

29 July 2019

Dear Tyrone Armatage,

Thank you for your Freedom of Information (Fol) request received on 17 July. You asked:

1 Once an applicant has had a face to face medical meeting with a qualified healthcare professional and has been awarded various points by that person, can a dwp decision maker overrule the views of the qualified healthcare professional?

2 What professional medical qualifications do the decision makers hold to enable them to overrule the healthcare professionals views?

3 How many qualified healthcare professionals decisions have been overruled by decision makers since PIP came into force?

4 What laws give the decision makers the permission to overrule a healthcare professional?

DWP Response:

I confirm that we hold the recorded information to respond to your request.

1. Decision making process

Health Professionals (HPs) working for the Assessment Providers (APs) are tasked with providing advice only and do not make decisions.

The decision making process for Personal Independence Payment (PIP) involves a Case Manager (CM) acting on behalf of the Secretary of State (SofS) to consider and decide:

- If or when the claimant meets the qualifying criteria in terms of the duration of disability (3 month qualifying period (QP) 9-month prospective test (PT) (known as the 'required period condition')
- the claimant's level of entitlement to PIP on the basis of the scores resulting from descriptors they have selected against all the activities for Daily Living and Mobility
- the level of award, length of award and period for a PIP Award Review where appropriate.

Once all evidence gathering has taken place, including a face-to-face assessment with a HP where appropriate, the CM will review the claim and all evidence provided and make a decision regarding the award of benefit.

DWP Case Managers are able to return reports that do not provide sufficient information to help them make a decision, or request further advice or clarification from APs.

2. Competence to make decisions

Decisions on claims and applications are made by the Secretary of State. In practice the Secretary of State does not make decisions personally. Instead, under the Carltona principle officials act on the Secretary of State's behalf, provided that she is satisfied that they are suitably trained and experienced to do so.

The Carltona principle dates from a judgment of the Court of Appeal in October 1943¹. The judgment said that the Secretary of State could not possibly make every decision for which he is constitutionally responsible and accountable to Parliament. The Secretary of State is therefore entitled to authorize a person of suitable authority to exercise these functions on his behalf.

¹ Carltona Ltd v. Commissioners of Works and others

Case Managers are trained DWP staff who are familiar with the legislation governing PIP, including changes made as a result of binding case law, but who do not have a healthcare background. The HPs report helps Case Managers to make fair and accurate decisions by providing impartial, objective and justified advice.

Advice for Decision Making is provided to Case Managers and is available here:

<https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>

3. Role of Health Professionals and Case Managers

Health Professionals are not awarding points or benefit. They are making a recommendation and providing advice, which the CM then considers along with any other information and evidence available, before making the decision on whether or not to award PIP.

4. Legal provisions

The main provisions for PIP are laid out in the Welfare Reform Act 2012, The Social Security (Personal Independence Payment) Regulations 2013 and The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. These are all available to view or download here:

<http://www.legislation.gov.uk/>

If you have any queries about this letter, please contact me quoting the reference number above.

Yours sincerely,

DWP Central FoI Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dpw.gov.uk or by writing to DWP, Central FoI Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF
Web: ico.org.uk/Global/contact_us or telephone 0303 123 1113 or 01625 545745