Not happy with a Social Security Benefit decision Housing/Council Tax Benefit decision or a Tax Credit decision and want to appeal?

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services & Housing
City & County of Swansea
Dinas A Sir Abertawe
The Swansea Welfare Rights Unit have prepared an appeals pack that includes separate leaflets designed to help you through the appeals process from start to finish. Leaflets can be obtained separately.

The pack can be used as a whole or the separate leaflets stand alone for the various stages of the appeals process. For more information or copies of this pack or separate leaflets please contact: Swansea (01792) 637401.

Leaflet 1  About the Appeals Service
Leaflet 2  Lodging your Appeal
Leaflet 3  After your Appeal has been lodged and the TAS 1 form
Leaflet 4  Preparing your Appeal
Leaflet 5  The Tribunal Hearing
Leaflet 6  Obtaining Medical Evidence for Disability Living Allowance Appeals
Leaflet 7  Collecting Medical evidence for your appeal regarding your ability to work.
Leaflet 8  Appealing a Tax Credit Decision

Swansea Welfare Rights Unit is part of the City and County of Swansea Directorate of Social Services and Housing. The purpose of the Unit is to promote and work towards the maximisation of benefit income for people in The City and County of Swansea. Our role is to ensure that our clients receive their full benefit entitlement. Our service which is free includes:

- Information
- Advice
- Support
- Practical Assistance
- Advocacy and Representation

To get help from the Swansea Welfare Rights Unit you can:

- Ring our Benefit Information Line, which is open Monday, Wednesday and Friday mornings from 10.30—12.30 on Swansea (01792) 533533
- Make an appointment to be seen at one of the nine District Housing Offices situated around The City and County of Swansea. If you are unable to get to a District Housing Office for an appointment, a Home Visit can be arranged. To make an appointment ring our Benefit Information Line during the above times.
Glossary

**Appellant** - The name given to the claimant at the appeal stage.

**Decision** - The letter which tells you whether you have been awarded benefit or whether your request for a change has been successful. Although you can be given a decision verbally on the phone you should always ask for it in writing as well to avoid any misunderstandings.

**Full explanation** - You can ask for more reasons for why the decision you have had has been made. This can be helpful in giving you a clearer idea of what you are arguing about! However, some decisions already include a full explanation, these are decisions on Incapacity Benefit; Bereavement Benefits; Retirement Pensions; Sure Start Maternity Payments and Social Fund Funeral and Cold Weather Payments. (Also Severe Disablement Allowance, which has now been abolished for new claimants).

**Revision** - This is a ‘review’ carried out by the section who made the decision in the first place. You can ask for a revision of a decision instead of going straight to an appeal. A revision is a review that can be carried out where you feel the decision was wrong. The decision maker can also decide to ‘revise’ a decision if they think it was wrong. The rules are complicated and you will need to get advice before asking for a revision. If you are not happy with the revision decision you will still be able to request an appeal.

**Supersession** – This is a ‘review’ carried out by the section who made the decision in the first place. It is mostly used where the decision was correct when it was made, but things have since changed, meaning that the decision should be looked at again. You can request this, or the decision maker can decide to ‘supersede’ a decision in these circumstances. There are other more complicated circumstances when a review of this kind can be carried out and you would need to get advice. If you are unhappy with a supersession decision you can appeal against it.

**Tribunal** – This is a hearing of your case in front of panel members who are not employed by the Department for Work and Pensions or other departments with responsibility for benefits and payments. They must look at all the facts again and make their own decision. The hearing can be an ‘oral’ one where you and/or someone else attends, or a ‘paper’ one where no-one attends.

**Case-law** – If either side is unhappy with an appeal decision they may be able to take the case to the next stage which is the Social Security Commissioners. This can only be done if the decision is wrong in law. There are several stages after the Commissioners such as the Court of Appeal and the House of Lords. At each stage the case can only be taken if it is accepted that there is an error of law. Decisions from Commissioners, and the other bodies such as the Court of Appeal are binding on all Decision Makers below Commissioner stage. This is referred to as ‘case-law’ as it is law made on individual cases but generally binding. You may find case-law mentioned and copied in your appeal papers. You may want to use helpful pieces of case-law yourself.
Presenting Officer – This person comes to the appeal to explain the decision of the agency who made the decision you are challenging. They are not independent of the decision making process which decided against you, however the individual at your appeal is unlikely to be the person who made the decision. The Agency do not always send a presenting officer, and it is now rare at disability or incapacity appeals in the Swansea area.

Decision Maker – The general name given to the staff who make decisions in most Government Agencies.

Submission – Case for appeal. The Agency’s submission will be in writing and include a summary of the facts as they see them and their reasons for the decision, including evidence collected by the Agency to support their case. Your submission will be anything you put verbally or in writing to the tribunal including any evidence collected by you to support your case.

Abbreviations

**TAS** - The Appeals Service. The Department for Work and Pensions is responsible for the Appeals Service, and the staff who work for TAS are employed by the Department for Work and Pensions. The tribunal members who sit on appeal panels and make appeal decisions are not employed by the Department for Work and Pensions, they are responsible to a different government department and are in that sense independent.

**BA** - Benefits Agency – This was the name of the Government Agency that was responsible for the benefit system until April 2002. The agency was responsible to the Department for Work and Pensions. From April 2002 the Agency has been renamed “Job Centre Plus”

**DBC** – Disability Benefits Centre. This is the Department for Work and Pensions Agency that deals with claims for disability benefits.

**EMP** – Examining Medical Practitioner. These are GPs employed by the Department for Work and Pensions (via SEMA) to carry out medicals in respect of disability benefits

**BAMS** – Benefits Agency Medical Service. This has now been taken over by a company called SEMA. They are contracted to run the medical services for the Department for Work and Pensions which includes examinations on Incapacity and Industrial Injuries Benefits.

**DM** – Decision maker – see glossary above.
This leaflet contains information

About the Appeals Service

and

What is an Appeal?

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
The Appeals Service consists of:

- An executive agency which is responsible for the administration of appeals.
- A panel of tribunal members who are appointed by the Lord Chancellor.
- The President of the Appeals Service.

The Appeals Service arranges and hears appeals on decisions about:

- Social Security Benefits
- Child Support
- Vaccine Damage Payments
- Tax Credits
- Housing and Council Tax Benefits
- Compensation Recovery

Venues:

Appeals are processed at nine central units which serve locally based tribunal venues where the appeal hearings take place. If you have chosen to have an oral hearing your appeal will be heard at the closest venue to you.

The central unit in South Wales is based at Cardiff. Appeals are heard at the following venues:

**Haverfordwest** – Winch Way House, Winchfield Lane.

**Llanelli** – Lakefield Community Centre, Lakefield Road.

**Neath** – County Court, Neath

**Swansea** – Ty Nant, High Street.
When you make a claim for a welfare benefit or tax credit you should receive a reply in writing telling you whether or not your claim has been successful. This is called a decision.

Who makes decisions?

Job Centre Plus, Disability and Carers Service and The Pension Service are all agencies of the Department for Work and Pensions who make decisions about Social Security Benefits.

The Local Authority makes decisions about Housing and Council Tax Benefit.

The Inland Revenue makes decisions about Tax Credits.

The Child Support Agency makes decisions about Child Maintenance.

(In this leaflet, unless it is important to say which one it is, they will all be referred to as the ‘agency’ or ‘agencies’).

Against most of the decisions made by these agencies there is what is called a right of appeal. This means that if you think the decision is wrong you have the right to explain why to an appeal tribunal, which will then decide your case.

