

Irrer ist amtlich – Beratung kann helfen!

Eine Aktion des Berliner Arbeitslosenzentrums (BALZ) mit Unterstützung der Liga der Wohlfahrtsverbände, der Landesarmutskonferenz Berlin und des Deutschen Gewerkschaftsbunds Berlin-Brandenburg



How do I assert my rights at the Job Centre?

The processing of claims and disputes at the Job Centre frequently takes too long. Decisions are frequently flawed. Many questions remain unclarified by the courts. The Job Centre is not always right. This information sheet contains tips on how to contest decisions made by the Job Centre.

Do you disagree with a decision?

Dispute

You can file an objection to a decision made by the Job Centre within a period of one month. Details of this can be found in the legal information, usually at the end of the decision. The period begins on the day on which the decision is delivered to you. In case of dispute, retain the postmarked envelope as proof.

The objection must be made in writing. The letter must describe the decision precisely and explain that you are filing an objection against it. It is sufficient for you to write what you think is wrong or unreasonable in the decision, for example that in your opinion the benefit is too little or that you cannot understand the calculation.

Submit your objection by post (recorded delivery) or deliver it in person to the reception desk at your Job Centre; ask for it to be date stamped and request a copy. In this way you can later prove that you did submit the objection, in case it is lost at the Job Centre.

Make a copy for your records.

The Job Centre should make a decision about your objection within three months. If this does not happen, you can raise a claim for failure to act at the social welfare court. A prerequisite is though that you have submitted all required documentation to the Job Centre. Experience shows that the processing of your objection will be quicker if before the end of the three-month deadline you explain to the Job Centre that you are seeking legal support and will raise a

claim for failure to act if the Job Centre does not make a decision within the deadline. More details can be found under "Failure to act".

You can also commission a lawyer to handle the objection process. Where appropriate, the government provides Legal Aid for this. More information is available below.

Is your objection unsuccessful?

Complaint

If your objection is completely or partially unsuccessful, you can raise a complaint against the objection decision within one month at the social welfare court. The period begins on the day on which the objection decision is delivered to you. Retain the postmarked envelope as proof. More details can be found in the legal information at the end of the objection decision.

It is most convenient for you if the complaint is made verbally directly to the legal application office of the social welfare court. Take with you a copy of the decision and a copy of the objection decision from the Job Centre, and if possible a copy of your objection. Insist that what you think is flawed in the decisions is recorded. The employees at the legal application office will put your complaint in writing.

If you write the complaint yourself, it must include the following information: as plaintiff all benefit recipients in your 'benefits unit' (BG) [you and all those who support/depend on you], your BG number, name and address of respondent authority, date and file number of the disputed decision, in particular the objection decision, an application to the court ("I propose that that the respondent is instructed to repeal the decisions dated ... and to award ..."). Write to substantiate what you think is flawed in the decisions. Your complaint can be written in everyday language. It does not have to cite references. The complaint application should be submitted in duplicate to the social welfare court.

You do not have to pay any court costs for the complaint. Fees will only arise if you commission a lawyer to represent you. For this you can apply to the social welfare court for legal aid and the support of a lawyer. How to do this is described below.

What if the deadline is missed?

Review application

If the one-month deadline for objection or complaint passes, the decision is passed as law and is incontestable. If only after this you discover that benefits owing to you have not been received in full, a decision passed as law can also be repealed. You can propose that the decisions you think are flawed be reviewed.

To do this you must submit a review application at the Job Centre against the flawed decisions. In this case it does not matter at what point the decisions were made because all decisions must be corrected if you demonstrate an error.

Retrospective payment of benefits can only be made for the current year in which the review application is submitted, and the previous calendar year. If for example it is established in June 2014 that accommodation costs have been calculated incorrectly in an award notice dated November 2012, a review application can be submitted, although the original award notice was not issued in the previous calendar year. Retrospective payment is then only made for the period from January 2013. This means that a review for a period when retrospective payment can no longer be made is usually meaningless.

If within six months the Job Centre has not made a decision about the review application, a claim can also be raised for failure to act (more on this below). If the decision remains unchanged, an objection can be raised against this within one month of the day on which you receive notification. If your objection is unsuccessful, a complaint can be raised against the objection decision.

You make an application and nothing happens - what now?

