

Winning Your Benefit Appeal

What you need to know

Published by Child Poverty Action Group
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A CIP record for this book is available from the British Library.

ISBN: 978 1 906076 77 1

Child Poverty Action Group is a charity registered in England and Wales (registration number 294841) and in Scotland (registration number SC039339), and is a company limited by guarantee, registered in England (registration number 1993854). VAT number: 690 808117

Cover and typography by Devious Designs
Content management system by KonnectSoft
Typeset by David Lewis XML Associates Ltd
Printed and bound in the UK by CPI Group (UK) Ltd, Croydon CR0 4YY

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Acknowledgements

Many thanks are due to Jon Shaw from CPAG in Scotland and Judge Edward Jacobs for checking the text. Thanks to Nicola Johnston for her efficient and thorough editing and for managing the production. Thanks are also due to Katherine Dawson for producing the index and Kathleen Armstrong for proofreading the text. We are also particularly grateful for all the hard work done by Nigel Taylor of Devious Designs and Mike Hatt of DLXML.

About Child Poverty Action Group

Child Poverty Action Group is a national charity working for the abolition of child poverty in the UK and for the improvement of the lives of low-income families.

To help achieve this goal, we have developed a high level of expertise in the welfare benefits system. We use this to support thousands of frontline advisers with our expert training and free helplines, enabling them to give families the best information and advice.

We also publish a widely used series of practitioner handbooks: our annual *Welfare Benefits and Tax Credits Handbook* (known as ‘the adviser’s bible’) is used by Citizens Advice Bureaux, local authorities and law centres throughout the UK.

Our policy, campaigning and lobbying work builds support for policy improvements to help children living in poverty. We host the End Child Poverty campaign, a national coalition of charities, faith groups and other organisations working to hold the government to its target of beating child poverty by 2020.

If you would like to help with our campaign to end child poverty, please visit our website at www.cpag.org.uk. You can also get the latest news by following us on Facebook (www.facebook.com/cpaguk) and Twitter @CPAGUK.

Keeping up to date

Advisers can get the latest information on appeals procedure and caselaw by booking on a CPAG training course. We can also provide your workplace with in-house training. See www.cpag.org.uk/training for more information.

Our *Welfare Benefits and Tax Credits Handbook* contains the latest information on universal credit, personal independence payment and other welfare reform measures. It also tells you all you need to know about entitlement to benefits and tax credits.

Getting advice

Your local Citizens Advice Bureau or other advice centre can give you advice and support on benefits. See www.citizensadvice.org.uk if you live in England or Wales, or www.cas.org.uk if you live in Scotland.

CPAG has an advice line for advisers.

For advisers in England and Wales:

Telephone: 020 7833 4627, Monday to Friday 10am to 12pm and 2pm to 4pm

For advisers in Scotland:

Telephone: 0141 552 0552, Monday to Friday 10am to 12pm

Email: advice@cpagscotland.org.uk

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Chapter 1

Introduction

This chapter covers:

1. What is an appeal?
2. What does this guide cover and who is it for?
3. Which decisions have the right of appeal?
4. What does a representative do?
5. How do you win your appeal?

What you need to know

- Appeals against benefit and tax credit decisions are made to an appeal tribunal called the First-tier Tribunal.
- Appeal tribunals are courts of law and must apply the law. However, they are not as formal as many courts and are not supposed to be intimidating. They are usually more concerned with establishing facts and considering evidence than with detailed disputes about the law.
- You do not need to be legally qualified or a legal expert to represent yourself or someone else in an appeal.
- It is strongly advisable to have a representative if you can.
- It is often worth appealing as there is a good success rate.
- Many decisions, especially those concerning illness or disability, are based on judgements or opinions which may be challenged in an appeal; however appeals can sometimes be avoided, especially where you can provide further information or evidence.

1. What is an appeal?

If you disagree about a decision about your benefit or tax credits claim, in most cases you can ask that it is changed. Usually, you must first ask for the decision to be looked at again by the 'decision maker'. If the decision maker looks at the decision again, if you are still unhappy then you can ask that an independent tribunal reconsider the decision. This is an appeal.

The tribunal that deals with benefit and tax credits appeals is called the 'First-tier Tribunal'. Appeals are possible against most decisions, including about whether you are entitled to the benefit or tax credit or not. A few decisions, mostly about how your benefit or tax credit is administered, cannot be appealed against.

Depending on the benefit or tax credit concerned, the decision maker will be an officer at the Department for Work and Pensions, HM Revenue and Customs or local authority.

The First-tier Tribunal can make any decision that the initial decision maker could have made. That means that the tribunal can 'allow' the appeal and make a different decision, or 'uphold' the original decision and confirm that it is correct. The tribunal's decision may be less favourable to you than the decision maker's. For example, it may increase the amount of the overpayment that you have to repay.

The tribunal must apply the law. It cannot make exceptions that the law does not allow. Winning your appeal means showing to the tribunal how the facts and evidence of your case mean that the relevant law, when properly applied, means that you are entitled to benefit.

What is the tribunal like?

The members of the tribunal who decide your appeal are independent – they do not work for HM Courts and Tribunals Service (who administers your appeal) or for the organisation that made the benefit decision.

