

We recently assisted Mr X in appealing a decision that he was not entitled to Personal Independence Payment.

Mr X has diagnoses of Cancer, Lung problems, heart problems, knee problems and is partially sighted.

Mr X received a face to face health assessment from the government's health assessment service at his home address. The assessing health professional awarded him zero points against the descriptors on which entitlement to Personal Independence Payment is assessed. This assessment was accepted by the Decision Maker at the Department of Work and Pensions who confirmed the award of zero points and concluded that Mr X was not entitled to PIP. The decision was reconsidered but remained unchanged.

Part of the reasoning behind the decision was that Mr X lived in a first floor flat without a lift and could therefore be expected to have adequate mobility. A further reason given was that he was able to walk to the bus stop in order to use public transport.

Mr X explained to us that his spouse had passed away two years previously. At that time he became subject to 25% 'bedroom tax' on his local authority accommodation. Mr X informs us that in order to pay the rent he was spiralling into debt and was in fear of losing his tenancy. He approached his housing office to ask if any alternative accommodation was available. He was made just one offer of a one bedroom flat which the local authority considered suitable for his needs. Although he was aware that he would have great problems with the stairs he believed he had no option but to accept the tenancy.

At that time Mr X was in receipt of just Contribution Based Employment and Support Allowance as, when he had been transferred from Incapacity Benefit he had not been invited to claim Income Related ESA. We contacted the DWP in respect of this who confirmed that Mr X fell into the class of claimant who, following a legal ruling, should have been in receipt of the Enhanced Disability Premium of Income Related ESA from the date of his migration from Incapacity Benefit. This has since been applied and arrears paid.

We assisted Mr X in appealing the decision not to award him PIP. We drafted a written submission including the reason as to why Mr X lived in a first floor flat and his difficulty with the stairs. We also explained that it caused Mr X great pain to walk to the bus stop, that he became breathless and dizzy but, that in order to attend for his medical appointments, he had no choice. He simply could not afford to take taxis. We cited case law holding that any distance covered through a stoic ability to push through pain should be ignored when assessing the distance that a claimant could stand and then move for the mobility component of PIP.

Given Mr X's lung and heart conditions it is reasonable to suppose that the excessive effort of pushing through the pain barrier in order to walk further than he was comfortable with posed a serious risk to his health.

Three days before his appeal was due to be heard by the Tribunal Mr X received a call from the Department of Work and Pensions. He was told that the decision had been revised to give him entitlement to the Enhanced Rate Daily Living and Standard Rate Mobility Components of Personal Independence Payment.

Mr X was happy with the result but expressed to us his frustration at the process stating, “why couldn’t they just have done that in the first place?”