

## How we helped a disabled woman win £10,500 benefits -- the full story



*Jane\*, a widow and wheelchair user living in supported accommodation in the East Midlands, who has been disabled for the past 40 years by a neurological illness, has won indefinite full Personal Independence Payments (PIP) of £595.40 per month, plus over £10,500 backdated benefit. This concludes a two-year battle with the DWP caused by the change from Disability Living Allowance (DLA) to PIP. She was helped by WinVisible and the Child Poverty Action Group (CPAG).*

### Facts of the injustice

In October 2017, Jane received a letter saying her high rate DLA was ending and she would need to make a new claim for PIP. She filled in the PIP form and sent in additional evidence. Capita, the company assessing PIP in her region, sent her a morning appointment for a face-to-face interview. They cancelled it when she told them morning visits were not suitable for her and she needed the appointment to be after 1pm. Due to the stress, she then asked to be assessed on paper medical evidence, which is allowed where the “face-to-face consultation is likely to be stressful to the claimant” ([DWP guidance to assessors](#)).

This was refused, and in February 2018, she was cut off for “failure to attend”. She asked for a reconsideration and her claim was “reopened” as it was accepted that she had good cause. But afterwards, she was again sent a morning appointment by Capita. Jane told them that she was sending further medical evidence to ask for a paper-based review. Eventually, her claim for PIP was again “closed” apparently because she was said to have “failed to attend” a further appointment.

In February 2018, the DWP wrote saying she was not entitled to PIP and her last DLA payment would be on 6 March 2018. After this, she had no disability benefits. Jane appealed, but was unable to travel to the appeal tribunal, 36 miles away. She didn't have homecare and had to manage everything by herself. If she had gone there, she would have been too exhausted to look after herself at home afterwards. This would have caused her health to deteriorate, which she couldn't let happen. So she opted for the

hearing to go ahead without her. The tribunal blamed Jane for not making herself available for home visits, accusing her of a pattern of unco-operative behaviour.



FIRST-TIER TRIBUNAL  
SOCIAL ENTITLEMENT CHAMBER

Held at: Chesterfield

**STATEMENT OF REASONS FOR DECISION**

This statement is to be read together with the decision notice issued by the tribunal and is prepared at the late request of the Appellant.

1. This is an appeal against a decision dated 20/02/2018. The claimant was not successful.
2. The Tribunal confirmed the decision that the Appellant is not entitled to either the daily living component or the mobility component of the Personal Independence Payment from 07/03/2018 because they failed to attend or participate in a consultation to enable the Department for Work and Pensions to assess entitlement.

They ruled against her. This was prejudiced, but a bad result is more likely when the claimant is not there in person to speak about their situation.

Jane was determined to fight this injustice, and looked for advice and support. The local Citizen's Advice Bureau told her they couldn't take it on as she had lost at the independent appeal tribunal and advised that she could only start again making a new claim. This would not be backdated. She asked the tribunal clerk what she could do. S/he said she could ask the judge for a statement of reasons for the tribunal decision and permission to appeal, which she did.

After her DLA had been cut off, including the mobility component, Jane was housebound for around five months, and relied on home deliveries for food. She couldn't go out without someone to push her manual wheelchair. She is not allowed to use her electric wheelchair outdoors because of her condition.

The DWP then told her she was barred from making a new PIP claim, due to reaching pension age meanwhile. She was only eligible for Attendance Allowance (AA), which has no mobility component and so was less money, forcing her to remain housebound.

**Finding WinVisible**

Jane says: "I came across WinVisible when searching [online](#)\*\* for help with asking for a paper assessment for my PIP claim. If I hadn't found you, I most certainly would have given up."

We looked into whether claiming Attendance Allowance meant she would not be allowed to appeal against the loss of PIP. We were told: "AA is a completely different benefit but

*hopefully the DWP will not decide to treat the AA claim as an event that ends the old PIP entitlement.*” So claiming was a risk, but by that point Jane desperately needed the money, and claimed it anyway.

We searched for experienced welfare rights legal representation. The Council welfare rights team didn't help. A local solicitor's firm that advertised help with benefit tribunals, charged fees that Jane couldn't afford. We tried various other services. Jane's lack of benefit was viewed as her own fault for not making herself available for the face-to-face interview. Or her case was deemed too difficult. Most people with PIP problems are under-assessed and don't get enough points, which is more straightforward to challenge. The general conclusion was that she would just have to accept the gap without benefit, and the drop in income between DLA and Attendance Allowance. But we were with Jane in not giving up.

