



disability nottinghamshire

ESA APPEAL TRIBUNAL GUIDE

1. INTRODUCTION

This guide is intended for use by claimants who are claiming Employment Support Allowance (ESA) and have been found fit for work under the 'Limited Capability for Work' assessment.

It is designed for use by claimants who intend to pursue their application for appeal on their own.

The purpose of this guide is to assist you to appeal and to help you to understand the steps involved in pursuing an appeal to an oral hearing with an Appeal Tribunal. The guide will help you to understand how the Tribunal will consider your application and the steps which you will need to take in order to convince an Appeal Tribunal that your claim is justified.

Appeal Tribunals cover appeals in respect of many types of benefit/allowances.

Remember, once a decision has been made to refuse an award which you think is not the right one for your situation, **it is up to you to prove that you are entitled to the benefit or allowance.**

2. WHAT TO DO AFTER YOU GET THE DECISION ON YOUR ALLOWANCE.

After you have had an unfavourable decision, you have the right to appeal that decision. You have **one month** from the date of the decision letter to submit the request for appeal. Your appeal request must contain specific reasons why you disagree with the decision and state points which you consider should make you eligible for the benefit.

However if you find yourself outside the time limit, it is worth sending in your appeal, as the time limit can be extended. Include a letter explaining why your appeal is late.

Your appeal request should be made in writing on an official GL24 appeal form or you can appeal by letter.

3. SUBMITTING THE OFFICIAL GL24 FORM

The booklet entitled 'If you think our decision is wrong' and numbered GL 24 must be obtained from your local Department of Work and Pensions office, which will normally be

able to send it to you by post. The form on which to make the appeal is attached to the back of the booklet and should be detached before submission.

Again, you must remember that there are strict time limits on the submission of this form. It must be sent in within **one month** of the date shown on the letter giving the decision on your allowance.

When completing the form, make sure that you provide all of the information requested. You are asked to supply the name and address of your representative but if you do not want the service of a representative leave this section blank. This guide is intended mainly for people who are to manage their own case and not have a representative.

DISABILITY NOTTINGHAMSHIRE ARE CURRENTLY UNABLE TO ASSIST AS REPRESENTATIVES.

When completing the 'Grounds for appeal' section on the form, you should provide detailed reasons as to why you think the decision is wrong. If you have any letters giving evidence of these copies should be included with the GL 24. If you have requested letters of evidence but they are not yet available, put a statement in the 'Grounds of appeal' to the effect that further evidence has been requested and will be forwarded as soon as it is received. **Again, remember to keep copies of all documents sent.**

If you do not use the official GL24 form you can submit a letter of appeal. The letter must show your details ie Name, Address, National Insurance Number and the name of the allowance you are appealing. You should indicate the date of decision you are appealing against and you should give full reasons as to why you are appealing. Remember your appeal letter must be sent in within one month from the date on your decision letter.

4. EVIDENCE

The submission of additional evidence is an essential element of proving your entitlement to the allowance you are claiming. You should ensure that all potential sources of additional evidence to support your claim are written to for example your GP, Consultant, Physiotherapist or other medical professional with whom you have had contact and who may be aware of your medical condition and how it affects you.

Any additional evidence which you may get should be considered carefully to establish whether the information provided by the writer is supportive of your case. The decision whether or not to submit it is yours.

A Tribunal can only make a decision on the basis of the evidence placed before it. It does have the authority to request the provision of additional medical evidence only under certain very limited circumstances but there is no obligation upon the Tribunal generally so to do. It is important, therefore, that the evidence you gather should be as comprehensive and relevant as possible.

Some of the written evidence which the Tribunal will consider is as follows:

- Your original ESA questionnaire ie ESA 50 form.
- The medical assessment report completed by the doctor or Health Care professional appointed by the DWP.

- Reports requested by the DWP from any other medical source i.e. a G.P, Consultant or Specialist you may have seen recently.
- Reports from other professionals, medical or otherwise, who may be familiar with how your medical condition affects you.

In addition to the above, the Tribunal will also take into account oral evidence which you will give in response to a series of questions from Tribunal members.

The Tribunal is an independent body but it has to work strictly within the rules which govern the benefit or allowance it is considering. It has to consider your situation at the date the benefit department made their decision. It cannot take into account any deterioration or improvement of your condition since that date. This, therefore, means that all of your answers to questions must relate to -

- In the case of ESA, your problems to undertake the activities set out in the physical descriptors and any relevant mental descriptors as they were at the date you went for any medical organised by the Benefit Department and the decision date and not as they are now.

You should remember that the Tribunal is not a Court of Law but is there to look at the facts of your case, so your oral evidence needs to be as detailed as you can make it. You need to be very specific about how your medical problems affect you.

