

# ADM Chapter P2: Assessment for PIP

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## Daily living and mobility components

P2001 The activities to satisfy the Daily Living and/or Mobility components are prescribed<sup>1</sup>. These can be found in the Appendices to this Chapter.

1 SS (PIP) Regs, Sch 1

## Limited and severely limited ability

P2002 Entitlement to PIP is based on whether a claimant has limited or severely limited ability to carry out daily living and/or mobility activities<sup>1</sup>. This will be determined by a DM using the information gathered during the PIP assessment (see P2004 – P2006).

1 SS (PIP) Regs, reg 4

P2003 In addition the required period condition, consisting of

1. the qualifying period of 3 months **and**

2. the prospective test of 9 months

has to be satisfied<sup>1</sup>. The HP will advise the DM if these conditions are likely to have been met (see P1031).

1 SS (PIP) Reg, reg 12 & 13

P2004 The PIP assessment is used to determine a claimant's ability to carry out

1. daily living activities **or**

2. mobility activities **or**

3. a mixture of both.

P2005 The assessment will determine whether a claimant's ability is limited or severely limited by their physical or mental condition, and if the claimant meets the required period condition<sup>1</sup> (see ADM Chapter P1 - Conditions of Entitlement).

1 SS (PIP) Regs, reg 4 & reg 12 to 15

P2006 The assessment will be in the form of either<sup>1</sup>

1. a face-to-face consultation **or**
2. a telephone consultation **or**
3. a paper based assessment **or**
4. a video consultation **or**
5. fast track if under the special rules for terminally ill persons **or**
- 6. a combination of any of 1. – 5.**

Once all the evidence is gathered the DM will also assess the claimant using the same criteria as the HP. The DM at this point may also ask the HP for additional information if required, to help the DM make their decision.

1 SS (PIP) Regs, reg 9(1)

P2007 The HP is specially trained to assess and evaluate the impact of disability on a claimant's ability to carry out activities of daily living and mobility. This includes the affects of variable conditions.

P2008 The HP has appropriate knowledge of clinical aspects of a wide range of medical conditions and is skilled in assessing people with physical and mental health conditions.

P2009 A HP will be one of the following

- 1.** An occupational therapist
- 2.** Nurse (level 1)
- 3.** Physiotherapist
- 4.** Paramedic
- 5.** Doctor (GMC registered)

P2010 The HP provides advice to the DM on the limitation to carry out daily living and/or mobility activities and advises on which descriptors are appropriate for the claimant. The advice the HP provides

is based on the daily living/mobility needs arising from a condition or conditions and not the condition(s) itself.

P2011 The claimant will be assessed as having limited ability if the daily living activities or mobility activities achieve a score of at least 8 points<sup>1</sup> in each component. This will then lead to an award of the relevant component or components at the standard rate of PIP (see P2014).

1 SS (PIP) Regs, reg 5(3)(a); reg 6(3)(a)

P2012 The claimant will be assessed as having severely limited ability if the daily living activities or mobility activities achieve a score of at least 12 points<sup>1</sup> in each component. This will then lead to an award of the relevant component or components at the enhanced rate of PIP (see P2014).

1 SS (PIP) Regs, reg 5(3)(b); reg 6(3)(b)

P2013 The score in relation to the daily living and mobility activities is determined<sup>1</sup> by adding together, in relation to each activity, the points awarded against the selected descriptors.

1 SS (PIP) Regs, reg 5(1); reg 6(1)

P2014 The applicable descriptor for the claimant for each activity is

- 1.** where one descriptor is satisfied for over 50% of the days, that descriptor<sup>1</sup> **or**
- 2.** where two or more descriptors are satisfied for over 50% of the days, the descriptor which scores the highest number of points<sup>2</sup> **or**
- 3.** where no descriptor is satisfied for over 50% of the days but two or more scoring descriptors are satisfied for periods of more than 50% of the days when added together, the descriptor to be applied is the one which
  - 3.1** is satisfied for the greatest proportion of the days **or**
  - 3.2** scores the higher or highest number of points where both or all descriptors are satisfied for the same period<sup>3</sup>.

1 PIP Regs, reg 7(1)(a); 2 reg 7(1)(b); 3 reg 7(1)(c)

### **Example 1**

Phil has long term problems with rheumatoid arthritis and has very limited walking ability. He needs to use a wheelchair for more than 50% of the days when outdoors, and can only walk a few metres before being in pain and discomfort. He is assessed as

“Can stand and move more than 1 metre but no more than 20 metres, either aided or unaided”

and scores 12 points on the assessment. He is therefore awarded the enhanced rate of the PIP mobility component.