The people who make decisions about Social Security Benefits, Child maintenance Payments and Housing/Council Tax Benefits are called Decision Makers and those who make decisions about Tax Credits are called Officers of the Board. For the rest of this leaflet they will all be referred to as ‘decision makers.’

There is a process, which you must follow in order to take advantage of your right of appeal. It is always important to get help with this process. The process is called lodging your appeal.

These leaflets are not meant to be a substitute for getting help with the process of appealing and it is very important that you get advice and if possible also get someone to go to the appeal with you to help you put your case. This person is usually called a representative. If you are unable to find a representative, this leaflet can be used, preferably together with an adviser, as a guide to help you lodge and prepare your appeal and to put your case at the hearing. (See overleaf for a list of advice agencies which could provide advice and representation).

Read these leaflets if you have received a decision about a Social Security Benefit, Child Maintenance or Housing/Council Tax Benefit or Tax Credit and you think that the decision is, for any reason, wrong.
LOCAL ADVICE AGENCIES

City and County of Swansea:

Swansea Welfare Rights Unit  P.O. Box 35, Swansea. SA1 3ZW
Tel: (01792) 533533 Mon, Wed, Friday mornings between 10.30 - 12.30

Housing Options  17 High Street, Swansea
Tel: (01792 533100)

Citizens Advice Bureaux:

Neath  44 Alfred Street, Neath
Tel: (01639) 635545

Port Talbot  76—78 Station Road, Port Talbot
Tel: (01639) 895057

Swansea  208 High Street, Swansea
Tel: (01792) 652902

Ystradgynlais  22 Heol Eglwys, Ystradgynlais
Tel: (01639) 849427

Voluntary/Charitable Organisations:

Disability Information and Advice Line (DIAL)  Tel: (01792) 588322

Disability Alliance  Tel: 0207247 8776

National Debtline  Tel: 0808 808 4000

Shelter Cymru  25 Walter Road, Swansea
For independent Housing rights advice
Tel: (01792) 644844
24 hour help line: Tel: 0808 800 4444
This leaflet contains information on

LODGING

YOUR APPEAL

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
Risks of challenging a decision

If you have been made an award of benefit but feel that the amount you have been awarded is too low you should bear in mind that appealing against the decision can lead to a reduction in, or removal of the award you already have. This applies especially to disability living allowance (DLA), attendance allowance (AA) and industrial injuries benefits.

If you are subject to immigration control you should always seek advice from a specialist adviser before challenging any decision because you could be putting your immigration status at risk.

Beginning the process

You must appeal in writing within one month of the date at the top of the letter informing you of the decision. This is usually called the decision letter. It is possible to ask for the decision to be looked at again before lodging your appeal. The technical name for this is a ‘revision’ but it is usually referred to by agency staff as ‘a reconsideration’. It is not necessary to request a revision, you have a choice - you can go straight to appeal.

For most benefits (but not housing and/or council tax benefit), you can ask for a revision by telephone. This is not advisable as it can lead to misunderstandings. This is because it is also possible to ask for an explanation of the decision by telephone. If you phone the agency they may think that all you want is an explanation of the decision and once they have given it to you they may think that you do not want to take the matter further. This can mean that the one-month time limit for asking for a revision and/or appeal is missed. If you do speak to the agency by telephone make sure that they understand that you are asking them to reconsider the decision. This leaflet does not cover ‘revisions’ in any detail.

Remember the request for an appeal must be in writing.

To make your appeal you can get an appeal form from the Agency called a GL24. An appeal form is included in this leaflet. This form asks you for the following information:

- Your name, address and date of birth.
- The date of the decision letter.
- The name of the benefit you have claimed.
- Why you think that the decision is wrong.
- Your National Insurance Number.
Make sure you return the form within the one-month time limit. You do not have to use this form and you can appeal by writing a letter. The letter must include all the above information. You should make sure that you sign and date it. It should reach the office, which sent you the decision within one month of the date at the top of the decision letter.

Whether you appeal by writing a letter or completing the GL24 form you should get advice if at all possible before doing so. You will need to try to give all the grounds for your appeal. This means that you will have to state all the reasons why you think the decision is wrong. The tribunal does not have to consider any issue that is not contained in the letter of appeal. You may not yet be aware of what the Agency are saying about your case because you will not yet have seen the agency’s submission or the evidence on which they have based their decision. You should state on the form or in the letter that you may want to add further grounds later.

When you return this form or send a letter you should ask the agency to send you a copy of your original claim form if you have not kept one, and/or any other documents they have used to make the decision. Once you have received these you should show them to your adviser, if you have one, as soon as possible.

If you miss the one-month time limit for getting your appeal back it may be possible to lodge a late appeal. This can only be done in very limited circumstances. If you are in this situation you should get advice.

If you do not receive an acknowledgement from the office you sent your GL24 form or appeal letter to within a few days; you should telephone to check that they have received it. Whenever you make a query about your appeal on the telephone you should make a note of what is said and the name of the person you speak to.

Only when you have received confirmation that the appropriate office has received your request for an appeal and accepted it as properly made can you take it that your appeal has been lodged. If you have not provided all the information that is asked for on the GL24 form you will be written to and asked to provide it. You should be given at least 14 days to do so. Make sure that you get the information they have asked for back to them within the time they have allowed or your appeal may be treated as not having been made within the time limit.

During this period of lodging your appeal you should make sure that you keep a very careful eye on the process so that you do not lose the right to appeal by missing the time limit. It is never safe to assume that letters you have sent have arrived at their destination and if you do not get an acknowledgement within a reasonable time you should always check to make sure your letter has been received. Once you have

Welfare Rights Unit Information Line is open on:
Monday, Wednesday and Friday mornings between
10.30—12.30
Telephone (01792) 533533
KEY POINTS TO REMEMBER

REMEMBER:

1. The risks of challenging a decision

2. Your appeal request MUST be in WRITING

3. You must request your appeal WITHIN ONE MONTH of the date at the top of the letter informing you of your decision

4. If you haven’t requested your appeal on form GL24 your request must include:
   • Your name and address and date of birth
   • The date of the decision letter
   • The name of the benefit you have have claimed
   • Your National Insurance Number
   • Why you think the decision is wrong.

5. Don’t forget to ask for a copy of your claim form, decision and any evidence they used to make their decision.

6. If you haven’t received an acknowledgement that they have received your appeal, ring them to check that they have it.

7. Seek help from an adviser as soon as possible.

8. REMEMBER—if you have missed the one month time limit, it may still be possible to lodge a late appeal—you will need help and advice to do this.
Seek representation as soon as you can

The following organisations may be able to provide support and representation with appeals:

**Welfare Rights Unit**
City and County of Swansea
Social Services Department
Planning and Contracting Section
Telephone: Swansea (01792) 533533
Monday, Wednesday or Friday mornings between 10.30 to 12.30.

**Citizens Advice Bureaux:**

Neath: Tel: (01639) 635545
Port Talbot: Tel: (01639) 895057
Swansea: Tel: (01792) 652902
Ystradgynlais: Tel: (01639) 849427

**Disability Information and Advice Line (DIAL):**
Telephone: Swansea (01792) 588322

All the above have limited resources, so seek help at the earliest possible date!
This leaflet contains Information on what happens

After Your Appeal has been Lodged

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
AFTER YOUR APPEAL HAS BEEN LODGED. THE TAS 1 FORM

received confirmation that your appeal has been lodged there will usually be a period of a few weeks before you hear anything else about it.

