal may not alter the original decision. However, if it is considered that a relevant **change of circumstance** has taken place then the First-tier Tribunal can alter the original award. In doing so the First-tier Tribunal can bring the award to an end or increase the duration of the award. The First-tier Tribunal can reduce or increase the award.

Missing Out…

We are aware of cases where the DWP's practice of cutting short awards early is causing people to miss out on PIP.

Example: Habib has been awarded PIP form June 2015 to June 2017. In October 2016 the DWP arrange for Habib to have a new medical. The DWP then ends his existing award from November 2016 based upon the details contained in the new medical. It is the decision of the DWP that Habib no longer qualifies for PIP. Habib asks for a 'mandatory reconsideration' of this decision but the outcome remains the same. Habib then appeals against the decision that he is no longer entitled to PIP. Habib's appeal heard in September 2017. Habib's appeal is allowed. It is the decision of the First-tier Tribunal that Habib's circumstances had not changed. Therefore, the DWP had no grounds to supersession. It is the decision of the First-tier Tribunal that in consequence the original decision could not be disturbed. The outcome of the appeal means that the DWP must pay Habib arrears of PIP for period November 2016 (the date they ended his existing award) to June 2017 (the date his original award was due to end). However, Habib does not have any PIP entitlement for any period after this date. This is because the DWP did not, as they would normally do, send Habib a renewal claim ('PIP Award Review - How your disability affects you' form) for him to complete because his award was ended early. Neither did Habib submit a new claim at the time when his previous award was due to end. Why would he? Therefore, Habib has missed out on PIP entitlement during the period from June 2017 to the date he makes a fresh claim. All Habib can do now is make a fresh claim.

In some appeal cases where the appeal is being heard after the expiry of the original award, even where the First-tier Tribunal are satisfied that there has been no change of circumstance, in allowing the claimant's appeal the First-tier Tribunal are extending the PIP award to allow the claimant time to make a fresh PIP claim and for that claim to be determined to save the claimant missing out. Whilst this practice is not strictly in accordance with the rules and there is no guarantee that a First-tier Tribunal would be prepared to do this, it does address the otherwise injustice of the claimant missing out on PIP.

Note: Please note that outside of the normal rules concerning 'mandatory reconsideration' and appeal getting decisions of the DWP and First-tier Tribunals can be a complex and challenging affair. This Information Guide addresses the issue of decisions being superseded on grounds of a change of circumstance. There are other situations in which decisions may be changed. For example, it is possible for decisions of both the DWP and First-tier Tribunals to be superseded or revised where the decision involved was based upon a mistake of fact or made in ignorance of relevant facts.

Welfare Rights Service
Specialist Support Team
City of Wolverhampton Council
A&C.WRS@wolverhampton.gov.