## **Example 2**

Mary has learning difficulties and

“Needs supervision or assistance to either prepare or cook a simple meal” - scoring 4 points.

“Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week” - scoring 2 points.

“Needs supervision or prompting to be able to wash or bathe” – scoring 2 points.

“Cannot read or understand signs, symbols or words at all” – scoring 8 points.

“Cannot make any budgeting decisions at all – scoring 6 points.

“Cannot plan the route of a journey” – scoring 8 points.

Mary is therefore awarded the daily living component at the enhanced rate as she has scored 22 points, and the mobility component at the standard rate as she has scored 8 points.

## **Example 3**

John has arthritis in his hands and for approximately 1 to 2 weeks a month he cannot

“Cannot prepare and cook food” which would score 8 points.

He also has Multiple Sclerosis which is not controlled well and for about 16 weeks of the year, which do not overlap with the arthritis, he

“Needs supervision or assistance to either prepare or cook a simple meal” which would score 4 points.

Neither descriptor is satisfied for more than 50% of the time on their own, but in aggregate cover more than 50% of the time. John is awarded the standard rate of the daily living component as the descriptor awarding 8 points applies for the greatest amount of the time.

P2015 When assessing the claimant’s ability to carry out an activity, the claimant is to be assessed as if

wearing or using any aid or appliance<sup>1</sup> which

1. the claimant normally wears or uses **or**
2. the claimant could reasonably be expected to wear or use.

1 SS (PIP) Regs, reg 4(2)(a) & (b)

(See [PIP The Meaning of “Safely”](#)) P2016 The descriptor will only be regarded as being satisfied if the claimant can be assessed as carrying out that activity, in the manner described in the descriptor

1. safely – which means in a manner unlikely to cause harm to themselves or to another person, either during or after completion of the activity **and**
2. to an acceptable standard – given the nature of the activity **and**
3. repeatedly – which means as often as the activity being assessed is reasonably required to be completed **and**
4. in a reasonable time period<sup>1</sup>- which means no more than twice as long as the maximum period that a person without a physical or mental condition, which limits that person’s ability to carry out the activity in question, would normally take to complete that activity.

1 SS (PIP) Regs, reg 4(2A)(d)

P2017 In determining whether the activity can be carried out in this manner, consideration should be given to

1. approach – what the individual needs to do; what assistance or aids are required; how long it takes; and whether it is safe **and**
2. outcome – whether the activity can be successfully completed and the standard that is achieved **and**
3. impact – the effects that reaching the outcome has on the individual and, where relevant, other people; and whether the individual can repeat the activity within a reasonable period of time and to the same standard (this includes consideration of symptoms such as pain, discomfort, breathlessness, fatigue and anxiety) **and**
4. variability – how an individual’s approach and outcomes change over time and the impact this has on them.

### **Example 1**

Henry is able to stand and move unaided. He can comfortably walk up to 150 metres at a normal pace. After 150 metres he starts to become breathless and to experience some mild pain. He can continue to

walk but his pace slows. The pain and breathlessness gradually increases and after 250 metres he needs to stop and rest for about 5 minutes before starting to walk again. Henry can repeatedly walk 250 metres, with short 5-minute rests in between for around an hour. After an hour of this, he needs a longer rest of about an hour before walking again. It takes Henry around four minutes to walk 200 metres. The DM considers whether Henry can stand and then move more than 200 metres (descriptor 2a) safely, to an acceptable standard, repeatedly and in a timely manner. The DM decides there is no evidence that this activity poses any risk to Henry's safety; he has said he experiences some pain and breathlessness and, while this may be uncomfortable, he knows when to stop and rest and there is no indication that this causes him any harm. The DM decides Henry can complete the activity more frequently than would reasonably be expected and, although he takes a little longer than a non-disabled person, he can complete the activity in a reasonable time period. As Henry can therefore stand and then move more than 200 metres safely, repeatedly and in a timely manner (the standard is not an issue in this instance), the DM selects descriptor 2a.