The Appeal Papers

The TAS 1 form

IMPORTANT: THIS FORM MUST BE COMPLETED AND RETURNED WITHIN 14 DAYS.
Questions which need an explanation

When your appeal is accepted as being properly made by the agency which made the original decision it will be looked at again by a decision-maker who may change the decision. This is usually called a reconsideration prior to appeal. If this happens in your case and you are satisfied with the new decision there will be nothing more for you to do. Your appeal will automatically lapse. This means that it will drop out of the system.

If the decision maker changes the decision and it is more favourable to you than the original decision, the appeal will lapse. If this happens and you are not satisfied with the new decision you will have to start the whole process of appealing again. This means that you will have to complete another GL24 form or write a new appeal letter. This could happen where you are awarded some benefit but you think you should be getting more.

If, after reconsideration, the decision-maker does not change the decision, the appeal will go ahead.

At this point a decision-maker will put together a bundle of papers which will consist of your original claim form(s) and all the documents which were used to make the original decision. The decision maker will also write down the reasons why they made the decision and will describe the case as they see it. They will also normally refer to the parts of the law they have based their decision on. This is usually called a submission but is also sometimes referred to by its more formal title of schedule of evidence. In this leaflet it will be referred to as the submission. The bundle of papers, including the decision maker’s submission, is called the appeal papers. The decision maker will send a copy of the appeal papers to the Appeals Service and a copy to you and your representative if you have named one.

When the appeal papers are sent to you and the Appeals Service by the Agency concerned you will also be sent a pre hearing enquiry form called a TAS 1 form which you must complete and return within 14 days to the Appeals Service. Usually a prepaid envelope is enclosed. If you do not get this form back in time your appeal may be ‘struck out.’ This means that it will not be allowed to continue. If you do not receive this form with the appeal papers you should contact the office which sent you the papers. The TAS 1 form asks you a series of questions, some are self-explanatory: others need an explanation.

Question 2 is ‘Do you want to have an oral hearing or do you want to have a paper hearing?’

At an oral hearing you, and anyone you want to go with you, attend at the Appeals Service local venue to explain your case to the members of the tribunal panel. This is usually the best thing to do as more appeals are successful where the person

Misconceived appeals

whose appeal it is (the appellant) attends in person.

At a paper hearing neither the appellant, the appellant’s representative, nor a representative from the Agency attend. The tribunal decides your case on the basis of the written submissions and any other paper evidence before it.
the written submissions and any other paper evidence before it.

You are asked to tick a box to indicate which of the above options you prefer. If you chose a paper hearing you can change your mind and opt for an oral hearing at any time before your case is heard. However it is important to remember that if you have chosen a paper hearing you will not be given any notice of the date it will be heard.

Question 3 only needs answering if you have chosen an oral hearing. It asks if you agree to being given less than 14 days notice of the date of the hearing. You should not agree to being given less than 14 days notice of the date of the hearing, since if you do find a representative this time will be useful to enable him or her to rearrange any prior commitments. The form also asks you for dates on which you or your representative will not be able to attend the hearing in the next 3 months. If you have a representative, state “please consult my representative.” You do not need to give the name of a representative at this stage and if you find one you can inform the Appeals Service later.

Question 6 asks if you want to put any more evidence before the tribunal and states that you must send such evidence with the TAS 1 form or let the Appeals Service know when you will be able to send it. It gives you the option of writing the date by which you will send any extra evidence. In most cases people will not be able to give exact dates and it is advisable to put ‘as soon as possible’ in the space provided. If you have chosen a paper hearing you should bear in mind that you will not be notified of the date your case will be heard. Therefore, it is important to send any written evidence or submissions as soon as possible or enter a date when you know you should have the evidence by.

When the Appeals Service receive your appeal papers and the completed TAS 1 form they will decide if it is a misconceived appeal or if there is a test case pending. There are certain situations where your appeal will not be accepted because it is considered to be misconceived. What is actually meant by this is that proper reasons for appealing have not been stated. For example, “I'm appealing because I need more money to live on” will not be “proper reasons”. If you are informed that your appeal is considered to be misconceived and that it will be struck out, you will have 14 days to challenge that decision by requesting an oral or paper hearing to decide whether or not the appeal is misconceived. If you are in this situation seek advice.

Test cases

If there is a case which is waiting to be heard whose outcome will have a direct effect on the outcome of other cases this is known as a test case. If the decision against which you have appealed is one that could be affected by the test case, the agency can require the tribunal to either:

- send the case back to the agency where it will be kept until the outcome of the test case

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This leaflet contains Information on

Preparing

Your

Appeal

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• keep the appeal in the Appeals Service Office until the test case has been decided; or
• hear the appeal as if the test case had been decided in the most unfavourable way.

If when the test case is actually heard the outcome is favourable to your case the unfavourable decision will be changed in your favour.

Listing your appeal

If your appeal is not considered to be misconceived and there is no test case pending, the Appeal Service will prepare your case for **listing**. This means that it will join a waiting list and when it reaches the top of that list a date will be set for the hearing. You and your representative, if you have one, will be informed of the date and the venue of the hearing. You should be given 14 days notice if you have opted for this on the TAS1 form. This is 14 days from the date the letter is sent to you.

Postponing your appeal

When the date for your hearing has been set you have the right to ask for a postponement. This should be done in writing at the earliest possible date giving the reasons for your request. If the reason is sickness you should get a sick note from your doctor. The Appeals Service is reluctant to postpone appeals as this tends to lengthen their waiting lists. They are more likely to refuse a postponement if it has been set on one of the dates on which you said you would be able to attend. If you have asked for a postponement because you are waiting for evidence and your request has been refused you should attend at the hearing and ask for an **adjournment**, arguing that it would not be fair on you to proceed with the case without the evidence. An adjournment is when the proceedings are temporarily halted for a short break of a few moments or a longer break of days or weeks.

If you are refused a postponement and the hearing goes ahead without you there; or you have attended the hearing and asked for an adjournment but have been refused and the hearing has gone ahead, you may be able to get the decision **set aside** if you are not happy with the result. This means that the decision will be treated as though it has never been made and a new hearing will be arranged. You should seek advice on how to get a tribunal decision set aside.

You should have received your appeal papers (these are sent by The Appeals Service and should include the TAS1, a copy of your claim form and all the documents which were used to make the original decision.

Once you have completed the TAS 1 form and returned it within the 14 days you should then consider the preparation of your appeal. The kind of preparation you will need to make will depend to a certain extent on the kind of decision you are appealing against. There are however some things you will need to consider and do, which are common to all appeals.

The first thing you need to do is to give a good deal of thought to the ‘**facts of the case**’. The ‘facts of the case’ would be things like; what actually happened on a par-
ticular day; or what you were told by a member of the Agency; or how far you can walk before feeling severe discomfort. These are examples of the kind of things that the tribunal will want to establish. If there is disagreement between what you say is the case and what the agency involved says is the case, it will be up to the tribunal to decide which version they accept as fact. This process is usually referred to as **finding the facts** of the case and the tribunal are under an obligation to do this. A good way to start thinking about the facts of the case is to read the decision makers submission in the appeal papers. You may find that there is actually a section headed ‘The facts of the case’ or something similar. You may discover that there are some statements that the decision-maker has stated as ‘facts’ which you consider to be incorrect and would want to challenge. These can be things like dates, amounts of money, or in what ways and to what extent you are affected by a disability. You should write down carefully all the points with which you disagree and compile your own account of what the facts are.

