**Select Committee Thoughts**

**how to improve assessments to reduce need for MR and Tribunal**

The most frequent weakness in assessments is a failure to apply the requirement that activities have to be done safely, to an acceptable standard, repeatedly, and within a reasonable time period (to quote the PIP regulations – LCW handbook has a similar formulation). Secondly, there is a tendancy to reach conclusions and recommendations on the flimsiest of information, most notable during lockdowns when HCPs made recommendations on whether someone could walk at a reasonable speed or for a reasonable speed solely on the basis of how the claimant sounded on the phone. It ought to be a clear option for the HCP to report: “I have no idea. There is no way I can tell from a phone conversation.” But “can’t possibly say” doesn’t seem to be an option.

But there is something more fundamentally wrong with the whole assessment concept. It stems from the fact that a claimant has to start the process by filling in a massive form. Every stage after that is a revisit to that form. But that’s not how an assessment of someone’s condition is done in healthcare. If I go to my GP, or my dentist, I don’t have to fill out a 25-page form telling them what I think is wrong. They are trained to find that out. Much time and effort on all sides would be saved if that was the HCP role.

There is also over-use of assessment. By now DWP should have enough information, based on hundreds of thousands of cases, as to which claimants really need face-to-face assessment. By reducing the number of assessments in cases where the answer is obvious, HCP resources could be freed up to do the job better and help DMs more.

**- how well are claimants supported by DWP to appeal decisions – is their guidance satisfactory?**

The information is adequate but basic and generic. Tweaking it won’t really make any difference. Sometimes JCP staff are helpful and supportive, which does make a difference. But really the only sensible advice DWP collectively can give is: “get advice from an organisation which knows its stuff.”

**- what are the barriers for claimants in appealing decisions?**

The individual steps are not difficult. It is the cumulative effect which claimants struggle with. There is the form, which is a massive effort for many. Then the assessment, which is stressful. Then a decision which may make no sense to the claimant. Then MR, nowadays with long delays. Then the appeal process. People get weary and drop out.

**- what are the timings – how long from application to MR and then to Tribunal – how do people cope financially**

These have deteriorated sharply, especially on the DWP side. My most recent cases have seen about 15 weeks from request to MR. The same for the tribunal stage, if all goes smoothly there. The tribunal has very variable waiting times between regions, which seems avoidable given how many appeals are now dealt with via video or phone.

Delay is not only stressful for the claimant, it generates more work all round, in terms of seeking updates, trying to find out which office is actually dealing with the matter, and requesting expedition. In overpayment cases Debt Management and their debt collectors will start threatening recovery action before MR has taken place. This is unjust and in my view an abuse of power.

**- Is the Mandatory Reconsideration stage working effectively to address problems at an earlier stage? Has DWP made any improvements since 2019**

MR is not worth retaining. Initially, in the vast majority of cases, it was a rubber stamp, but it was quick so one could get on to the appeal stage quickly. DWP is now more likely to make a change at MR than before but at the expense of very long delays. This has been exacerbated by the notion that a DM can discuss the decision with the claimant. This has in effect turned MR into a 2-stage process, the first with the benefits team, the second with the Dispute Resolution Team. Even after MR there is further reconsideration, by the appeals officer and by the presenting officer. In effect this means every case which reaches a tribunal hearing will have been considered by an HCP and four or five officials. This is absurdly inefficient.

**- reflections on lapsed appeals – does this work for DWP or claimants – should it be improved in some way?**

The lapsing process is clumsy, and works only because of the sensible way some appeals officers get round it. There are two scenarios. The first is where the appeals officer concedes the whole claim. In that situation the lapsing process is appropriate. The other is where the appeals officer gives a better decision but it is not all that the claimant wants. In those circumstances the lapsing process could be invoked but if the appeals officer doesn’t know the client is happy with the change they will often not make a decision but just a recommendation to the tribunal. It would be simpler if the regulations drew a distinction between the two types of case, with appeals automatically continuing in the latter scenario.

**- Why are so many decisions overturned at tribunal – what does this say about the initial decision making process?**

The answer I think is simple: unlike all the DWP officials involved, the tribunal sees, hears, and believes the claimant; and the tribunal has a better understanding of the law.

The DWP has an institutional myth that the overturn rate is due to new evidence. That isn’t so. It also points out that as a percentage of all decisions successful appeals are very small. That is statistical sleight-of-hand. They count as part of the whole the claimants who were successful from the outset and those who were unsuccessful but drop out of the process before they reach the tribunal.

**- Can DWP cost-effectively replicate the specialist knowledge and experience reflected in the Tribunal Panel in its decision-making?**

Not directly, but it could raise its game with some or all of the following:

(1) better training, specifically incorporating learning from tribunal decisions and from claimants’ representatives;

(2) DM units specialising in the more difficult conditions to assess, such as autism, fibromyalgia, and OCD;

(3) gathering information from the Job Centre staff who actually know the individual claimants;

(4) using the medical and legal expertise available within DWP and its contractors more frequently and effectively to answer specific queries;

(5) reducing the number of stages in the process so that the culture and process is “right first time” not “someone else will correct my mistakes.”

Paul Stockton

Epping Forest Citizens Advice

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