Tribunals are courts of law: they are independent, must apply the relevant law, and have a legally qualified judge. The tribunal asks

questions and considers evidence, makes relevant findings of fact, and then applies the relevant law. The tribunal members know and have access to the relevant law.

However, appeal tribunals are more informal than most courts of law. The judge does not wear a judicial wig or gown, there is no dock or witness stand and other lawyers are not usually present. Oaths are not usually taken, although the tribunal may decide to require this in some cases. The tribunal is usually more concerned with establishing facts and considering evidence than detailed legal argument. Rather than having 'for' and 'against' cases, the tribunal hearing is more like a discussion – although the tribunal can ask questions and you may feel like the tribunal does not believe everything you are saying.

More information about HM Courts and Tribunals Service and the First-tier Tribunal is in Chapter 2.

2. What does this guide cover and who is it for?

This guide is about benefit and tax credits appeals to the First-tier Tribunal. It covers what you should do to ensure your appeal is successful, and looks at things like how to appeal, preparing for the appeal, gathering evidence and constructing arguments, writing a 'submission' and going to the appeal hearing.

It is also possible to appeal against a decision of the First-tier Tribunal. That appeal is made to a different tribunal, called the Upper Tribunal. Appeals to the Upper Tribunal are different in that they are much more concerned with the interpretation of the law. This guide is not about representing in appeals to the Upper Tribunal. However, some basic information about such appeals is in Chapter 7.

Who is this guide for?

The guide is for anyone who wants to represent at an appeal tribunal. It is particularly for people with little or no experience of representing, although more experienced appeal representatives may also find it useful.

In this guide, the information and advice is addressed to 'you' as the claimant. If you have a representative, it is intended that the guide can also be used to aid her/his work on your appeal.

You do not have to have a representative and can represent yourself in your own appeal if you wish, or you can get help with it from a friend or relative. But it is always better to get help from a representative if you can.

What CPAG says

Having a representative

It is strongly advisable to have a representative if you can, as s/he will provide a lot of help in preparing your appeal and increase the chances of winning your appeal.

A good representative is likely to have access to information and resources to help with the appeal, and may have some useful experience in representing in other cases. S/he is able to liaise with the various official bodies that are involved in your appeal, and may be able to get evidence for you and write a submission to send in to the tribunal.

3. Which decisions have the right of appeal?

Appeals can be made about decisions on entitlement to most social security benefits, including:

- employment and support allowance (including the work capability assessment)
- jobseeker's allowance (including things like if you are sanctioned for not taking part in an interview or not seeking work)
- personal independence payment and disability living allowance (including the disability tests)
- universal credit
- housing benefit, paid by your local authority
- child tax credit and working tax credit, paid by HM Revenue and Customs
- the 'habitual residence' and the 'right to reside' tests

What the law says

Mandatory reconsideration

If the decision is about:

- personal independence payment
- universal credit
- other benefits paid by the Department for Work and Pensions if it was made on or after 28 October 2013,

before you can appeal the decision maker must usually have looked at the decision again (carried out a ‘mandatory reconsideration’ of the decision) and issued you with the result of that in a ‘mandatory reconsideration notice’. The letter from the decision maker about benefit entitlement must state whether there is a right of appeal or not.

Section 12(3A)–(3B) Social Security Act 1998; regulation 7(2) The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013; regulation 3ZA The Social Security and Child Support (Decisions and Appeals) Regulations 1999

The requirement for a mandatory reconsideration before you can appeal does not apply to housing benefit. It is expected to apply to tax credits and other benefits paid by HM Revenue and Customs from April 2014. More information about mandatory reconsiderations is in Chapter 3.

A few decisions do not have the right of appeal. In particular, decisions about things like how and when a benefit or tax credit is paid do not have the right of appeal.

What are most appeals about?

Currently, over three-quarters of benefit appeals are about illness or disability. Around 70 per cent of appeals are about employment and support allowance, mostly whether someone passes or fails the work capability assessment. Twelve per cent of appeals are about disability living allowance or attendance allowance, often about whether

someone needs enough help with care or mobility to qualify. These figures may change over time, especially as personal independence payment replaces disability living allowance and as universal credit is introduced, although the work capability assessment is also part of universal credit.

Many of the examples and case studies used in this guide are about employment and support allowance (in particular the work capability assessment) and disability living allowance/personal independence payment. Although appeals about illness and disability benefits are essentially similar to other benefit appeals, they also involve some particular issues about the tests that decide whether or not you qualify, and medical evidence. Chapter 5 has information about some issues which often come up in those appeals.

4. What does a representative do?

The role of an appeal 'representative' is to put your case to the tribunal, or to help you to do so.

Representatives do not need to be a lawyer, or hold a legal or any other qualification, but the tribunal will expect that s/he:

- knows the case and the points s/he wishes to make
- helps establish the facts
- has a basic idea of the law relevant to the appeal

Representing someone at an appeal means more than just being there for reassurance or emotional support (valuable though those things are). Representatives may have access to personal information about the person who they are representing. Preparing the appeal ideally involves getting information from people such as doctors or employers, and accessing information about the benefit rules. It may involve researching the law.