You should check **all** the information you gave on claim forms very carefully to make sure that it is correct. This is especially important in disability living allowance, attendance allowance and incapacity benefit appeals. Check that you have given an accurate picture of how you are affected by your disabilities or illness. If you have understated the extent to which you are disabled by your medical condition you will need to explain this at the tribunal.

When you have a clear idea of what you think the facts of the case are and which points in the decision-maker’s submission you consider are incorrect or misinterpreted, it is important to seek advice. You should, if possible, make an appointment to see an adviser to discuss these aspects of the case. If you have not been able to decide what the facts of the case are you should ask the adviser to help you to do this. You should also ask the adviser to check the law relating to your appeal; both the law which the decision maker has quoted in the submission and any other law (including **case law**) which would be relevant and helpful. (For an explanation of what case law is see glossary) Where possible you should obtain further information on the rules which apply to the benefit. This can be helpful to you when looking for areas in the decision-maker’s submission which you could challenge. Some advice agencies have leaflets explaining particular benefits and what the **qualifying conditions** for them are.

**Qualifying conditions** are the rules which determine who is, or is not, legally entitled to a particular benefit. Although it is a good idea to find out as much as possible about the benefit involved, you should bear in mind that welfare benefit law is extremely complex and difficult to understand. It is not advisable to attempt to put to-
gethert the legal arguments of your case without help from someone who knows the
law. While some tribunals are mostly concerned with establishing the correct legal
interpretation, most are at least as much concerned with establishing the facts.

Some appeals may not be about the rules for a benefit, but may be arguments about
other issues such as whether someone has been overpaid or not. There will still be
“facts” to be established.

Once you have decided what the facts of your particular case are, it is important to
gather as much evidence as possible to help establish those facts at the tribunal
hearing. You may need to ask an adviser about what kind of evidence you need and

**Paper evidence**

how to go about getting it. This will vary depending on what kind of benefit your ap-
peal is about. The following is meant as a guide only and it is important to get ad-
vice.

When a case is brought before a tribunal it will be for one or other of the parties in-
volved to convince the tribunal that their account of the facts is the correct one. This
is called the **onus of proof**. In most of the welfare benefits cases brought before a
tribunal the onus of proof is on the claimant to prove their case (at appeal the claim-
ant is called the appellant) There are some situations however where the onus of
proof is on the Benefits Agency. Your adviser will be able to tell you if this applies to
your case. Either way the standard of proof at tribunals **only** requires that you prove
your case on the **balance of probabilities**. This means that you will need to con-
vince the tribunal that it is more likely than not that your version of events is the cor-
rect one. The more evidence you can get to support what you are saying the more
likely you are to convince the tribunal.

**Your own evidence**

In most cases if you lodged your appeal after 21/05/1998 the evidence you provide
must support the facts as they stood at the date of the decision against which you
are appealing. That is because the tribunal can only consider the case as it stood at
that point in time. Anything that has happened since then will not be accepted as
relevant to the case. *This does not mean that any medical evidence which you have
acquired after the date of the decision will not be relevant, but it must be clear that it
is not based on any worsening of your condition or change of circumstances since
that date.*

If your appeal was lodged before 21/05/98 you should seek advice as different rules
apply and the tribunal can consider the case, as it is at the date the hearing takes place.
This is known as **down to the date of the hearing**
The rules governing what is allowable as evidence at an appeal tribunal are not as strict as those for the law courts. It is therefore possible to present letters and statements from witnesses who are unable to be present. However such evidence will be given more weight if the witness attends in person and is willing to be questioned. If it is possible to get professionals such as care workers, nurses or even doctors to attend at the hearing their evidence will be given a lot of weight.

This covers any kind of written document that supports the facts that you are trying to prove. For appeals which concern your physical or mental state of health it can include anything which you think is relevant, such as reports or letters of support from hospital consultants, psychiatrists, general practitioners, nurses, health visitors, social workers, therapists, carers, relatives, teachers, friends or neighbours. For other kinds of appeals it may include things like proof of earnings, bank statements, statements from occupational pension providers, bills, receipts, invoices, estimates, copies of claim forms, copies of accounts, valuations of property etc.

You should try to send copies of all documentary evidence to The Appeals Service at least 10 days before the hearing to allow time for them to be circulated to all the parties concerned.

(See leaflet 6 for advice on how to obtain medical evidence on DLA and leaflet 7 for Incapacity Benefit)

The tribunal members will certainly want to question you directly (even if you have a representative) They will want to test written statements you have made on forms for example, against the answers you give to their questions. If there are too many inconsistencies between your written statements and the answers you give at the hearing, you may lose credibility as a witness. The tribunal is allowed to form an opinion of your credibility and their assessment of you will affect how much weight they attach to your evidence. Check the papers very carefully to see if there are any places where you have contradicted yourself and if there are, be prepared to explain them to the tribunal. There is well established case-law that says your evidence should be accepted unless there is any reason to doubt you, therefore if it is not accepted the tribunal must clearly explain why not in their written decision.

A submission is everything you put before the tribunal for consideration in relation to your case. Your submission therefore will include all the documents you have sent in and everything you and your witnesses say at an oral hearing. A written submission is a statement of your case dealing with all the issues you want the tribunal to address. There is no requirement that there must be a written submission but there are advantages in having one. It may be possible for you to get an adviser to write one for you or to assist you in writing your own.

If you are unable to find someone to help you to prepare a written submission and you feel unable to write one yourself, it would still be a good idea to make some notes to refer to at the hearing. Write down all the points you want to raise and brief notes about what you want to say about them; note all the areas where you disagree with what the decision maker has said in his or her submission; note all relevant dates and names, and the page numbers of documents which you want to
point out to the tribunal.

If you feel that you are better able to say what you want to say on paper then the best course of action would be to write a submission and send it to the Appeals Service at least ten days before the hearing. If you were not able to get the submission to the Appeals Service in time, you could read it out at the tribunal hearing, but either way you would still be expected to answer detailed questions. You should try to write your submission in a straightforward manner so that it is easy to read and understand. It is not advisable to attempt to write in a legalistic way unless the language of the law is familiar to you. It is helpful to try and understand the law relating to your appeal but it is probably not a good idea to consult law books. A better place to start would be with a welfare benefit handbook or a detailed leaflet on the benefit. A good advice agency should be able to provide you with a leaflet or photocopies of the relevant sections of a handbook and/or case law. There is no substitute for good advice and what follows are no more than suggestions, which may be useful as a guide to writing a submission. Where possible get advice before you begin and/or show your submission to an adviser when you have written it.

- Read the appeal papers very carefully and slowly, preferably more than once to make sure you understand what the decision maker is saying. Make careful notes as you read, especially where you disagree with the way the facts of the case have been stated. Check each document and piece of evidence they have presented. Attention to detail is very important. Once you feel that you fully understand the decision maker’s case you will have a better idea of what you need to say in your submission.

Seek representation as soon as you can

- Remember that the only information the members of the tribunal have about your case is what is contained in the appeal papers. It is a good idea therefore to begin with a short history of the relevant events as they took place giving all the dates you can.

