

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No. CPIP/2614/2018

Before: MR Hemingway: Judge of the Upper Tribunal

Decision: As the decision of the First-tier Tribunal (made at Poole on 25 April 2018) involved the making of an error of law, it is set aside. Further, the case is remitted to the First-tier Tribunal for reconsideration by a differently constituted panel.

DIRECTIONS FOR THE REHEARING:

A: The Tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the Tribunals discretion under Section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.

B: In doing so, the tribunal must not take account of circumstances that were not obtaining at the date of the original decision of the Secretary of State under appeal. Later evidence is admissible provided that it relates to the time of the decision: *R(DLA)2&3/01*.

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal, brought by the claimant and with my permission, from a decision of the First-tier Tribunal (the tribunal) which it made on and following a hearing of 25 April 2018. The tribunal decided that there were grounds to supersede a previous awarding decision so that, for the period from 9 May 2017 to 4 April 2021, the claimant was entitled to a personal independence payment (PIP) comprising the standard rate of the daily living component and the standard rate of the mobility component. In deciding this appeal, I have found it necessary only to consider the way in which the tribunal approached the question of entitlement to points under mobility activity 1 (Planning and following journeys).

2. Personal independence payments are governed by the Welfare Reform Act 2012 and Regulations made thereunder. In this case, the relevant legislation for the purposes of this appeal is Part 3 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013. Under mobility activity 1, a claimant will score 10 points if unable to follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. A person will score 12 points if unable to follow the route of a familiar journey without another person, assistance dog or orientation aid.

3. By way of background, the claimant previously had an award of PIP comprising the standard rate of the daily living component and the enhanced rate of the mobility component. That award had been for the period from 15 June 2015 to 29 January 2018. But on 9 May 2017 a decision-maker acting on behalf of the Secretary of State made a supersession decision extending the period of the award to 4 April 2021 but reducing the level of entitlement to the mobility component from the

enhanced to the standard rate. As to points in relation to the mobility component, the Secretary of State's decision-maker concluded that there was no entitlement to any points under mobility 1 although there was an entitlement to 10 points under mobility activity 2 (Moving around). So, the necessary 12 point threshold for the enhanced rate was not reached.

4. On appeal to the tribunal the claimant indicated that he had various disabilities with respect to both his physical and mental health but that, with respect to the latter, he had suffered from chronic anxiety and depression for a number of years. He said that one of the consequences was that he only felt "*genuinely safe*" when he was in his home or in his motor car. The tribunal recorded that he had given evidence to it to the effect that he "*did not like being alone when he left the house*"; that he might travel alone in his motor car to see friends; that he might drive alone in order to go shopping alone at a quiet time; and might go to a "*familiar chemist or a delicatessen, or to a hairdresser whom he had known for twenty years or to a laundrette where he had got to know people over a similar period*". He had also said that he feared strangers and that it was important for him to know, before setting out on a journey, who he would meet at the end of that journey.

5. The tribunal agreed with the Secretary of State's decision-maker that there was an entitlement to 10 points under the descriptors linked to mobility activity 2. It also agreed that there was no entitlement to any points under any of the descriptors linked to mobility activity 1. As to the latter, having reviewed the evidence it said this:

"14. Is his anxiety such that he cannot follow the route of an unfamiliar journey without another person? That would be the case if he were on foot, but we would expect him to be able to make the journey alone in the car which is his safe place. Again, it is the unfamiliarity of the journey rather than the persons whom he is likely to meet at the end which is the crucial factor".

6. In other words, the tribunal was deciding that the claimant was able to follow the route of unfamiliar journeys absent another person by driving, even though he would not be able to do so by walking.

7. The claimant was assisted by his representative in seeking permission to appeal. The part of the grounds of appeal concerned with mobility activity 1 contained contentions that (I summarise) the tribunal had failed to ask itself whether the claimant would be able to follow the route of a journey using public transport (with the implication if he could not he would score points even if able to travel by other means); had failed to consider whether he might be able to conclude or finish a journey once he had got out of his motor car; had failed to distinguish between his ability to follow the route of a familiar journey and an unfamiliar one; and had failed to take account of the shortcomings of his motor car which was said to be a "second hand vehicle of some considerable age". I did not limit my grant of permission notwithstanding an initial view that some of the grounds had more arguable merit than others.

8. The Secretary of State, responding to the appeal to the Upper Tribunal, accepted that the tribunal had erred in law. That was because, in the view of her representative, it had made insufficient findings as to the claimant's ability (in a motor

car) to follow the route of an unfamiliar journey as opposed to a familiar one. It was also accepted (I think) that it did not make sufficient findings or any at all as to the claimant's ability to follow the route of the portion of a journey from its origin (presumably the claimant's front door) to the motor car and then as to his ability to follow the final part of the route to his ultimate destination having parked the motor car and got out of it. At least, it seemed to be acknowledged that the tribunal might have erred in that way. So, and in consequence, the Secretary of State's representative invited me to set aside the tribunal's decision and remit so that new findings could be made. The claimant's representative did not disagree with that proposed course of action.

