

PIP DAILY LIVING ACTIVITY 9 – EFFECT OF SUPREME COURT JUDGEMENT

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INTRODUCTION

- 1 The purpose of this memo is to inform decision makers (DM) about a judgment of the Supreme Court. The Upper Tribunal case of [2016] UKUT 191 (AAC)¹, which dealt with the interpretation of the descriptors under daily living activity 9, was the subject of an appeal to the Court of Session [2017] CSIH 57², which itself was appealed to the Supreme Court in *SSWP v MM*, [2019] UKSC 34³.
- 2 It is important to be aware that this decision will be subject to an administrative exercise. As a non-administrative exercise decision maker you will only take this decision into account from the normal effective date of decision before you. Any relevant period of entitlement prior to the effective date you are dealing with will be picked up by the decision makers working on the administrative exercise.

1 MMcK v SSWP [2016] UKUT 191 (AAC); 2 [2017] CSIH 57; 3 [2019] UKSC 34

BACKGROUND

- 3 Two issues in respect of daily living activity 9 were in dispute:
 1. What is the distinction between and meaning of the terms “prompting” (descriptor 9b) and “social support” (descriptor 9c)?
 2. Can social support be given to a person at a time other than during the activity?



- 4 The position of the Secretary of State prior to the judgment on **1.** was that “social support” was a distinct category of help from prompting, so that if a claimant required prompting only to engage with others face to face, they could only satisfy descriptor 9b (no matter who provided that prompting). If they required help over and above prompting (and it was provided by someone who met the statutory definition of a giver of “social support” – someone “trained or experienced in assisting people to engage in social situations”¹) then the claimant could satisfy descriptor 9c.

1 Social Security (Personal Independence Payment) Regulations 2013 Part 1 Schedule 1 Part 1

- 5 The position of the Secretary of State on **2.** was that in order to count as social support the help had to be given either during the activity, or immediately before it.

WHAT WAS DECIDED IN MM

- 6 It was held that:
1. There is an overlap between “social support” and “prompting”. When someone receives prompting (i.e. reminding, encouraging or explaining by another person¹) from a person who meets the definition of a giver of social support (“a person trained or experienced in assisting people to engage in social situations”¹), then that could be classed as social support, not prompting².

1 Social Security (Personal Independence Payment) Regulations 2013 Schedule 1 Part 1; 2 [2019] UKSC 34

2. In order for descriptor 9c to be satisfied it is not enough for the claimant to be receiving help from a person who meets the definition of a giver of social support. Rather the claimant must *only* be able to engage if they have help from persons who are trained or experienced in assisting people to engage in social situations. If the help could be from someone who does not meet that definition, such as any well-meaning friend or family member¹, then descriptor 9c cannot be met (9b would apply in that instance).

1 [2019] UKSC 34

3. In order to qualify as social support, the help need not be given during the activity itself or immediately beforehand. However, there still has to be an ongoing need for the claimant to receive that social support to be able to engage with other people face to face (for the whole required period) as per the requirements of regulation 4(2A)¹.

1 reg 4 (2A)



APPLYING THE MM DECISION

- 7 If the claimant can **only** engage when they have the help of a person trained or experienced in assisting people to engage in social situations they would satisfy 9c – it must be a necessity and not a choice. If the claimant can engage without the help of such an individual/s they do not satisfy 9c.
- 8 A person providing social support must be trained or experienced in assisting people to engage in social situations – this can include health professionals and family and friends so long as they meet the required level in the individual circumstances. A close and comforting relationship is not sufficient to constitute social support. There must be a need for a person trained or experienced in assisting people to engage with others.
- 9 As there is no need for the help from the person providing the social support to be given at the time of, or just before, the engagement itself, it can include help such as meetings with psychiatric professionals and mental health workers which then enable the claimant to engage with other people. However, it must be reasonable to state that it is the help which directly causes the claimant to be able to engage, and without such specific intervention then engagement face to face would not be possible. Also, the DM should consider the required period - the claimant must on a balance of probabilities reasonably require that social support for the duration of the nine-month prospective period (as well as the three month qualifying period).

Example 1

The DM accepts that the claimant needs prompting in order to engage with other people face to face. They go on to find that the prompting is provided from any well-meaning friend or family member. The DM determines that the claimant does not need social support because help is not required from a person trained or experienced in assisting people to engage in social situations. Descriptor 9b is selected.

Example 2

The DM determines that the claimant does need prompting in order to engage with other people face to face. The DM finds that the claimant needs the prompting to be provided solely by their partner or else they would not be able to engage with others face to face. The claimant's partner has over many years become intimately experienced in the needs of their spouse and in what support needs to be given to allow them to engage with others. The DM deems the partner to have the necessary training and/or experience to be a giver of social support, and determines that the claimant could only engage effectively if prompted by them. Descriptor 9c is selected.



Example 3

The DM determines that the claimant is able to engage with other people face to face without problem at the time of engagement. However, they have a monthly meeting with a therapist who provides counselling to the claimant. The DM determines that the claimant needs this support as were it not for those meetings the claimant would not be able to engage with others face to face to an acceptable standard. They determine that the counselling is a long term treatment and will likely be needed for the required period. The DM selects descriptor 9c.

Example 4

The DM determines that the claimant is able to engage with other people face to face without problem at the time of engagement. The DM notes that the claimant completed a course of CBT a few months ago, and there have been no further planned mental health interventions or medications prescribed since the completion of the course. The DM determines that there is no longer a need for CBT in order to engage with others in the present (and for the rest of the required period) and therefore determines that he needs neither social support nor prompting. The DM selects descriptor 9a.

Example 5

The claimant is able to engage with other people face to face without problem at the time of engagement. However, before leaving the house to engage with others they must sit down with their mother who mentally prepares and supports them for the meeting. The DM determines that this intervention is required for the claimant to be able to engage with others face to face. They determine that the claimant's mother meets the definition of someone who gives social support based on their experience and training for how to prepare the claimant to engage. They also determine that this help has been required on a long-term basis and is likely to be needed for the required period. The DM selects descriptor 9c.

Example 6

The claimant is able to engage with other people face to face without problem at the time of engagement. However, they state they are only able to do this due to an encouraging meeting they have with a well-meaning friend once a week, which makes them feel more confident. The DM determines that the meeting is not necessary to allow the claimant to engage with others through the rest of the week, as it is not specifically focused on helping the claimant engage with others face to face, nor relies on any techniques or training developed to help engagement. The meeting is not



necessary for the claimant to be able to engage with others face to face. The DM selects descriptor 9a.

DECISION MAKING

Relevant determination

- 10 The decision in MM is a “relevant determination”¹. The date of the determination is not that of the Supreme Court decision, nor the Court of Session, but the Upper Tribunal decision. Therefore, the date is 06.04.16. The decision only applies from that date onwards.

1 Social Security Act 98, s 27

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo ADM 07/19](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: September 2020

The content of the examples in this document (including use of imagery) is for illustrative purposes only