

CHIEF ADJUDICATOR'S GUIDANCE PAPER REGARDING POSTPONEMENT OF ASSESSMENTS

Preamble

The Adjudication Secretariat incurs costs when claimants do not attend a scheduled assessment. Cancellation fees in individual cases can range from \$615 to \$4,147. As well, cancellations with insufficient notice result in travel costs that cannot be recovered.

Moreover, missed appointments take away time slots that could have been used by other claimants needing assessments. Repeated missed appointments can result in experts refusing to conduct assessments for the IAP.

This procedure for managing postponements of assessments mirrors the existing procedure for postponement of hearings (GP-7: Failure of Hearings to Proceed), but has been simplified and customized for assessments.

Notification of Assessments

1. Where the claimant is represented by counsel:
 - a. The claimant's counsel bears primary responsibility for notifying the claimant of the scheduled date, time, and location of the assessment. Claimant counsel is expected to notify the claimant of the assessment date, time and location immediately after receiving confirmation of the appointment from the psychological expert or medical supplier.
 - b. The Adjudication Secretariat will send a reminder notice to claimant counsel two weeks before the assessment.
 - c. Claimant counsel will remind the claimant of the assessment a minimum of two weeks before the assessment. It is recommended that claimant counsel issue a second reminder to the claimant one week before the assessment.
2. Where the claimant is self-represented:
 - a. The Adjudication Secretariat will notify the claimant of the scheduled date, time, and location of the assessment as soon as the information is confirmed.
 - b. The Adjudication Secretariat will issue a reminder notice to the claimant a minimum of two weeks before the assessment. A second reminder will be issued to the claimant one week before the assessment.

Notice of Cancellation

3. If the claimant cannot attend a scheduled assessment, the claimant or claimant's counsel must contact the Adjudication Secretariat as early as possible. Requests to reschedule an assessment may be submitted to the Secretariat, without negative consequence, up to two weeks *after* the Secretariat receives confirmation of the assessment date.

Cancellation or Failure to Attend – Staff Review

4. If a claimant cancels or fails to attend an assessment, the Adjudication Secretariat may:
 - a. On the first cancellation or failure to attend, if a satisfactory reason is provided, reschedule the assessment; or
 - b. Seek direction from the adjudicator under section 5.

Cancellation or Failure to Attend – Adjudicator Review

5. Upon referral to the adjudicator:
 - a. The Adjudication Secretariat will provide a report on any previous postponement activity on the file, and an estimate of the unrecoverable costs, if any; and
 - b. The adjudicator may choose to receive submissions from the claimant and, if the adjudicator determines that the interests of other parties are materially affected, from those parties.
6. The adjudicator will then consider the information provided and the relevant factors, including the factors listed in section 8, and make a Procedural Order including one or more of the following terms:
 - a. Direct the Secretariat to reschedule an assessment;
 - b. Direct the Secretariat to reschedule an assessment with conditions, which may include the following:
 - i. The adjudicator may specify that there will be no further postponements without leave.
 - ii. The adjudicator may place the file on hold pending a written attestation from the claimant he/she is ready to proceed.
 - iii. The adjudicator may place the file on hold pending a written attestation from the claimant's counsel or the Secretariat that the claimant has been located and is willing and able to attend an assessment.
 - iv. The adjudicator may direct that all future notices of assessment be sent directly to the claimant by signature-required mail, as well as emailed to counsel.
 - v. Any other condition the adjudicator finds appropriate.
 - c. If claimant's counsel bears responsibility for the cancellation or the claimant's failure to attend, it may be taken into account in assessing fairness and reasonableness of legal fees. Subject to the discretion of the adjudicator, any legal fee adjustment may reflect the unrecoverable costs.
 - d. If the claimant has refused to provide an explanation or the explanation is unsatisfactory, the adjudicator may proceed to final submissions and decide the claim without the benefit of medical or expert evidence.

7. For certainty, a Procedural Order cannot require the parties to waive an assessment. However, the adjudicator may decide not to reschedule an assessment, in which case compensation would be limited to those acts and levels of harms and/or opportunity loss that do not require medical or expert evidence.

Factors for the Adjudicator to Consider

8. The adjudicator will consider the following:
 - a. Was the assessment scheduled appropriately?
 - b. Was the claimant notified of the assessment in a timely fashion?
 - c. Are there any unusual circumstances surrounding the scheduling of the assessment that may have made it difficult for the claimant to attend?
 - d. Have there been any previous cancellations or failures to attend?
 - e. Is the request to reschedule the assessment reasonable under the circumstances?
 - f. Had claimant's counsel taken reasonable steps to ensure attendance of the claimant at the assessment before cancelling it?
 - g. If the claimant cannot be located, has claimant's counsel exercised reasonable diligence to locate the claimant and ensure the claimant's attendance?
 - h. Did the claimant and/or counsel provide sufficient notice of cancellation to the Adjudication Secretariat such that unrecoverable costs could be avoided or minimized?
 - i. What delay would be caused by rescheduling the assessment, and what is the impact of the delay on the claimant's claim and completion of the IAP?

Rights of Review

9. Parties retain the normal rights of review under Schedule D and the Implementation Orders, which may be exercised only upon receipt of a final decision or a legal fee review. Nothing in this section precludes a review of the final decision on grounds that the section 6 Order was unreasonable or otherwise in error.

Interpretation

10. In this Guidance Paper, "unrecoverable costs" means the costs expended by the Adjudication Secretariat on an assessment that was cancelled or the claimant failed to attend, that cannot reasonably be avoided or recovered, and includes, without limitation, cancellation fees, travel and accommodation costs, and travel advances.