- State what you believe the correct decision should be, e.g. ‘I believe I am entitled to incapacity benefit from 00/00/00’ or ‘I believe that the overpayment of benefit from 00/00/00 to 00/00/00 is not recoverable’

- Give your account of the facts, as you believe them to be, and if possible relate the facts to the relevant law. If you find it too difficult to relate the law to the facts of your case as you write, you could simply direct the tribunal to any legislation and/or case law, which you think supports your case at the end of the submission. You can use a phrase such as ‘I would like to draw the tribunal’s attention to the following legislation/case law which is relevant

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The

Tribunal

Hearing

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
to my case.’ It is better if you can say in your submission why you think your case is supported by a particular regulation or piece of case law, but it is not essential.

- If you refer to any documents in the appeal papers make sure you give the document number so that the members of the panel will be easily able to refer to it.

- Point out any parts of the decision-maker’s submission, which you think are incorrect, and say why. Is it factually incorrect or has the law been incorrectly interpreted?

- If your appeal is about entitlement to a disability benefit or incapacity benefit you should check any medical evidence which the decision maker has presented very carefully and say where you think it is wrong and why. Where possible you should provide further medical evidence, which supports your case. (see leaflet 6 for detail of how to obtain medical evidence for a DLA appeal and leaflet 7 for collecting medical evidence regarding your appeal about being found capable of work).

The following organisations may be able to provide support and representation with appeals:

- Swansea Welfare Rights Unit. Telephone on Monday, Wednesday or Friday mornings between 10.30 to 12.30. Swansea (01792) 533533

- Citizens Advice Bureaux

- Disability Information and Advice Line (DIAL): Telephone: Swansea 588322

All the above have limited resources, so seek help at the earliest possible date!

What happens at an oral hearing?
Who will be at an oral hearing?

The tribunal, which hears your appeal, will be made up of one, two or three members depending on which benefit is involved.

Examples:

- An appeal concerning an income support decision will normally be heard by a tribunal panel of one panel member, who will be legally qualified.
- An appeal concerning incapacity benefit will normally be heard by a tribunal of two members. One will be legally qualified the other will be a doctor.
- An appeal concerning disability living allowance will normally be heard by a tribunal of three panel members. One will be legally qualified, one will be a doctor and the third will be a lay person who has some experience of people with disabilities.
- An appeal concerning an Industrial Injuries decision (or SDA) is normally heard by two or three members. One will be legally qualified; the other(s) will be a Doctor. This is the only type of an appeal where a medical examination is carried out. The legally qualified member will always be the Chairman.

There may also be a person from the agency present. They are usually known as presenting officers. Their job is to assist the tribunal by presenting the agency’s case. The presenting officer should enter the appeal room at the same time as you and should leave at the same time.

The person who sorts out administrative matters for the tribunal is a called a clerk to the tribunal. S/he may remain in the room when your appeal is being heard but s/he should not make any comment on the proceedings.

You, the presenting officer and the tribunal chairman are allowed to call witnesses to come to the hearing to give evidence. It is not usual however for the presenting office or the chairman to do so.

When you arrive at the local venue you will be met by the clerk to the tribunal who will take your details and discuss travelling expenses with you. When the tribunal is ready to hear your case s/he will ask you and, if there is one, the presenting officer to come in to the room.

There are no strict rules of procedure for tribunal hearings but there are certain things that you have a right to expect. The chairman should introduce himself and everyone else who is present to you. The chairman should explain to you how s/he intends to conduct the hearing and should ensure that you, and your representative, have the chance to say all you want to. The Chairman will direct who speaks when.

The nature of the tribunal is inquisitorial. This means that the panel will seek to arrive at their decision by consulting the papers presented to them and by asking ques-
tions of you and any witnesses. The questioning can be and often is prolonged, thorough and very detailed. You should be treated with courtesy and respect at all times. If you feel any of the tribunal members have been rude or unnecessarily aggressive in their questioning there are two ways in which you could deal with this. You could either protest right away at the hearing, providing you are able to do this in a calm and polite manner, or you could make a written complaint after the hearing.

If there is a presenting officer present you should listen carefully to what s/he says and if possible make notes, as you may want to take up some of the things s/he has said. You should already have read the decision maker’s submission and you may find that the presenting officer does little more than refer to the points in the submission. However if s/he does refer to different regulations or case law which is not contained in the submission, or produces new evidence which you have not had the chance to examine, you should ask for an adjournment in order for you to consider it and /or seek further advice.

As well as asking you direct questions the tribunal will be observing you throughout the hearing. They will be trying to pick up non-verbal signals from you and may make assumptions about your truthfulness or reliability as a witness. If the appeal is about your incapacity for work or your disability, the tribunal will be observing the way you walk, sit down, and stand up etc. If it is felt that the way you do these things is inconsistent with what you are saying, your credibility could be questioned.

Not all venues are designed with disabilities of any kind in mind. It may be helpful for you to find out about access and parking at the venue, and the layout inside the building and where the tribunal rooms are situated.

The only time a medical examination can be carried out at an oral hearing is if the appeal is about an industrial injuries benefit or severe disablement allowance. (Severe disablement allowance was abolished for new claimants on the 06/04/2001)

If you have not sent in a written submission and the chairman appears to be drawing the hearing to a close before you feel that all the points you want to raise have been considered and your side of the story properly put, you should say that there are further things that you want to say. Consult your submission notes, if you have made any, to remind you of all the issues you want the tribunal to consider. This will very probably lead to further questioning by the panel. If you feel that the hearing has gone well even though you have not been able to raise all the issues you wanted to,

Welfare Rights Unit Information Line is open on:
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Telephone (01792) 533533
This leaflet contains Information on

Obtaining Medical Evidence for Disability Living Allowance Appeals

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
you may feel that it would be better to leave it there. This can be a difficult decision to make and cannot be made beforehand. Try to take your time, keep calm and don’t be rushed. It is easy to feel intimidated, try not to be!! Remember this is supposed to be an information gathering exercise, not a trial.

A paper hearing is the same as an oral hearing except it will be heard in your absence. Once you have lodged your appeal, you will be sent the appeal papers. This will include the Agency’s reasons for their decision.

You will need to read the appeal papers carefully and send in your written comments on why you disagree with the Agency’s decision. This will be your submission. You need to do this and collect any evidence as soon as possible because you will not be informed of the date of the hearing. This information should definitely be sent by the date you have entered in question 6 of the TAS1 form. You will have to make sure that everything you want the tribunal to consider is in your submission because you will not be there to add anything or correct any inaccuracies.

If you know you can get evidence but not until a certain date, let the Appeals Service know that you have not yet completed your submission.

Even if you chose a paper hearing the tribunal chairman may feel that it would be more appropriate to have an oral hearing. If that happens you cannot be forced to attend. However if the tribunal felt that they needed you there to answer questions it is not going to help your case if you do not attend.

As a general rule it is not advisable to opt for a paper hearing unless you feel you have no choice, statistics suggest chances of a successful outcome are not as high as if you attend.

• Try and stay calm and polite. Try not to react defensively

• If you are unsure of what is being asked, ask them to either repeat themselves or rephrase their question so you do understand what is being asked of you.

• Make a list of everything you want to say at the hearing, and check that you have said everything before the appeal draws to a close.

• If you get upset or start to feel agitated, ask for a short break to enable you to compose yourself.

• Remember it is supposed to be an information gathering exercise, try not to with-hold information because you find it embarrassing to talk about it. You will need to provide an accurate picture of your situation.

This section should be read in conjunction with the Swansea Welfare Rights Unit’s leaflet on Disability Living Allowance.