Provisional order (summary proceedings)

Unemployment benefit II is for necessary subsistence costs. The maximum processing times of six months for applications and three months for objections are often too long. Frequently, recipients of unemployment benefit II fall into hardship because of this and also because of flawed decisions by the Job Centre. For cases such as this there is the possibility of applying to the social welfare court to decree a provisional order as summary proceedings.

The requirements for the application, if it is to be successful, are very high. They must set out and prove everything and as a precaution be sworn under oath. It is recommended that procedures for provisional orders are carried out with legal support. You can apply for help with legal costs for this (more on this below).

The court usually reaches a provisional decision in the short term. Frequently it remains conclusively in place. However, as this cannot be relied on, you must continue the objection and complaint procedure in parallel to the decree process for a provisional order unless the Job Centre has issued a remedial decision that accepts your application or objection. If the Job Centre issues a remedial decision, you should check precisely whether it fulfils all your claims. If this is not the case, you must continue the objection or complaint procedure.

Have you waited more than six months for a decision or three months for an objection decision?

Failure to act

If the Job Centre has not made a decision about your application after six months or about your objection after three months, you can raise a claim in the social welfare court for failure to act.

You can submit the claim to the social welfare court in writing or have it recorded there at the legal application office. It is vital to give the date on which you made your application to the Job Centre (submit copies, if available) and to state that no decision or objection decision has yet been made.

Court costs at the social welfare court will not arise for claims for failure to act. Further information can be found above under "Complaints".

Where can you find support?

If you are unsure whether the decision from the Job Centre is correct, you can contact an advisory centre. There you will be informed at no charge about your rights and duties concerning the Job Centre and if necessary supported in the compilation of claims or correspondence. Addresses for advisory centres in Berlin can be found online at:

www.beratung-kann-helfen.de

You can also find support from a lawyer. In this case you should consider the following:

- Contact a specialist lawyer for social legislation. Specialist lawyers can be found in the "Yellow Pages" (www.gelbseiten.de) or at the Berlin Legal Chambers (www.rak-berlin.de).
- Legal costs for advice and representation in objection procedures are means tested, in particular regarding your asset situation, and if necessary are paid by the treasury. You then receive legal aid (more on this below). Help is available with court costs for representation in court (more on this below).
- If you have legal expenses insurance cover or are a member of a trade union, you should find out from them whether legal fees are covered for out-of-court activities in social legislation matters (usually only for social welfare court legal protection; sometimes the objection procedure is included).

- Be sceptical if a lawyer advertises right outside the Job Centre. The co-payment of 15 euro for legal aid is not a special offer from a particular lawyer; it is the case for all lawyers.

How do I get legal aid?

(for advice and out-of-court representation by lawyers)

If you require consultancy from a lawyer, you can go to the legal application office of the District Court responsible for the area in which you are resident and apply for a qualification certificate for legal aid. You must submit the „Application for the granting of legal aid including a statement on the economic and personal situation of the person seeking legal aid“. Usually this includes:

- Decision or objection decision from the Job Centre against which you wish to act
- Current unemployment benefit II decision
- Tenancy agreement, current utility costs calculation, insurance documents
- Evidence of your income
- Evidence of your assets
- Supporting documents in relation to debts
- Complete bank statements for the last three months

The qualification certificate should be issued to you by the court immediately and you must give this to your lawyer at the beginning of consultation. If legal aid is granted, you must only pay the lawyer a co-payment of 15 euro. Take the documentation mentioned above with you to the lawyer.

The courts sometimes refuse to grant legal aid sometimes without appropriate reason or refer to free offers from social legislation advisory centres. Make it clear why you are not in a position on your own to clarify the situation with the Job Centre and why in your case a solicitor must advise you. If you are unsuccessful with this, immediately request a written rejection of legal aid. Submit a so-called reminder to the processor straightaway. Ask them to record why you are applying for legal assistance and why you cannot help yourself. Ensure you get a copy of the reminder.

How do I get help with court costs?

(for representation in court by lawyers)

You can apply to the social welfare court for help with court costs and the allocation (name and address) of a lawyer for your complaint or your application for the decree of a provisional order. Frequently this is done for you by the lawyer who is representing you.