### **Example 2**

Louise is able to stand and move with a walking stick. She can walk up to 50 metres at a slightly slowed pace with some discomfort. After this distance she starts to experience increasing hip pain. She can continue to walk, but her pace slows even further and after 100 metres she needs to stop and rest. This takes a lot out of her and for a few hours after Louise is unable to go more than a few steps without experiencing further severe hip pain. The DM considers whether Louise can stand and then move more than 50 metres but no more than 200 metres (descriptor 2b) safely, to an acceptable standard, repeatedly, and in a timely manner. The DM decides that there is no issue with the standard and that she can do so safely, because, although she experiences pain, she knows when to stop and rest, and there is no indication that this causes her any harm. However, after she has walked 100 metres, it is several hours before Louise can walk this distance again. The DM decides this is less frequently than would be reasonably expected and therefore concludes she cannot do so repeatedly. Louise can repeatedly manage a few metres using her stick, which is less than 20 metres but more than 1 metre (descriptor 2e). On this evidence the DM selects descriptor 2e.

### **Example 3**

Julie can prepare and cook a simple meal. However she lacks a perception of danger and occasionally cuts herself from mishandling knives or burns herself on hot pans. She is also impatient and does not cook food for as long as it should be cooked, as a result she prepares food that is lukewarm and meat that is not cooked properly – for example, chicken that is pink in the middle. Her sister usually has to be in the kitchen when she is cooking meals to make sure she does so safely and to remind her to leave food to cook fully. The DM considers whether Julie can prepare and cook a simple meal unaided (descriptor 1a), safely, to an acceptable standard, repeatedly and in a timely manner. The DM decides Julie is able to do so repeatedly and in a timely manner. Because she lacks a perception of danger, the DM decides Julie needs supervision to be able to safely prepare or cook a simple meal (descriptor 1e). Because she does not cook food for as long as she should, the DM decides Julie needs prompting to prepare or cook a simple meal (descriptor 1d) to an acceptable standard. In this case there are two possible descriptors – 1d

and 1e, but as descriptor 1d does not describe a manner in which Julie is able to carry out the activity safely, the DM selects descriptor 1e.

P2018 Where the claimant is assessed as having severely limited ability to carry out the daily living and/or mobility activities, they cannot also be assessed as having limited ability in relation to that component<sup>1</sup>.

1 SS (PIP) Regs, reg 4(3)

P2019 – P2025

## Information requirements

P2026 The claimant will be required to provide any information or evidence<sup>1</sup> that may be requested by the DM to determine their ability to undertake either the daily living or mobility activities specified.

1 SS (PIP) Regs, reg 8(1)

P2027 The information will take the form of

1. the claimant questionnaire, (How your disability affects you), if required
2. any other information as may be requested by the DM
3. any other additional information requested by a person approved by the Secretary of State (e.g. a HP requesting further information by telephone).

P2028 Where information has been requested of the claimant, that information must be provided within 1 month<sup>1</sup> of the request, or any longer period as the DM may consider reasonable.

**Note:** See P2056 for guidance where a claimant fails to comply with providing information or evidence.

1 SS (PIP) Reg, reg 8(2)

P2029 – P2045

## Assessment consultations

P2046 If it is decided that a consultation<sup>1</sup> with the claimant is required to assess the claimant's ability to undertake daily living and/or mobility activities the consultation<sup>1</sup> will take the form of participation in a face-to-face consultation (but see P2006, a consultation by telephone may be used to gather further information).

**Note:** A paper based assessment may be available for some claimants, and may be made where there is sufficient evidence for the HP to advise on all aspects of the claim.

P2047 The claimant will be required to comply with the request to attend for a consultation. Failure to comply will result in the DM giving a negative determination<sup>1</sup>, unless the claimant shows good reason<sup>2</sup> not to participate in the consultation (see P2058).

**Note:** See P2056 for guidance where a claimant fails to comply with a request to attend a consultation and guidance at P2058 and ADM Chapter P6 for guidance on good reason.

1 SS (PIP) Regs, reg 9(2); 2 reg 10

P2048 The claimant must be notified in writing<sup>1</sup> of the

**1. date and**

**2. time and**

**3. place**

of the consultation at least 7 days in advance.

**Note:** The claimant can agree to accept a shorter period of notice, whether given in writing or otherwise.

1 SS (PIP) Regs, reg 9(3)

P2049 The written notice may be issued electronically<sup>1</sup> where the claimant has agreed to correspondence being sent in this manner.

**Note** This facility will not be available until a future date.

1 SS (PIP) Regs, reg 9(4)

P2050 – P2055

## Subpages

- Failure to comply P2056-P2058
- Duration of award P2061-P2065

- Re-determination P2066-P2067
- Terminal illness P2076-P2080
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## Failure to comply P2056-P2058

P2056 Failure to comply with the request

1. to provide information **or**
2. attend a consultation

without good reason shall result in a negative determination<sup>1</sup> of the component(s) to which the failure is related.