If the decision you are appealing against is about a disability living allowance (DLA) claim you will need to obtain some medical evidence to support your case. The tribunal may already have in it’s possession a factual report from your general practitioner and/or an examining medical practitioner’s report (EMP report) and/or a hospital consultant’s report. A factual report is a questionnaire which the agency
The tribunal will be trying to establish to what extent your ability to cope with everyday tasks is affected and/or the extent of your needs for supervision. The tribunal may know that you suffer from arthritis, for example: what they need to find out is how bad the arthritis is, and how disabled you are by it. Once the tribunal has satisfied itself of the extent to which you are disabled by your medical condition(s) it then has to apply the law to determine if you are entitled to benefit and at what rate it should be paid.

The more your Doctor can say about the effect your medical condition has on your ability to perform these everyday tasks, or about what might happen if you are not supervised, the more helpful their letter will be to the tribunal. (Applying the law means deciding if you meet the qualifying conditions for the benefit which are contained in Government Legislation).

There is a questionnaire at the end of this leaflet which you may want to show to your Doctor. It will give him/her some idea of the kind of things the tribunal will need to know. S/he may also feel that it would be less time consuming for them to complete a questionnaire than to write a letter. The questionnaires are designed so that you indicate which tasks you have problems with/or for mobility how you are restricted. The Doctor will have to sign to confirm whether s/he agrees or disagrees. Make copies if you have more than one Doctor to get evidence from.

If the policy of your G.P’s surgery is to charge for medical evidence you will have to decide not only whether you can afford to pay for a letter, but also whether or not it would be worth paying for. If you know your Doctor would be very supportive then it is probable that a letter would help your case but if you feel s/he would not be, then you may be wasting your money.

It will probably be more difficult for you to arrange to see a hospital consultant and it may be better in any case to write him/her a letter. There is a letter enclosed which you can send with the questionnaire. If your claim for benefit is because of a mental health problem and you have a consultant psychiatrist s/he may be more likely to have detailed knowledge of how you are affected by your condition than your G.P.

Other professionals who might be able to provide medical evidence

You should also consider other professionals who might be able to provide medical evidence. These might include:

Physiotherapists; Occupational Therapists; Clinical Psychologists; Nurses; Health Visitors; Pain clinics; Community Mental Health Nurses; Social Workers; Educational Psychologists; Therapists; Teachers; Counsellors; Sheltered Accommodation Wardens; Support Workers; Community Care Assistants (Home Care); Carers.
Access to your medical records

You also have a right to see your medical records held by your GP and any hospital you have attended, and to have photocopies made. There will probably be a charge for this. Some hospitals will go through your records for you and select only those parts which may be useful to your case. Medical records can be difficult to understand and you may need to consult a medical dictionary. There will probably be one for reference in your local library.

Once you have obtained all the medical evidence you can, you will need to study it carefully to make sure that it is actually helpful to your case. If you do not understand all the medical terms used, check them out in a medical dictionary. If you feel that some of the evidence does not support your case you are not obliged to send it to the tribunal. It may be that a report/letter will have parts that are good and other parts not so good. If this is the case you will have to decide whether it is better to use it or not. If you are uncertain about the usefulness of any of your medical evidence you should seek advice.

Once you have decided which medical evidence you want the tribunal to consider you should send it to the Appeals Service at least 10 days before the date of your appeal. If you are unable to do this you could take it with you on the day if there is not too much. If you do present the tribunal with a great deal of evidence on the day, they may want to adjourn the hearing to give them time to consider it.

**Remember** that for the vast majority of appeals lodged after 21/05/98 the appeal tribunal will only be able to consider the case as it stood at the date of the decision against which you are appealing.

*Any deterioration or change in your condition since that date, which might mean that you qualify for benefit now, cannot be taken into account at the hearing.* This may mean that you could qualify for benefit now, but may not be considered to have done so at the time of the decision you’ve appealed against. (For more information on this see leaflet 4).

When you contact your Doctor or other professional to request medical evidence you should make this clear. It is not unusual for Doctors to write letters of support stating that in their opinion their patient should now get the benefit because their condition has deteriorated. This will not be helpful to your case, as it will be taken by the tribunal to mean that in the Doctor’s opinion you did not qualify at the date of the decision. Benefit cannot be awarded at appeal if this is the case.

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**Welfare Rights Unit Information Line is open on:**
Monday, Wednesday and Friday mornings between
10.30—12.30
Telephone (01792) 533533
Dear Dr

Name:
D.O.B:

I have had a decision on my claim for Disability Living Allowance, and I am in the process of challenging this decision.

Understandably a lot of weight is given to medical opinion and to be successful I will need supportive medical evidence regarding my condition and how it affects me.

The attached is a pro forma on which I have indicated how I am affected. I have been advised to seek confirmation of these statements from you.

If you feel that you do not have detailed knowledge of my abilities to do these tasks, please consider whether my statements are consistent with my condition/s and whether the areas I have listed are likely to be problematic for me.

Thank-you for your time, any support that you can provide will be greatly appreciated.

Yours sincerely,
This leaflet contains Information on Collecting Evidence for an Appeal regarding your ability to work

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
This leaflet should be used with leaflet 4 ‘preparing your appeal’.

If the decision you are appealing against is about whether you are able to work or not you will need to get some medical evidence to support your case. The actual benefit you claimed may have been Incapacity Benefit (IB) or Income Support, (IS). It is also possible that you may have appealed against a decision on whether you are able to work or not when the benefit is Severe Disablement Allowance, (SDA). SDA has now been abolished but you may still be getting it. All these benefits are paid to people who are incapable of work, and all use the same test of whether you are incapable of work or not. The test is called the ‘Personal Capability Assessment’.

| IB50 |

When you claim one of the benefits above because you are sick, you will at some point have to fill in a form called an IB50. The IB50 form is the personal capability assessment, depending on the answers you give you will either pass or fail the test, (but see below)! Even if you have been getting one of the above benefits for some time you will occasionally be sent another one of these forms to complete for re-assessment. The form is a questionnaire that asks you several questions about your ability to do certain physical tasks. There is also room to give information about mental health problems, although the questions are not detailed or multiple choice like the physical ones.

The decision about whether you meet the test or not is rarely based just on your IB50 form. Most people are sent for a medical examination and a doctor will fill in a similar form called an IB85 covering the same questions. The main difference is that the IB85 does have detailed questions on mental health that you will not have been asked on your IB50. The doctor will say whether s/he agrees with the answers you have put on your form. The decision maker will look at your IB50 form and the IB85 but nearly always bases her/his decision on what the doctor has said.

At the back of this leaflet are sample pages from both forms. The sample pages cover the same ‘areas’. The answers to the multiple choice questions about the different areas such as ‘sitting’ or ‘walking’ are called ‘descriptors’.

When you get the appeal papers, copies of both these forms will be included.

You should make a note of all the areas the doctor has disagreed with you on. In boxes on the opposite page to the questions the doctor will make comments on why s/he does not agree with your own answers. The doctor will also record any ‘clinical findings’. These are supposed to be the results of any physical examination. There may be comments that you feel strongly about. It is a good idea to make notes about these comments and why you disagree with them.

For example, the doctor may have commented that s/he doesn’t agree with your answer that you can ‘only sit comfortably for 10 minutes’ because ‘s/he sat comfortably throughout the examination’.
It is quite common for assumptions like this to be made without having asked the claimant how they are feeling. If this has happened to you, and you were, in fact, in a lot of pain or discomfort during the interview, it will be important for you to say so at your appeal.

You will need to get supportive medical evidence from your own GP or other specialist on the particular areas of disagreement. It is possible to disagree with the IB85 without any medical evidence of your own but you will not be taken as seriously and will have less chance of success.

