



Parliamentary Briefing

Employment & Support Allowance / Personal Independence Payments Westminster Hall Debate, 30th November 2016, 2.30pm – 4.00pm

About Z2K

The Zacchaeus 2000 Trust (Z2K) is a London-wide anti-poverty charity that promotes the improvement of living conditions on the basis of economic and social justice through the provision of evidence-based policy alternatives to government, and by direct engagement with the lives of the poorest and most vulnerable.

Z2K provides a generalist advice and casework service offering in-depth and long term support for people struggling on low incomes. As part of this work, we support our clients through the Personal Independence Payment (PIP) and Employment and Support Allowance (ESA) application processes.

We help claimants to fill out their PIP2/ESA50 forms, attend medical assessments, gather medical evidence, write appeal submissions and provide representation at appeals. In the past three years, we have represented almost 800 clients at tribunal and have a 70 per cent success rate at overturning PIP and ESA decisions at appeal. This experience forms the basis of this briefing.

General Comments

As a whole the multiple stages of both the PIP and ESA processes make it very complicated and difficult to understand, particularly for the claimants with mental health conditions. This is compounded by the typically opaque and confusing language of DWP communications. For PIP, the fact that claimants can only apply by telephone can make it difficult for some to claim and deters them from doing so. This is a serious issue for those with mental health problems, poor English skills or sensory impairments.

There is an alarming regularity with which clients contact us having initially received 0 points for either PIP or ESA who then go on to be found eligible at appeal. That a tribunal utilising the same descriptors and regulations and often armed with the exact same evidence, can come to such a radically different result, indicates fundamental problems with the assessment process. The consistently high appeal success rates for ESA and PIP demonstrate that this is a national problem and not just an experience unique to our clients.

Despite the differences in design and function of the ESA and PIP and application processes there is a remarkable similarity between the problems our clients experience in both. At the heart of many of the problems with the PIP and ESA processes lies the face-to-face assessment. In our experience, the assessments are inherently flawed and unable to make an accurate appraisal of a claimants capabilities. Examples of the problems experienced are given below.

Another common thread in both ESA and PIP is the use, or lack thereof, of additional evidence and a reliance on an often flawed assessment as the main source of information about claimant capability. Finally, disability benefits suffer from the failings of the Mandatory Reconsideration (MR) system, which invariably fails to offer proper redress.

Face-to-face Assessment

After the introduction of PIP, it quickly became apparent that assessments were displaying many of the same problems we had continually experienced with the ESA Work Capability Assessments. These include the use of indirect questions to ascertain capability in reference to the descriptors, the focus on maximum capability (which is misleading with fluctuating conditions), lack of relevant medical expertise and the belief that the assessors impressions of the claimant on the day can act as an accurate proxy for determining their day-to-day capabilities.

The severity of the assessments flaws are demonstrated in the worrying regularity of appeals we process where the claimant was initially awarded as little as 0 points but goes on to be found eligible. For example, 'Kevin' suffers from acute paranoid schizophrenia and diabetes. He was initially awarded 0 points on the basis that he was 'orientated in time, place and person' at the assessment and the fact that he no longer received specialist support for his condition must mean that it wasn't that severe.

This focus on the appearance of claimant's abilities on the day of assessment is shallow and impressionistic and has no basis in medical expertise. For example, the fact that a claimant is able to make eye contact with an assessor is frequently taken to mean that they must be capable of engaging with other people on a daily basis. This method fails to take into account that claimants make strenuous efforts to engage with the assessment that can often leave them suffering the effects of post-traumatic stress disorder for weeks after. It also fails to acknowledge that conditions invariably fluctuate and how a claimant appears on one day isn't a reliable indicator of their day to day capability.

In Kevin's case he went on to be awarded PIP at the enhanced daily living rate after his appeal. Key to the tribunal's decision was the testimony of Kevin's brother and carer, who had detailed insight into his limitations. Although he had attended the assessment with Kevin the assessor did not allow him to speak.

The lack of assessors with medical expertise is also been an issue. DWP maintain this is unimportant because the assessment is about capability not medical conditions. However, lack of medical knowledge about particular conditions can prevent an assessor from having insight into the problems of capability it can cause. For example, at a WCA for a claimant with epilepsy the claimant was not asked whether her fits caused incontinence and her embarrassment meant she did not

volunteer this information. A properly qualified assessor with a knowledge of epilepsy would know that it is common for sufferers to experience incontinence and ask appropriate questions. In this instance the DWP's decision that the claimant was fit for work was immediately overturned at appeal without even a hearing.