5. THE ENQUIRY FORM

When you have submitted the form GL 24, you will, in due course, receive a pack of papers which should include the following:

- A statement of reasons for the decision made
- Information concerning the relevant law about the benefit claimed
- A copy of your application form
- A copy of the medical report(s) or other evidence obtained by the decision maker to make the decision
- A copy of all evidence which you may have submitted

A couple of days later you will receive an 'ENQUIRY FORM'.

The purpose of the Enquiry form is for you to confirm that you still wish to proceed with your appeal. Several months may have passed since you submitted your appeal and your circumstances might have changed so you no longer wish to proceed. This form needs to be completed and returned to the Tribunal Service office stated on the front of the form **within 14 days**. If it is not returned, it is likely that your appeal will be 'struck out' i.e. it will be regarded as withdrawn and no further action will be taken.

6. THE TRIBUNAL

You will in due course receive a letter from the Tribunal Service which tells you the date and time of your hearing.

If you live within the Nottinghamshire area, you most likely will have to go to Nottingham or Chesterfield. You will be sent a map of its location.

When you get to the Tribunal building you will be directed into the waiting room. A clerk will come and take your details and ask if you have any additional evidence to submit. If

you have any last minute evidence, you should bring three copies and give two to the clerk for the Tribunal. The clerk will also ask if you have any travelling expenses. You may claim public transport fares incurred or car expenses will be paid for the mileage you have done to get to the Tribunal.

Taxi fares will only be paid if they have been previously authorised. To request authorisation, you need to phone the Tribunal Service office prior to the date of your hearing.

You will then be directed into the Tribunal room.

7. The Hearing

There are only two persons on the appeal panel: a Judge who is legally qualified and a doctor. The function of the Judge is to ensure that all of the legal requirements relating to the Tribunal and the benefit are complied with.

The function of the doctor is to advise on medical matters concerning your claim: a medical examination will not be carried out but you will be observed for any discrepancies between your claimed medical problems and how you conduct yourself in the Tribunal.

You will be advised that the panel is an independent body and you may be asked if there is any statement you wish to make about your case before proceeding further

The ESA Tribunal is concerned only with the tests prescribed in the 'Limited Capability For Work Assessment'(physical and/or mental) as laid down in the regulations. A copy of these descriptors is contained in the pack of papers sent to you for your appeal.

The panel will have the same set of documents that you have and the members will have familiarised themselves with your case beforehand.

As you will probably be aware, the award of ESA is dependant on the number of points awarded. To qualify for the benefit, you need to have 15 points.

The usual procedure is for the doctor to ask you questions about your medical history and what medications you are taking. One thing to remember is that the Tribunal are looking at your situation as it was at the time you completed the ESA Questionnaire form, you had your medical and a decision was made, they cannot take into account any change in your condition since that date. You must, therefore, bear this in mind when giving your answers.

The Tribunal will be looking at the answers you gave on the ESA Questionnaire form and the report prepared after your medical examination. If there are discrepancies between what you claim were your difficulties and what the examining doctor has concluded about your abilities, then you need to be able to explain the reasons why.

The limited capability for work assessment has to take into account the physical difficulties you have in undertaking the task, such as causing you pain, fatigue, angina, making you breathless or causing you any other problems. If you are able to do the task once but

then you have difficulty in repeating it, then, dependant on the degree of difficulty, you might be considered as not being able to fulfil the task.

It is, however, up to you to prove your disability so it is in your interests to give as much information and be as explicit as you can in answer to questions you are asked.

The last paragraph also applies to any claim that you are making with regard to being eligible for the benefit under the mental disabilities descriptors – you should make the Tribunal aware of the problems you have with your mental health and give detailed information as to how this affects your daily life and relationships with other people.

When the Tribunal have finished their questions, you will usually be given the opportunity to make any additional comments about your claim which you think appropriate. You can use this as an opportunity to mention facts about your physical or mental difficulties which have not been covered by the questions or to reiterate points which you think are important.

The Judge will then ask you to leave the room and return to the waiting room whilst they deliberate and make the decision. This will normally take about 10 – 15 minutes, when you will be asked to go back to the Tribunal room and you will be told the decision.

Rarely, the Tribunal will not make the decision immediately but make it later and notify you by post.

8. FINALLY

This guide is intended only to cover the main points of Appeal and Tribunal procedures. We cannot guarantee that your Tribunal will follow exactly the same pattern, as individual Judges may run their hearings slightly differently.

If you do come across any major variation to the model of the Tribunal procedures, as set out in this guide, or find that any of the information is incorrect for any reason, we would like to hear about it.

Like anyone else, we can all learn from experience and any input from clients can only help to improve our service.