**Being questioned at appeal**

The tribunal may agree that you have certain conditions but will want to hear from you about how your conditions affect your ability to do certain tasks.

You should prepare yourself to be asked questions about how you manage certain tasks. For example it will not be enough to explain that you cannot bend and kneel because it causes you pain. Be prepared to answer questions like ‘What would you do if you dropped something on the floor in the middle of the room’?

You should prepare yourself for the appeal by thinking of as much detail about your difficulties and as many different examples as you can to explain. Think of all the questions you might be asked about your different areas of difficulty and be prepared to answer them in detail. For example, you will not just be asked about how you feel when you are walking, you will be asked where you go, how often, how you shop, how you get there.

The tribunal will only be concerned with your ability and difficulties at the time the decision you appealed against was made. If you have got worse since then or have health problems that you did not have at the time, this will not be relevant to your appeal. If this applies to you, get advice about the possibility of putting in a new claim while you are waiting for your appeal to be heard.

**The Personal Capability Assessment**

**Physical problems only**

The way the test works is that points are awarded for the different ‘descriptors’. Only the highest score that applies to you in each of the areas is counted. If you get a total of 15 or more points then you will be considered incapable of work. If you are awarded points for walking and walking up and down stairs you will only be awarded the highest of the two scores. These are the only two areas that overlap, points from all other areas are added together.

**Physical and mental health problems**
If you have mental health problems as well as physical problems you can also be awarded points for this. You have to be awarded at least 6 points for mental health areas to be able to add them to your other points to make a total of 15.

**Note:** If you are awarded 6 points for mental health it will actually be treated as 9 points when it comes to adding them on to your other points! If you are awarded less than 6 points for mental health they will be ignored! This is a strange quirk in the system that is very difficult to understand in the real world!

**Mental health problems only**

If your only problem is a mental health one then you need to be awarded 10 points instead of 15 to be considered incapable of work. Check the point score for an idea of relevant areas.

You can find copies of the point scores at the back of this leaflet.

**Steps in considering the papers and seeking medical support**

1. Identify areas of disagreement between your own answers and the doctor’s answers.

2. Make notes about any problems you have with the doctor’s comments about how you were at the examination, what you were supposed to have said, what the doctor feels your abilities are.

3. Use the attached letter and questionnaire to get some supportive evidence from your own GP/Specialist confirming your answers. You will need to identify which statements apply to your situation on the covering letter and complete the statements on the questionnaire. Your Doctor should then sign whether they agree or disagree.

4. Make notes for yourself about why you feel things your own doctor/specialist has said back up what you say. Make notes about things your doctor/specialist says that contradicts what the decision maker’s doctor has said.

5. If the doctor has behaved in an unacceptable way. For example been insulting or rude, or physically rough, you should make a complaint about this to ‘SEMA’, by writing to ‘The complaints Manager’ at the address on the letter calling you for examination. If you are not satisfied with their response to your complaint, you should request that your complaint be referred to an Independent Tier.

6. If you do not agree with the things the doctor has said, or you are unhappy with the way s/he did things, or you feel s/he has made incorrect assumptions, or commented on areas that were not tested at the examination, you should say this in your written appeal. If you have not done this because you had not seen the report before you made your appeal then you should send your written comments about these things in to the appeal service as soon as possible. This is because the tribunal will take you less seriously if you say all those things for the first time at the hearing itself.

One of the main problems with appeals about whether you can work or not, is that
they are not interested in real jobs or what your ability to do your own job is. This means when they ask you about whether you are able to sit comfortably or go up and down stairs or lift and carry, they are not thinking about doing these things in a real work setting.

Although it is not about real jobs the law does say that they have to consider your ability to do things, broadly and not rigidly. They have to think about whether you can do things ‘safely’ and whether you can do things ‘most of the time’. If you can do something only occasionally you should be treated as not being able to do it.

Option 1

What you should do while you are waiting for your appeal to be heard

- Claim a hardship payment of Income Support if you meet the means test. This is reduced from the usual amount.
- You will not be credited with a national insurance contribution. This means if you lose your appeal you will have a gap in your contribution record.
- The only advantage is that you do not have to ‘sign on’ regularly to get this payment. You will need to get advice about the means test.

Option 2

- Claim Jobseekers allowance (JSA). You will have to meet the means test or the contribution test to get this benefit. You will need to get advice about this. The payment you get will be the normal amount for an unemployed person. The law says that even though you have to sign on as available for and seeking work this cannot be used against you at your incapacity appeal. It is important that you ask to see the disability adviser and stress that you have restrictions. It is important that you do not say you are incapable of work, (even though you are)!, or you will not be allowed to sign on.
- You will be credited with a national insurance contribution. This means if you lose your appeal you will not have a gap in your contribution record.

If you were not getting any income support, (either as a top up to your incapacity benefit or on it’s own) before you appealed you may need to make a claim for income support as well as Jobseeker’s Allowance. This is complex and to do with backdating and you will need to get advice.

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Telephone (01792) 533533
Dr

Dear Dr

Name: 
D.O.B: 

I have had a decision on my claim for Incapacity benefits, and I am in the process of challenging this decision.

Understandably a lot of weight is given to medical opinion and to be successful I will need supportive medical evidence regarding my condition and how it affects me.

The attached is a pro forma on which I have indicated how I am affected. I have been advised to seek confirmation of these statements from you.

I realise that the attached questionnaire appears to be long, however not all the questions apply to me.

I feel that the following questions apply……………………………………………
and should be grateful for your comments on these.

Thank-you for your time, any support that you can provide will be greatly appreciated.

Yours sincerely,
I have given information on my IB50 incapacity form about tasks I have difficulty with. Please can you indicate in each case whether you agree that I suffer this level of restriction.

1. **Sitting**

The question asks about sitting in an **upright chair with a back but no arms**, my answers relate to that kind of chair.

I have stated that I cannot…………………………………………………………
………………………………………………………………………………………
………………………………………………………………………………………
Agree/disagree Signature:………………………………..
Comments:………………………………………………………………………..

2. **Getting up from a chair**

The question relates to the same kind of chair as above.

I have stated that I cannot/sometimes cannot
………………………………………………………..
…………………………………………………………………………………………
Agree/disagree Signature:………………………………..
Comments:………………………………………………………………………..
3. **Bending or kneeling**

I have stated that I cannot/sometimes cannot

…………………………………………………………………………………………

…………………………………………………………………………………………

Agree/disagree       Signature:…………………………

Comment:………………………………………………………………………………

4. **Standing**

I have stated that I cannot stand………………………………………………

…………………………………………………………………………………………

Agree/disagree       Signature:……………………………………

Comments:………………………………………………………………………………

5. **Walking**

I have stated that I cannot walk………………………………………………

…………………………………………………………………………………………

Agree/disagree       Signature:……………………………………

Comments:………………………………………………………………………………

6. **Walking up and down stairs**

I have stated that I ……………………………………………………………

…………………………………………………………………………………………

Agree/disagree       Signature:……………………………………

Comment:………………………………………………………………………………
7.  **Using Your hands**  
I have stated that I cannot…………………………………………………………

…………………………………………………………………………………………

Agree/disagree    Signature:…………………………..

Comment:…………………………………………………………………………

8.  **Reaching with your arms**  
I have stated that I cannot…………………………………………………………

…………………………………………………………………………………………

Agree/disagree    Signature:…………………………..