Representatives need to present your case to the tribunal in the most effective way. So a good representative will help prepare your appeal by helping to gather relevant facts and evidence, checking the law and helping prepare for the hearing. In practice, tribunals very often like your representative to provide a written summary of your case

(called a written 'submission') sent in advance of the tribunal hearing. The tribunal will expect a representative to cooperate with it in holding an efficient and fair hearing.

More information about the role of the representative is in Chapter 4.

If you do not have a representative, the tribunal does not expect you to do the job of an appeal representative. Instead it will ask you about basic facts in your case such as your medical condition and what happened at your medical assessment.

Box A

Where can I find a representative?

In practice, most representatives are not lawyers or legally qualified. They are often people working (either as paid worker or as a volunteer) for an advice centre, local authority, support group or charity. Ideally, a representative has some knowledge or training about the benefits system and appeals, but that is not always essential. Representatives are often working in:

- Citizens Advice Bureaux
- law centres (or a firm of solicitors doing social security work)
- local authority welfare rights units
- local disability charities or support groups
- unemployed workers' centres or trade unions
- hospitals and social work departments

5. How do you win your appeal?

Is it worth appealing?

It is often worth appealing. Success rates are good, although they vary depending on the benefit concerned, whether there is an oral hearing of the appeal and whether you are represented.

There is no point appealing against a decision that is clearly correct under the law, as this cannot be changed by the tribunal. For example, sometimes you may be disappointed by the level of benefit

rates that decide how much you are paid; but if the benefit award has been calculated correctly, then the tribunal is bound by the law setting the benefit rates and cannot change the decision. However, many decisions are matters of judgement or opinion, and another view of the same facts and evidence could be made. Sometimes, things simply go wrong.

Box B

Common issues where an appeal may be necessary

- Decisions about the work capability assessment for employment and support allowance and universal credit. The official medical report may be inaccurate, or the decision maker may have ignored other evidence or failed to seek evidence from someone who knows you.
- Decisions about the disability tests for personal independence payment, disability living allowance or attendance allowance. The official medical reports may be inaccurate, or the decision maker may have ignored other evidence or failed to seek evidence from someone who knows you.
- Many other decisions involving the exercise of judgement by the decision maker, such as whether you are living together with another person as part of a couple, whether you deliberately got rid of money in order to get benefit, or whether you have established and retained a 'right to reside'.
- In a few cases, there may be a complex issue of law involved, in which case you may be able to argue that the decision maker has misunderstood or misapplied the relevant law.

However, sometimes an appeal may be avoided.

What CPAG says

Successful appeals

The overall appeal success rate for all benefits and tax credits in 2012/13 was 38 per cent. This varies according to what benefit is involved: for example, the overall success rate for employment and support allowance appeals was 43 per cent. Where claimants attended their appeal hearing (ie, had an ‘oral hearing’ of the appeal) success rates were higher, at 47 per cent overall. Success rates were higher still where a representative helped with the appeal (63 per cent overall). Many appeal representatives report success rates at oral hearings of 70 per cent or more.

To increase your chance of success:

- ask for an oral hearing of your appeal which you attend so that the tribunal can ask you questions, clarify facts and discuss the evidence
- have a representative, if possible, to help with things like checking the law, gathering evidence and writing a submission, and assist you and the tribunal at the hearing
- be well prepared – understand what the tribunal is like, what the tribunal can do, and that the tribunal will ask you questions during an oral hearing

Can the appeal be avoided?

An appeal is often necessary to correct an inaccurate or poor decision, such as one based on an inaccurate medical assessment, or drawing the wrong conclusion from the facts. That decisions are sometimes wrong is borne out by the high success rate on appeal.

However, as appeals are time-consuming for everyone involved and can be stressful, you should consider whether an appeal can be avoided – see Box C. The most common way an appeal can be avoided is to make the decision maker aware of information or evidence that s/he did not use when making the original decision. This could be, for example, a correction to something that was misunderstood in the medical, supportive medical evidence from

your GP, or evidence showing that your income is different from that used by the decision maker. Decision makers are trained to be prepared to consider such information or evidence even after they have made their decision, and change it if appropriate.

If you must have a 'mandatory reconsideration' (see page 32) before you have the right to appeal, the process of having the decision looked at again provides an opportunity to send in further information or evidence. If the information or evidence becomes available after the sending of the mandatory reconsideration notice, it can still be sent in after the appeal has been made.

Box C

Avoiding an appeal

- Is the decision wrong or can you at least argue that it is wrong – for example, is it based on a judgement that could be challenged? Is it based on facts which have been misunderstood? If the decision is clearly correct, the tribunal cannot change it.
- Is there an obvious simple mistake in the decision that can be pointed out to the decision maker, which means that it clearly should be changed without the need for an appeal?
- Is there any further information or evidence, for example from a doctor or carer, that might persuade the decision maker to change the decision without the need for an appeal?
- If you must have a 'mandatory reconsideration' before you have the right of appeal, is there further information or evidence that could be sent in with that request for the decision to be looked at again, so that the decision is changed without the need for an appeal?