9. Leaving aside, for the moment, the parts of a journey made before entering and after exiting the motor car, the tribunal did, in my judgement, make sufficient factual findings, underpinned by the existence of a proper evidential basis, concerning the claimant's ability to follow the route of a familiar journey without another person (in this particular case the assistance dog and orientation aid are not relevant). It made findings that he did actually make a range of familiar journeys alone. That included journeys which might have been of some length such as visits to see friends in a nearby village. But those would involve him travelling along familiar routes. The tribunal seemed to accept that a particular Asda Store he would go to alone to do his shopping was one with which he was familiar and he was clearly familiar with the journeys to the chemist, delicatessen and hairdressers which the tribunal had mentioned. But I can find nothing in the tribunal's statement of reasons or elsewhere to suggest it made enquiries as to his ability, in his motor car, notwithstanding that he regarded that as being a "safe place", to follow the route of an unfamiliar journey alone. It does not appear that he told the tribunal anything about his ability to drive along other than familiar routes or that he was asked to do so. The impression he seemed to give was that he would follow the route of familiar journeys in his motor car but that he did not attempt unfamiliar ones. It does not follow that merely because a claimant only accomplishes familiar journeys he is incapable, absent another person, from accomplishing unfamiliar ones. Further, if a claimant is capable of accomplishing both but chooses to make familiar journeys only, it is likely there will (as was the case here) be little or no direct evidence of the actual accomplishing of unfamiliar journeys. In those circumstances the absence of such evidence will not assist a claimant.

10. Nevertheless, there was evidence before the tribunal capable of suggesting that the claimant might be limiting himself to following the route of familiar journeys because of his anxiety. So, I have concluded the tribunal erred through failing to adequately enquire into and through failing to make any findings about the claimant's ability to follow the route of an unfamiliar journey without another person, even if it can be assumed that the entirety of any such journey could be undertaken by driving. The findings the tribunal did make were, very probably, sufficient to demonstrate that he did not score 12 points under mobility descriptor 1(f). But it follows from what I have said above that they were insufficient to enable the tribunal to make a proper finding as to whether he should score 10 points under mobility descriptor 1(d). Those points if awarded would, of course, comfortably make the difference between entitlement to the standard rate and entitlement to the enhanced rate of the mobility component.

11. So, what I have said already is sufficient to justify the setting aside of the tribunal's decision. However, I have also decided to address the question of whether the tribunal was correct in proceeding, as it did, on the basis that the route of a journey could be followed from start to end in a motor car.

12. As to that, as a matter of common sense, even where the bulk of a journey may be accomplished by driving, there must be at least relatively small parts of, I suppose, virtually every journey, which will have to be accomplished by some other means. If, for example, the claimant were to go to a branch of Asda (whether the one he normally goes to or one which is not known to him) that would involve him going from his front door to his motor car and then from wherever it was he had parked his motor car (quite possibly a carpark) to the store itself. Given his particular difficulties with anxiety when not in his home and not in his motor car, those small parts of the journey would raise different questions with respect to his ability to manage absent another person than would the part of a journey achieved by driving. The evidence did not appear to suggest that he would not be able to manage to get from his front door to his motor car so long as it was parked very close to his front door but that matter was not specifically addressed by the tribunal. But perhaps more significantly in the context of this particular claimant, the tribunal did not address the leg of his journey from his motor car to his ultimate intended destination. On his evidence, if it were to be accepted, he would not be able to undertake that part of the journey even if he could manage the other two parts. Whilst I appreciate it is the route rather than the destination which is important (*SSWP v IV(PIP)* [2016] UKUT 0420 (AAC)), a journey is not complete until it has been made from its physical starting point to its ultimate destination. The route of such a journey will include all of that. Of course, some concluding parts of some journeys will be easier to accomplish than others. By way of example, it would probably be easier for a person suffering from the degree of anxiety which the claimant says he experiences when outdoors to go from a parked motor car in the very near vicinity of his friend's front door than from a motor car to a branch of Asda. It seems to me the tribunal was required to make findings as to the claimant's ability to accomplish at least the starting leg and the final leg of that type of journey before reaching an overall view as to his ability to follow the route of a journey at all. Each case will turn upon its individual facts but it is not sufficient to simply say, as did this tribunal, that a claimant is able to follow the route of a journey merely because he is able to follow the bulk of it in his motor car. So, the tribunal erred in that respect too.

13. I should perhaps deal, albeit briefly, with the claimant's representative's contention that the claimant was necessarily unable to follow the route of a journey, familiar or otherwise, because his anxiety precluded him from using public transport. Although it is not said so, it might be the representative had in mind previous versions of the Department for Work and Pensions PIP Assessment Guide which suggested that a person should be considered unable to follow an unfamiliar journey if incapable of using public transport. I am not sure whether that indication is contained in the current Guide but it does not matter. In *SSWP v IV* cited above it was explained that the contents of that Guide were not relevant because entitlement to a personal independence payment is governed by statute and the Social Security (Personal Independence Payment) Regulations 2013. It is those provisions which

have to be interpreted and which apply, rather than anything which is said in the Guide. So, although I have decided to allow the claimant's appeal I would reject that particular ground of appeal. But that has no impact on the outcome.

14. Since I have decided to remit there will be a rehearing before a differently constituted tribunal. The rehearing will not be limited to the grounds on which I have set aside the tribunal's decision. The tribunal will consider all aspects of the case, both fact and law, entirely afresh. Further, it will not be limited to the evidence and submissions before the tribunal at the previous hearing. It will decide the case on the basis of all of the evidence before it, including any further written or oral evidence it may receive.

(Signed on the original)

MR Hemingway
Judge of the Upper Tribunal

Dated: 24 June 2019