### **Finding CPAG's Upper Tribunal Project**

In January 2019, WinVisible and others were at the High Court to support a [legal challenge against Universal Credit](#) by a disabled woman, and a mum who cares for her disabled daughter. Inside court, we met Martin Williams, welfare rights adviser with the CPAG team representing the disabled girl and her mum. In February 2019 we wrote to Martin about Jane. He told us that CPAG's Upper Tribunal Project could help us. CPAG does not take on cases directly, but works with smaller organisations doing them, so WinVisible would be Jane's official representative. We were a bit daunted as we had no Upper Tribunal experience. We are a grassroots group, not lawyers or welfare rights experts. Martin reassured us that in most cases at the Upper Tribunal it is all done on paper, and he would prepare the application and legal arguments, so we started.

### **Working together on the appeal**

By March 2019, Jane had serious health complications, brought on by the first-tier tribunal refusing her request for permission to appeal against their decision. She said: *"I'm so tired of it all, I can't fight anymore."* We encouraged her to keep going and to send us the documents needed for the Upper Tribunal. She was getting daily visits from the NHS district nurse. With limited energy, she had to choose between self-care or doing paperwork. Jane could not scan documents at home or go to the post office to get them copied and posted. She waited for a friend to be available, not wanting to exhaust their goodwill, a reality for many disabled people. Between all these factors, the application for appeal to Upper Tribunal was late. But we helped put across these reasons to the judge, who therefore extended the time for making the application.

### **Legal arguments to the Upper Tribunal**

In discussions with Martin, we drew on all our casework and disability experience, to have as much input as we could into making the legal arguments which he drafted. He guided us through all the stages.

The case was conducted by exchange of written legal arguments between us and the DWP, overseen by the judge. Our arguments were emailed to the Upper Tribunal (UT).

The UT sent these to the DWP to answer. We had a right of reply as we were the side appealing.

At the first round, we argued that the first tribunal should have focussed on the date of the first home visit. Capita had cancelled this visit themselves, so it wasn't true that Jane had failed to attend it. Capita cancelled further appointments, so it was unclear whether there was any date set up which Jane had actually missed. **The first tribunal lumped together all the appointments, which is an error in law. They accused Jane of a pattern of unco-operative behaviour, saying she should have made herself available. They didn't take her health problems and lack of homecare into account.** They ruled that her health would not have prevented her from taking part, ignoring the time she needed in the morning. They expected her to open the front door regardless of being ready.

The DWP's reply accepted that Jane's PIP claim should not have been rejected for failure to attend an appointment. And they now stated that having offered Jane a second appointment (they stopped her DLA for not attending the first one), they must have accepted she had a good reason for not attending that first appointment. In addition the DWP pointed out that once her good cause had been accepted, Jane's DLA should have been reinstated until such time as her PIP claim was decided. However, the DWP's position was that the case should now be sent back to a new first-tier tribunal.

We replied to that by arguing that the DLA should simply be reinstated and the question of PIP entitlement be decided separately by the DWP from a paper assessment.

### **DWP assessment and settlement**

In November 2019, a DWP official rang WinVisible to discuss settlement. We could have said no and held out for a ruling from the Upper Tribunal judge with reasons against the DWP and the assessor companies on the important issue of "failure to attend" and that assessors should accommodate themselves to disabled people. But the Upper Tribunal process takes many months, and Jane urgently needed the benefits.

Initially the DWP and CPAG said that now Jane's PIP claim was to be decided afresh, she might still have to have the face-to-face PIP interview before getting any money, as her assessment had not been completed. Our hearts sank as it could make her give up and withdraw. Instead, we offered to gather further medical evidence for a paper-based assessment. We put her situation to the DWP official a few times. This encouraged them to use her Attendance Allowance claim and the other information they had on file to complete the PIP assessment without an interview. An agreement between WinVisible and the DWP to award Jane full PIP was sent in to the Upper Tribunal, and approved by the judge in December 2019. Payment was made in January 2020.

From Jane's first contact to this result, took around 14 months and much worry. We regularly rang and emailed Jane to help her keep going during the months of waiting when nothing seemed to be progressing. Jane said: "Many thanks to you all for your hard work with this, without the help, I couldn't have carried on with the Upper Tribunal."