**Note:** For guidance on good reason see P2058 and ADM Chapter P6 – Good Reason.

1 SS (PIP) Regs, reg 8(3) & 9(2)

P2057 A negative determination<sup>1</sup> means a determination that a person does not meet the requirements of the daily living component or the mobility component.

1 WR Act 12, s 80(6)

### Example

Amanda made a telephone claim to PIP and was sent out a part 2 questionnaire, 'How does your disability affect you'. She was asked to return the form within one month of the date of the request. After 19 days she had not returned the form so she was sent a postal reminder but she also failed to respond to this. As she did not comply with returning the information required, and she hadn't been identified as needing additional support, a negative determination was made on her claim.

### Good reason

P2058 Claimants will have had the opportunity to explain why they have not complied with a request to

1. provide information **or**
2. attend a consultation.

It will remain the claimant's responsibility to show good reason and provide any evidence to justify their good reason. The DM will make a decision based on all the individual facts and circumstance of the case and taking into account in particular the claimant's state of health at the relevant time and the nature of their disability.

**Note:** For further guidance on good reason see ADM Chapter P6 - Good reason.

P2059 – P2060



## Duration of award P2061-P2065

P2061 Awards for PIP are by default to be for a fixed term<sup>1</sup>. There are exceptions to this, where it is considered that such a period would be inappropriate.

1 WR Act 12, s 88(2)

P2062 Where following an assessment consultation, it is considered that the claimant has

1. a level of functional ability which is not likely to change in the long-term **or**
2. high levels of functional impairment which are only likely to increase

a fixed term award will be inappropriate and an on-going award with a PIP Award Review date after 10 years will be applicable.

**Note:** This is the guidance issued by the Secretary of State in accordance with legislation<sup>1</sup>.

1 WR Act 12, s 88(3)

P2063 When deciding the duration of a fixed term award<sup>1</sup> of PIP the DM should look at all the evidence and facts of the case, including the advice from the HP. There will be two types of fixed term awards

1. short fixed term awards, which will be for a minimum of 9 months and a maximum of 2 years **or**
2. longer fixed term awards, where the DM will set an expiry date 12 months after the date on which the claimant is due to be referred to the HP for a review

**Note:** DMs will also have a role in deciding the PIP Award Review date which will be detailed in the DM's procedural guidance.

1 WR Act 12, s 88(2)

P2064 When deciding the length of the award the DM will have regard to

1. the advice from the HP, within the PIP assessment report **and**
2. any further evidence gathered by the HP **and**
3. the evidence given by the claimant in the questionnaire (How your disability affects you), and any additional information supplied by the claimant.

**Note:** DMs should refer to the procedural guidance on Award Periods and Reviews (within the Decision Making Process Guidance), when deciding the length of the award and setting review periods.

P2065 The advice on prognosis from the HP advising when they wish to see the claimant again in accordance with P2066 – P2067, will have had consideration as to

- 1.** whether there is likely to be an improvement or deterioration in the disability or its functional effects **and**
- 2.** whether further treatment is required **and**
- 3.** the time any improvement or deterioration is likely to be expected **and**
- 4.** the natural progress of the underlying condition **and**
- 5.** any adjustments and adaptations.

### **Example 1**

Joan sent in her questionnaire for her claim to PIP and attended for a consultation with an HP. On the evidence before them the HP provided a report to the DM for their consideration, with a recommendation that the claim should be reviewed in 3 years. This took into account the likely prognosis by the HP of improvement in Joan's disability condition and the daily living/mobility needs arising. The DM considered all the evidence and made their decision on the length of the award, decided on a PIP Award Review date of 3 years and an award for PIP of 4 years. This ensures that the award does not run out before the new decision is made.

### **Example 2**

Richard submitted his questionnaire in relation to his claim for PIP, and the HP considered the information and called him for a consultation. At the consultation Richard brought a letter from his GP and handed it to the HP. The HP looked at all the evidence, including the consultation, and advised that Richard's claim should be reviewed after two years. The DM considered all the evidence and decided that a formal review would not be appropriate, and made an award of PIP for two years, as it is expected that he will have improved by the end of the award. Richard will receive a letter before the end of his award to advise him about claiming again, should his needs not have improved.

### **Example 3**

Agnes has had a long term disability and made a claim for PIP. She submitted her questionnaire, and the HP decided to seek further advice from her hospital consultant. On this evidence the HP made an assessment and advised the DM that Agnes' prognosis was that her needs would be unlikely to change. On this evidence from the HP the DM made a decision to make an ongoing award for PIP, with a PIP Award Review date after 10 years, to check if the level of benefit is still appropriate.

