

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Disability Living Allowance A guide to appealing Disability Living Allowance Decisions

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Introduction

There are 3 levels of appeal when appealing a decision by the Department of Work and Pensions (DWP). They are:

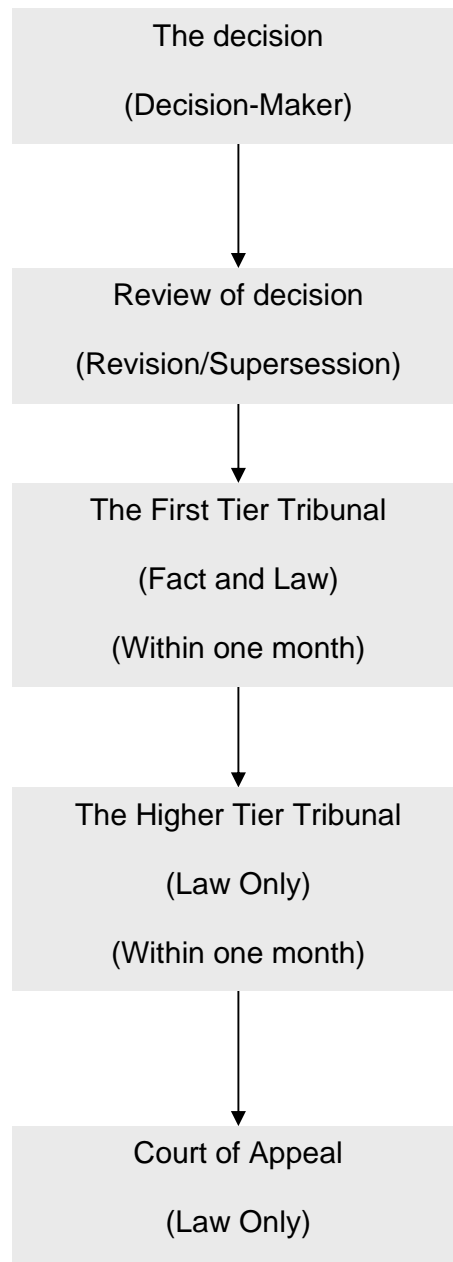
1. Reconsideration
2. Appealing to the first tier tribunal
3. Appealing to the higher tier tribunal.

Generally it is best to first appeal by asking the Department of Work and Pensions to reconsider its decision first. If this fails then you can appeal to the First Tier tribunal which is independent and run by the Social Security tribunal service. If your appeal to the first tier tribunal fails then you can appeal to the Higher Tier tribunal. Below you will find a list of some of the types of documents that you could use as evidence in any appeal or application for Disability Living Allowance.

Evidence for appealing Disability Living Allowance decisions at any level of appeal

- A letter of support from your doctor;
- A care plan;
- A doctor's report;
- A Statement by the claimant showing the history of the problems and how they affect them;
- Any medical such as letter for appointments, anything which assists in proving your claimant attended their Doctor/hospital or other therapy for their problem;
- A diary of how the problems effect the claimant on a day to day;
- A statement from anyone that might provide care or help the claimant with their problems such as friends, family, care workers or Work colleagues etc.

Appeals



Tribunal Procedural Rules

As of 3 November 2008 we have the newly formatted first and higher tier tribunal. They now have a set of written rules governing how the First Tier tribunal is governed and what powers it has. There is also a separate set of rules for the Higher Tier Tribunal service.

Application for Judicial Review may be available if appeal not possible. The application must be made 'promptly' (and in any case within three months). Judicial Review can now be heard in the Higher Tier Tribunal.

Reconsiderations

Reconsiderations are performed by the Department of Work and Pensions and are paper based. You can ask the Department of Work and Pensions to reconsider a decision by phone or letter it is advisable that you do both and keep a record. It is best to send additional evidence when you are appealing a decision.

Does having Representation at a tribunal make a difference?

The tribunal can, from a distance, be quite daunting from the perspective of a claimant. The Department of Work and Pensions Submission is usually padded out with copies of the application forms for Disability Living Allowance and medical documents. The claimant will also not know what the rules are and therefore will not know if they have a chance of success or if they are bringing with them the evidence they need.

The difference having a Representative assisting a claimant changes all of the above. The claimant should walk in to the tribunal fully informed, with an understanding of the process and what is the likelihood of them winning their case. More importantly they will know why. You can see below that the difference between a claimant winning their appeal on their own and a claimant with a representative winning is around 15%.

Overall success	Claimant attended only	Representative attended only	Claimant and representative attended	Oral hearing without claimant or rep	Paper hearing
45.1%	51.7%	62.1	66.6	20.2	16.6

Appealing to the first tier tribunal

How do I appeal?

The Department of Work and Pensions will send you a letter with the decision. The letter will give you details of how to appeal the decision. When you reply to this, you will be sent an appeal form from the Tribunal service. Once you send this off you will be sent further details and the submission from the Department of Work and Pensions and this will be the start of your appeal.

Do I appeal?

The decision to appeal will be based directly on your or the person you are representing (the claimant's) condition relative to the basic tests for Disability Living Allowance. Generally, the issue, once the decision is taken to appeal, will be to find evidence to dispute the medical evidence of the Department of Work and Pensions. This will usually be in the form of a supporting letter from your or the claimant's doctor although witness statements from you, or the claimant, and others, will assist.

What could go wrong?

You or the claimant could, for example: be already receiving middle rate care, and be asking for high rate care and the tribunal could decide to award low rate or no rate instead. It is important to remember that tribunals can put benefits down as well as up.

The date of the decision

If you, or the claimant, decide to appeal then you must bear in mind that the tribunal will only look at how you or the claimant was at the time of the decision. If you, or the claimant, have become worse after that date it will not affect the decision of the tribunal. The only use of evidence dated after the date of the decision will be to show that you, or the claimant, have a continuing illness and deserve a longer award.