## “Failure to attend”

“Failure to attend” is a big issue for sick, severely disabled and traumatised claimants, such as survivors of abuse and sexual violence being assessed by strangers. We are easy targets for the DWP to dismiss our claims in this way. As disabled claimants, we are expected to accept needless and stressful reassessments, and appointments at any time, even 9am on a Sunday morning. The Centre for Health and Disability Assessments (CHDA run by Maximus) said these are scheduled “where there is a business need”. DWP completion targets, linked to fees and profit, come first.

Most services tell people to comply with the current system and are judgemental against women. Compliance includes routinely attending exams and interviews when asked. Instead, WinVisible has concentrated on self-help for women to fight their own case, highlighting discrimination and the exemption from needless and stressful face-to-face interviews, which is provided for in the Regulations and DWP guidance on assessment for disability benefits. We also try to overcome the indifference, bureaucracy and delay which exhausts sick and disabled people into giving up, by asking MPs and senior officials to intervene.

Women we’ve helped include a cancer patient struggling to cope with treatment, and a woman in mental distress, to whom Maximus/CHDA sent a DWP form on “failure to attend” a home visit, to fill in or be cut off, even though nobody from CHDA had visited because it was cancelled. CHDA assured us that their health professional had been cancelled by them. Changes were promised to Joy Dove after her daughter [Jodey Whiting](#) tragically killed herself after being cut off benefit when her reasons for failure to attend were not accepted, but it’s getting worse.

Mr R recently won his case at Upper Tribunal. Both the DWP and first-tier tribunal had decided that he was not entitled to PIP because of “failure to attend”. He had missed the appointment because he was taken ill and hospitalised overnight with an epileptic seizure. He told the DWP this and promised to send proof, but without NHS documentation they wouldn’t believe him, and cut him off (similarly to Jodey Whiting). However, the judge’s ruling in [IR](#) focussed on whether the appointment letter sent by Independent Assessment Services (Atos) makes clear to claimants that they could get cut off if they don’t attend.

Martin at CPAG explains that “where a claimant is said by the DWP to have failed to attend an assessment without a good reason, it is always worth them seeking to challenge those decisions. At appeal the DWP will have to show that they have complied with the proper procedure in making the assessment appointment (see [IR v Secretary of State for Work and Pensions \(PIP\) \[2019\] UKUT 374 \(AAC\)](#) where it is suggested that the ATOS letters inviting claimants to attend medicals used in that case were not sufficiently clear to impose a duty on the claimant to attend- although note the letters may well now be updated). Even if they can do that, a claimant may still be able to win their appeal if they can establish that they did have a good reason for not participating: recent cases have highlighted that this will always include consideration of any specific health problems a claimant was suffering from on the day (see [SA v Secretary of State for Work and Pensions \(ESA\) \[2019\] UKUT 118 \(AAC\)](#) where the claimant had a seizure on the day of the hearing. The DWP attempt to refer to a previous pattern of failures to attend was held not to be relevant in the context of the case).”

## Facing a brutal benefits system

Disabled people, and disabled women especially who are dealing with added issues such as domestic violence and caring responsibilities, feel very strongly that the benefits system should not treat us like malingerers and scroungers, and should respect our rights.

Serious, lifelong and long-term conditions should be recognised; we should not be made to prove our entitlement over and over again. Many people complain that their life award of DLA was abolished by the new PIP rules.

In addition to the “residence and presence” test for benefits, those of us who are traumatised immigrant and refugee women are up against racism, such as psychiatric reports which prove our needs being discounted. There have been many instances of outright prejudice against single mothers claiming benefits, and against women with invisible disabilities who are wrongly suspected of exaggerating our condition.

We are also very worried about government plans to merge the tests for PIP and Employment and Support Allowance/Universal Credit into one. At least now with a test for each benefit, people have some income to survive on if they are refused one or the other. The PIP and Work Capability tests are discredited, as are the assessor companies, notorious for dismissing serious disabilities and conditions.

One in three of Capita’s assessments are significantly “[flawed](#)” but in 2019 the companies got extended contracts worth £630m. According to DWP statistics, so far [nearly half](#) of DLA to PIP claimants have their benefit stopped or reduced. A woman wrote on our blog: *“The nurse who did my assessment finished her job the day I had my assessment because she said they twist and lie about everything she reports.”*

Jane won her case through determination, WinVisible’s practical support and encouragement, and our working with a dedicated professional at CPAG, combining personal experience, disability rights, welfare rights and legal knowledge.

February 2020

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\*Not her real name.

\*\* Based in London, WinVisible is increasingly known online through our blog and contacted by women across England, Scotland and Wales. We welcome volunteers to help with all our activities. Our casework is financially supported by the Oak Foundation and National Lottery Community Fund.