Comment:…………………………………………………………………………

9.  **Lifting and carrying**  
I have stated that I cannot…………………………………………………………

…………………………………………………………………………………………

Agree/disagree    Signature:…………………………..

Comment:…………………………………………………………………………

10. **Seeing**  
I have stated that I cannot…………………………………………………………

…………………………………………………………………………………………

Agree/disagree    Signature:…………………………..

Comment:…………………………………………………………………………

11. **Speaking**  
I have stated that……………………………………………………………………

…………………………………………………………………………………………

Agree/disagree    Signature:…………………………..

Comment:…………………………………………………………………………
12. Hearing
I have stated that I cannot .................................................................
...........................................................................................................
Agree/disagree Signature:..............................
Comment:.................................................................

13. Fits or something like this
I have stated that I have .................................................................
...........................................................................................................
Agree/disagree Signature:..............................
Comment:.................................................................

14. Coping with toilet needs
I have stated that .................................................................
...........................................................................................................
Agree/disagree Signature:..............................
Comment:.................................................................

15. Information about anxiety, depression and other mental health problems
I have stated that I have/have not been treated for anxiety, depression/mental illness.
Agree/disagree Signature:..............................
Comment:.................................................................

I have listed overleaf the tasks I have problems/difficulties with due to anxiety, depression and other mental health problems and should be grateful if you would agree/disagree, or whether the problems/difficulties are consistent with my illness/disability.
I have also said that I suffer in the following ways because of my mental health

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Agree/Disagree

Any further comments:

Signature: Date:

Surgery stamp:
This leaflet contains Information on

Appealing Against Tax Credit Decisions

This leaflet was produced by:

Swansea Welfare Rights Unit
Directorate of Social Services and Housing
City and County of Swansea
At the time of writing appeals against Tax Credit decisions are heard by The Appeals Service which is an Agency of the Department for Work and Pensions. Eventually appeals against Tax Credits will be administered and heard by the Inland Revenue but this is not expected to happen in the near future. At the moment therefore, many of the rules governing Tax Credit appeals are the same as those for Social Security Benefits. Leaflets one to seven deal with the general rules governing appeals and advice on the process of appealing, and they should be read in conjunction with this leaflet. The purpose of this leaflet is to point out the important differences.

WHICH TAX CREDIT DECISIONS CAN YOU APPEAL AGAINST

You can appeal against the amount of the award that has been made. The time limit for appealing runs from the date of the final decision and not the date of the overpayment decision if one is subsequently made. This is important because there is no right of appeal against an overpayment decision and all overpayments whether due to official error on the part of the Inland Revenue, or not, are recoverable. The Inland Revenue can use its discretion not to recover if it considers that to do so would cause hardship.

THE DECISIONS YOU CAN APPEAL AGAINST ARE:

- An initial decision
- A final decision
- A revised decision
- An enquiry decision
- A discovery decision
- An Inland Revenue decision imposing a penalty
- A decision charging interest on an overpayment.

You should be informed of your right of appeal in the decision letter.

WHO HAS THE RIGHT TO APPEAL

- The claimant (in joint claims either or both claimants)
- A claimant who has had a penalty issued against her/him
- A claimant’s appointee
- A receiver appointed by the Court of Protection.

The Inland Revenue have stated that they will also accept appeals from your professional adviser or agent if you have authorised them to act on your behalf. You will need to sign a form called ‘Authority for an Intermediary to act’. Your professional adviser/agent should have copies of these.

HOW TO LODGE YOUR APPEAL

There is a leaflet available from the Inland Revenue—WTC/AP ‘How to Appeal Against a Tax Credit Decision or Award’ which contains an appeal form. If you have internet access this form can be downloaded. You can also lodge your appeal by writing a letter which should contain the following details:
• Your full name, address, National Insurance Number and date of birth.
• The date of the decision you are appealing against and the credit involved - Working Tax Credit (WTC) or Child Tax Credit (CTC)
• The grounds of your appeal. Try to include all the reasons you have for believing the decision is wrong although it may be possible to site new grounds at the appeal hearing if the chairperson thinks it reasonable to allow this.
• Your signature or, if you have one, your appointee’s or adviser’s signature.

You should send your appeal to the Inland Revenue. You will find the address on the decision notice.

AFTER LODGING YOUR APPEAL

There is an opportunity to settle your appeal before the hearing; this may happen in two ways:

• You can write to the Inland Revenue explaining why you think the decision is wrong and send any relevant information and/or evidence to support your arguments. If the Inland Revenue agree that you are right the dispute will be settled.
• The Inland Revenue may also write to you setting out what it sees to be the facts of the case, explaining their position and offering you terms on which to settle the dispute. If both parties are able to agree to the terms then the appeal is settled and will not proceed to a hearing.

You are under no obligation to agree with the Inland Revenue’s account. You should make sure that the terms offered give you everything you believe you are entitled to. If possible seek advice before agreeing to the terms. If you do accept them the Inland Revenue should write to you setting out the new amount of your award. You can still change your mind and you have thirty days from the date on the written notice in which to inform the Inland Revenue that you have and that you want the appeal to go ahead. If you do not contact them to say you have changed your mind within the 30 days then the dispute is considered settled.

If you do not pursue your appeal or do not comply with a direction from the Inland Revenue your appeal could be struck out. If this happens you should write to the Inland Revenue within one month to state why you think it should not have been struck out and to ask for it to be reinstated. The chair of the tribunal can then either reinstate your appeal if:

• You asked for this within the one month time limit and s/he accepts your grounds.
• S/he decides that there were not proper grounds for striking it out in the first place.
• It is not in the interests of justice to strike out the appeal.

With Tax Credits there is no automatic right to withdraw your appeal if you decide you do not want to go ahead with it. You can tell the Inland Revenue that you want to withdraw either in writing or by telephone but they can refuse to let you by writing to you within 30 days of your request.
If they do not write to you within 30 days it means that the appeal has been withdrawn. It is a good idea to check with them that this is the case.

Unlike with Social Security Benefits you have to ask for an oral hearing if you want one, if you do not ask then it will be heard on the papers only. The opportunity to do this will be when you are sent the appeal papers and the TAS1 form which must be completed and returned within 14 days. (see leaflet 3 for a copy of the TAS1 form) The rules for Tax Credit appeal tribunal hearings are the same as for other benefits with the following differences:

- The tribunal cannot refer you for a medical examination so if your appeal concerns a disability issue you should make sure you have acquired your own medical evidence.

- The tribunal must consider the grounds you gave in your letter of appeal and can only allow you to introduce new grounds if they are satisfied that it was not unreasonable for you to omit them from the appeal notice.

- As is the case with welfare benefits both you and the DWP have the right to appeal to the Social Security Commissioners if the tribunal has made a error of law. If the DWP are considering appealing against a decision favourable to you, they will not pay you until the Commissioner makes his/her decision.

**HOW THE TRIBUNAL IS MADE UP**

There will be either one, two or three members on a Tax Credit panel depending on what issues are involved.

The panel will be made up of three members: a lawyer, a doctor and lay member who has experience of disability when:

- The disability element or severe disability element of WTC or CTC is at issue.

- The appeal is about the eligibility to WTC and the issue is whether you have a disability which puts you at a disadvantage in getting a job.

- The dispute is about the Child Care Element and the issue is about the incapacity of your partner or the disability of a child.

The panel will have two members: a lawyer and a financial expert where there are difficult financial issues about profit and loss accounts, revenue accounts, balance sheets and accounts of trust funds.

In all other cases there will be one panel member and s/he will be a lawyer.