## Re-determination P2066-P2067

P2066 Where a claimant has been determined to have a limited or severely limited ability to carry out activities, the DM may re-determine<sup>1</sup> whether a claimant still has limited or severely limited ability to carry out the required activities.

1 SS(PIP) Regs, reg 11

P2067 The re-determination can be performed when

- 1.** a period of award is coming to an end **or**
- 2.** a claimant reports a change of circumstances **or**
- 3.** the DM wishes to review the claimant's award, at any time or for any reason.

**Note:** This provision does not enable the award to be changed. In order to change the award a supersession decision is required, see ADM Chapter A4.

P2068 – P2075

## Terminal illness P2076-P2080

P2076 There are exceptions to the normal rules when the person who claims

1. is terminally ill **and**
2. has made a claim for PIP expressly on the ground of terminal illness<sup>1</sup>.

**Note:** Evidence from or on behalf of the disabled person of terminal illness will amend the claim to one based on the Special Rules (see P2079).

1 WR Act 12, s 82

P2077 A person is regarded as being terminally ill<sup>1</sup> for the purposes of P2076 if

1. at any time the person suffers from a progressive disease **and**
2. the person's death in consequence of that disease can reasonably be expected within 12 months.

1 WR Act 12, s 82(4)

P2078 When a claim is made under the circumstances in P2076 the claimant will

1. not be required to satisfy the required period condition for either component<sup>1</sup> **and**
2. not be required to satisfy the past presence condition<sup>2</sup> **and**
3. be awarded the enhanced rate of the daily living component<sup>3</sup> **and**
4. be required to provide information on the mobility activities before either rate of that component can be awarded.

1 WR Act 12, s 82(2) & (3); 2 SS (PIP) Regs, reg 22; 3 WR Act 12, s 82(2)

P2079 Claims for terminally ill people will usually be awarded for and limited to 3 years. A reminder will be issued before the award expires to remind the claimant to re-claim PIP.

### Third party claims

P2080 A claim may be accepted from a third party<sup>1</sup> if the claim is made expressly on the ground that this is on behalf of someone who is terminally ill. This has the effect that the terminally ill person has made the claim (see ADM Chapter A2 - claims).

P2081 - P2999

# Appendix 1 - Definitions and Descriptors

## PERSONAL INDEPENDENCE PAYMENT ASSESSMENT

This Appendix gives the definitions of terms used in the regulations and schedule and the list of descriptors.

### **Aided**

means with

- 1.** the use of an aid or appliance **or**
- 2.** supervision, prompting or assistance.

### **Assistance**

means physical intervention by another person and does not include speech.

### **Assistance Dog**

means a dog trained to guide or assist a person with a sensory impairment.

### **Basic verbal information**

means information in the claimant's native language conveyed in a simple sentence.

### **Basic written information**

means signs, symbols and dates written or printed in the claimant's native language.

### **Bathe**

includes getting into or out of an unadapted bath or shower.

### **Communication support**

means support from a person trained or experienced in communicating with people with specific communication needs including interpreting verbal information into a non-verbal form and vice versa.

### **Complex budgeting decisions**

means decisions involving

**1.** calculating household and personal budgets **and**

**2.** managing and paying bills **and**

planning future purchases

### **Complex verbal information**

means information in the claimant's native language conveyed in either more than one sentence or one complicated sentence.

### **Complex written information**

means more than one sentence of written or printed standard size text in the claimant's native language.

### **Cook**

means to heat food at or above waist height.

### **Dress and undress**

includes putting on and taking off socks and shoes.

### **Engage socially**

means

**1.** interact with others in a contextually and socially appropriate manner **and**

**2.** understand body language **and**

**3.** establish relationships.

### **Manage incontinence**

means manage involuntary evacuation of the bowel or bladder including use of a collecting device or self-catheterisation and clean oneself afterwards.

### **Manage medication or therapy**

means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in the claimant's health.

### **Medication**

means medication to be taken at home which is prescribed or recommended by a registered

**1.** doctor

**2.** nurse **or**

**3.** pharmacist.

### **Monitor health**

means

**1.** detect significant changes in the claimant's condition which are likely to lead to a deterioration in their health **and**

**2.** take action advised by a

**2.1** registered doctor

**2.2** registered nurse **or**

**2.3** health professional who is regulated by the Health Professions Council

without which the claimant's health is likely to deteriorate.