Oral or written

On the appeal form, when requesting an appeal, it is asked whether you, or the claimant, would prefer an appeal an oral or written appeal. On the basis of previous statistics always aim for an oral appeal as it greatly increases the possibility of winning.

Sequence of events – The tribunal

- Notify the Department of Work and Pensions that you want to appeal.
- Receive the Department of Work and Pensions' bundle.
- Gather evidence, medical support and then write your submission.
- Receive the option of an oral or written appeal (choose oral).
- Receive the date for the tribunal hearing.
- Send in your submission, with evidence (if possible a few weeks before the tribunal).
- The tribunal day itself.
- The decision (on the day or sent that day by post).

The submission

If you are representing a claimant you will want to send a written letter stating the reasons you will believe that the claimant should be on a higher award. This is your submission. If possible keep this to two pages and try and keep to the time period in question. The tribunal do not want the claimant's life story in the submission.

Submitting to tribunal

When you submit your evidence to the tribunal make sure that you send it early enough. The evidence will still have to be sent to the tribunal from the main tribunal –office and so will take time. The tribunal itself will then have time to read it days in advance. On rare occasions this may lead to you turning up to the tribunal and being told that they are willing to offer your claimant an award directly on the submission (apparently this is rare but can ease your day and the claimant's stress levels)

The day of the tribunal

On the day of the tribunal, if the Department of Work and Pensions do not appear, your claimant and you will be told to go to a room when the tribunal is ready for you. The tribunal may ask the representative some questions but the majority of the questions being asked by the panel will be to the claimant. The basis of this will form the tribunal's decision. After the tribunal have asked their questions, they will ask if you have any questions. That will end the hearing.

If the Department of Work and Pensions do appear, they will also ask questions after going through the evidence. They will also be able to ask questions of anyone else that appears as a witness on the claimant's behalf.

The panel

The panel is made up of the following people and is independent:

- Doctor
- A Judge (solicitor or barrister)
- A disability representative.

The decision

Depending upon the day, the panel may give you a decision straight away or ask you to leave for ten minutes and then tell you or it may say it is too busy and say it will write to you with its decision.

The Higher Tier Tribunal

The process

- a. Ask the tribunal for a statement of reasons. You must ask for this for within one month of the tribunal decision. It can sometimes take a while for it to be sent to you.
- b. You apply for the right to appeal to the judge of your tribunal. This must be done again within one month after you receive the statement of reasons. You must

include a copy of the original decision you are appealing against. You send in your new submission stating the error of law.

- c. If it says no then you can apply directly to the Higher Tier tribunal.
- d. You will receive your decision

What can the Higher Tier Tribunal do?

You can ask it to set aside your decision and allow you a fresh tribunal.

Do I appeal?

The question of whether you appeal or not is based on whether the tribunal have made an error of law. It does not matter if you did not have the best evidence with you. Nor does it matter if you have better evidence now. The commissioner will only look at the decision the tribunal made on the day with the evidence they had in front of them at the time.

What is an error of law?

- a. The tribunal got the law wrong, i.e. it misinterpreted a previous decision or a statute.
- b. If there was no evidence to support the decision that the tribunal came to.
- c. If the tribunal got the facts wrong in the case.
- d. A breach of procedure/breach of natural justice, for example: not allowing an adjournment; not allowing you to call witnesses; no interpreter or bad interpretation; you did not get notice of the hearing; you did not receive the Department of Work and Pensions' submission; you asked for an oral hearing but one did not take place.
- e. The tribunal did not give adequate reasons for its decision.

Not an error of law

It is not an error of law if a different tribunal would have come to a different conclusion.

Supersession

Supersession is what the Department of Work and Pensions call a decision which is based upon a change in circumstances. The Decision maker will make this decision either because the claimant has notified the Department of Work and Pensions that there is a change in their situation or the decision will be taken after the Department of Work and Pensions have found information which brings it to the conclusion that the situation is different with the claim.

Evidence for supersession

A claimant can have sent the Department of Work and Pensions evidence and a request for supersession. They may have sent their doctor's reports or hospital reports and a statement of a change in their situation.

The other scenario is that the claimant has sent in their application for their next Disability Living Allowance application a bit early but not filled it in correctly and the decision maker has decided that, based on the new form, the claimant is in better health.

Another possibility is that the claimant has been for a Department Of Work And Pensions medical and, on basis of the medical advisor's information, the Tribunal think the claimant is healthier than was claimed.

As with all decision makers' decisions, there is one month to appeal the decision.

Primary Sources of information on the law

1. CPAG Welfare Benefits and Tax Credits Handbook; ed Simon Osborne. ISBN: 1906076359. Publisher: CPAG – gives comprehensive coverage of all welfare benefits and tax credits. Fully indexed and cross-referenced to law, regulations and official guidance, and also to court and commissioners' decisions.
2. The Disability Living Allowance and Attendance Allowance case law pack; Derbyshire County Council Welfare Rights Service (paper version) – provides a digest of some 700 House of Lords, Court of Appeal judgments and Commissioner decisions.
3. The Disability Living Allowance and Attendance Allowance case law pack; Derbyshire County Council Welfare Rights Service (CD version) – this is a website of the paper version on a CD.
4. Social Security Legislation Volume 1 (2008/09); Chief Editors: David Bonner, Ian Hooker, Robin White. ISBN: 9781847037275. Publisher: Sweet and Maxwell – non means tested benefits.
5. The Journal of Welfare Benefits Law and Practice. Publisher: Arden Davies Publishing – monthly update on the law concerning Welfare Benefits.

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education / informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external websites have been carefully selected but are provided without any endorsement of the content of those sites.

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