Help with court costs is only granted if in the opinion of the court the complaint has sufficient prospect of success and neither legal expenses insurance cover nor another source, for example your trade union, will underwrite the costs and

you yourself cannot pay the costs. You must declare your personal and economic situation. Even if you can claim for unemployment benefit II, the court verifies whether you are eligible to help with court costs. How the income is checked can be referenced in the leaflet „Help with court costs“ of the Berlin Justice. Please also note: For help with court costs, the (lower) asset boundaries for social welfare are used, not those for unemployment benefit II. If the court grants help with court costs, either the entire fee for the lawyer is underwritten or you can pay in instalments.

If your situation improves or deteriorates significantly, the court is to change the decision on repayments from you retrospectively for up to a period of four years. In addition, you are obliged to notify the court of any significant improvements on your income or any change of address for a period of four years after termination of the proceedings. In case of regular income, you must notify every increase of more than 100 euro (without deductions) per month, which is not a one-off increase. If any claimed deductions (housing costs, allowances, payment obligations or other liabilities) reduce or will be omitted, you are also obliged to notify this fact, if the decrease exceeds 100 euro per month and is not a once-only deduction.

If help with court costs is denied, you can engage a lawyer and pay the arising fees yourself, possibly in instalments. Speak to your lawyer about this. If you win the court case, the Job Centre must pay the costs of your lawyer.

Legal application office at the social welfare court in Berlin:

Invalidenstr. 52 in 10557 Berlin (near Hauptbahnhof),
Ground floor, Room 11

Opening times: Mon-Thu 9am-2pm, Fri 9am-1pm

Telephone: (0 30) 9 02 27 – 12 90

Fax: (0 30) 39 74 86 30



Dealing with the authorities

Tips from Stiftung Warentest [German Consumer Support Group]

- **Documentation.** Unless expressly stated to the contrary by the authorities, send only copies so that your originals cannot be lost. If you must submit originals, be sure to retain copies and if possible have these certified.
- **Advice.** The authorities are obliged to advise you and to inform you of all relevant possibilities. If the authorities fail to do this, they are to compensate you for any arising damages. If due to a lack of information you fail to submit on time an application for the granting of benefits, the authorities must also pay retrospectively, if this application is later successful.
- **Climate.** Remember that employees of the authorities are more likely to be friendly to you if you are friendly to them. Try to create a professional and constructive atmosphere.
- **Tests.** You do not need to accept any decision by the authorities without complaint. You can file an objection against any decision and in this way instigate an investigation of the circumstances and legal situation. If the objection does not achieve your aim either, you can complain to the social welfare court. Objection and complaint are free of charge to you. Also, you do not necessarily need a lawyer. Authorities and courts are obliged to record your concerns, even if they are not correctly formulated in legal terminology.
- **Emergency applications.** If application, objection, and/or complaints procedures become long drawn out and you have no (more) money for living costs and rent, you can make an application to the social welfare court to decree a provisional order. Application is also permitted if you have still not received any information. Send a reminder to the authorities before submitting an emergency application to the court and state that you are going to court if the decision is not made within two to three weeks.
- **Procedure duration.** Please note that even a decision about emergency applications can take some time. A number of social welfare courts are reporting backlogs because of disputes about unemployment benefit.
- **Formulation.** You do not have to make statements about the legal situation or cite references. State what concerns you as concisely and clearly as possible and what you consider to be flawed in the decision by the authorities.
- **Record keeping.** Objections and complaints need not be submitted in writing. Both can be made orally and recorded. Take care above all that the processor is actually making a recording of your objection and is not merely taking it as a simple oral complaint.
- **Legal situation.** Remember that authorities and courts are bound by law. You have a claim to benefits only if it is set out in law. Numerous questions remain unclarified regarding unemployment benefit II. There are no guarantees for the success of individual objection and complaint procedures.
- **Fraud.** Keep strictly to the truth in dealing with authorities and the social welfare court. If you make false statements and receive benefits based on these to which you have no claim, criminal proceedings can be initiated against you. Furthermore, the authorities will demand repayment of the wrongfully paid benefits.

Further information can be found online at:
www.beratung-kann-helfen.de

Contact (no consultancy):
Berliner Arbeitslosenzentrum
evangelischer Kirchenkreise e. V. (BALZ)
Branch office - Frank Steger
Kirchstrasse 4, 14163 Berlin
Tel. (0 30) 2 00 09 40 15
www.berliner-arbeitslosenzentrum.de

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