Since Maximus have taken over from ATOS in conducting the WCA we have noticed little or no improvement in assessment quality.

Medical Evidence

Even if the most egregious problems with the assessment were to be solved additional evidence would still have an important role to play. The nature of high volume operations like PIP and ESA mean that unless considerable extra resources were assigned it is impossible to get a holistic picture of claimant's capability, even when an assessment is properly conducted. This is why further evidence (and assigning due weight to that evidence) is key to good decision making. Unfortunately, the use of evidence by DWP decision makers is severely lacking.

Firstly, claimants face multiple barriers in providing further evidence. It is not always clear to claimants how important it is to provide further evidence but even for those who understand the importance it is not easy. For example, GPs and other healthcare professionals often now charge anything from £70 to £120 for supplying evidence such as medical records or even a letter. Low income claimants are unable to afford to pay such charges themselves. Many claimants also have mental health issues that mean they lack insight into their condition or have an impaired understanding of how the processes works and the importance of gathering evidence. Given these barriers the responsibility for ensuring the decision maker has sufficient evidence should lie with the DWP.

In cases where we have been able to ensure that appropriate additional evidence has been submitted our experience has been that such evidence has not been used appropriately or fairly. It is consistently the case that decision makers place far greater weight on the assessment report than the client's own testimony or any additional evidence. Where a claimant has been deemed ineligible for a disability benefit there is a contradiction between what they state they are capable of and what the healthcare professional has deemed them able to do. Rather than seeking further evidence that could inform them whether it is the healthcare professional or the claimant that is correct the decision maker invariably simply accepts the healthcare professional's assessment.

Mandatory Reconsideration

Over the past two years, we have only seen our clients initial benefit decisions overturned at MR on four occasions, despite the fact that that the vast majority of our clients go on to win at appeal. That the Tribunal consistently finds in favour of claimants who were not granted benefit entitlement by DWP after MR demonstrates that there is something manifestly wrong with the MR process. As such, we believe that at best MR merely serves to delay claimants receiving proper redress through the Tribunal. At worst, it can serve to distress and even impoverish claimants.

The wide gap between overturn rates at MR (15 per cent for new PIP claims and 25 per cent for DLA reassessments) and at appeal shows that in the majority of cases MR is not serving its intended function of correcting obviously wrong decisions. Recently, Z2K has experienced a number of MRs completed within only one or two days. Given that DWP's stated processing time for any information submitted to them is up to 10 days, we have serious doubts about the thoroughness of MRs that are conducted within one or two days.

Given the existence of a fair and efficient appeals process, Z2K is of the opinion that MRs are an unnecessary bureaucratic complication.

ESA Case Study - David

'David' suffers from liver cirrhosis, type 2 diabetes, depression, pain in his right knee, lower back pain and glaucoma in his right eye. In July 2014 he applied for ESA. There was a considerable delay in David being given a date for his Work Capability Assessment but when the day finally came it had to be cancelled because the case notes weren't sent by the benefit centre. He wasn't told until he had arrived at the assessment centre after a long and stressful journey.

When he was finally assessed in November 2015 he was awarded 0 points and found fit for work. Upon being informed of this decision we submitted a Mandatory Reconsideration in December. After weeks of chasing an MR decision we were informed in March that they had never actually received the request so we resubmitted it. In April, we were informed by the DWP that the decision was not overturned and after submitting an appeal and receiving the bundle we saw that the DWP had actually received the MR request in December.

While awaiting the MR decision for four months David had to claim Jobseekers Allowance (JSA). When he first went to the Job Centre he was confronted by a very rude and hostile advisor who refused to even allow him to claim JSA and told him to apply for ESA. It wasn't until a Z2K adviser attended the Job Centre with David and forcefully explained the situation that he was finally permitted to claim JSA.

David is a recovering alcoholic who had not drunk for a number of years but the stress of this situation caused him to relapse and further worsened his health conditions. After the appeal tribunal he was awarded 18 points and the panel decided that work related activity would be a danger to his health so regulation 35 applied and he was placed in the Support Group. More than two years after applying David is finally in receipt of the benefit he is entitled to.

Conclusion

Both the ESA and PIP assessment processes are fundamentally flawed and lead to severely sick and disabled claimants being incorrectly denied the benefits for which they are eligible with alarming regularity. Despite a series of independent reviews and a change of assessment provider there has been no noticeable improvement in ESA decision making. Since the introduction of PIP, similar problems to those experienced with ESA have become apparent. There has been no serious attempts by the Government to address these problems.