### **Orientation aid**

19 Orientation aid means a specialist aid designed to assist disabled people to follow a route safely.

### **Prepare**

In the context of food prepare means to make food ready for cooking or eating.

### **Prompting**

means reminding, encouraging or explaining by another person.

### **Psychological distress**

means distress related to an enduring mental health condition or an intellectual or cognitive impairment.

### **Read**

includes reading signs, symbols and words but does not include reading Braille.

### **Simple budgeting decisions**

means decisions involving

- 1.** calculating the cost of goods **and**
- 2.** calculating change required after a purchase.

### **Simple Meal**

means a cooked one-course meal for one using fresh ingredients.

### **Social Support**

means support from a person trained or experienced in assisting people to engage in social situations.

### **Stand**

means stand upright with at least one biological foot on the ground.

### **Supervision**

means the continuous presence of another person for the purpose of ensuring the claimant's safety.

### **Take nutrition**

means

- 1.** to cut food into pieces **and**
- 2.** convey food or drink to one's mouth **and**
- 3.** chew and swallow food or drink **or**
- 4.** take nutrition by using a therapeutic source.

### **Therapeutic source**

means parenteral or enteral tube feeding, using a rate limiting device such as a delivery system or feed pump.

### **Therapy**

means therapy to be undertaken at home which is prescribed or recommended by a

- 1.** registered
- 2.** health professional regulated by the Health Professions Council.

**1.1** doctor

**1.2** nurse **or**

**1.3** pharmacist

### **Toilet needs**

means

- 1.** getting on and off an unadapted toilet **and**
- 2.** evacuating the bladder and bowel **and**
- 3.** cleaning oneself afterwards.

### **Unaided**

means without

- 1.** the use of an aid or appliance **or**
- 2.** supervision, prompting or assistance.

## **Daily living and mobility activities**

**Note: See P2011- P2014**

### **Daily Living Activities**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Activity</b>	<b>Descriptors</b>	<b>Points</b>
<b>1. Preparing food.</b>	<b>a. Can prepare and cook a simple meal unaided.</b>	<b>0</b>
	<b>b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.</b>	<b>2</b>

	<b>c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.</b>	<b>2</b>
	<b>d. Needs prompting to be able to either prepare or cook a simple meal.</b>	<b>2</b>
	<b>e. Needs supervision or assistance to either prepare or cook a simple meal.</b>	<b>4</b>
	<b>f. Cannot prepare and cook food.</b>	<b>8</b>
<b>2. Taking nutrition.</b>	<b>a. Can take nutrition unaided.</b>	<b>0</b>
	<b>b. Needs –</b>	<b>2</b>
	<b>(i) to use an aid or appliance to be able to take nutrition; or</b>	
	<b>(ii) supervision to be able to take nutrition; or</b>	
	<b>(ii) assistance to be able to cut up food.</b>	
	<b>c. Needs a therapeutic source to be able to take nutrition.</b>	<b>2</b>
	<b>d. Needs prompting to be able to take nutrition.</b>	<b>4</b>
	<b>e. Needs assistance to be able to manage a therapeutic source to take nutrition.</b>	<b>6</b>
	<b>f. Cannot convey food and drink to their mouth and needs another person to do so.</b>	<b>10</b>
<b>3. Managing therapy or monitoring a health condition.</b>	<b>a. Either –</b>	<b>0</b>
	<b>(i) does not receive medication or therapy or need to monitor a health condition; or</b>	
	<b>(ii) can manage medication or therapy or monitor a health condition unaided.</b>	
	<b>3(b) Needs any one or more of the following –</b>	<b>1</b>
	<b>(i) to use an aid or appliance to be able to manage medication;</b>	
	<b>(ii) supervision, prompting or assistance to be able to</b>	

manage medication;

(iii) supervision, prompting or assistance to be able to monitor a health condition

c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week. 2

d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week. 4

e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week. 6

f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week. 8

**4. Washing and bathing**

a. Can wash and bathe unaided. 0

b. Needs to use an aid or appliance to be able to wash or bathe. 2

c. Needs supervision or prompting to be able to wash or bathe. 2

d. Needs assistance to be able to wash either their hair or body below the waist. 2

e. Needs assistance to be able to get in or out of a bath or shower. 3

f. Needs assistance to be able to wash their body between the shoulders and waist. 4

g. Cannot wash and bathe at all and needs another person to wash their entire body. 8

**5. Managing toilet needs or incontinence.**

a. Can manage toilet needs or incontinence unaided. 0

	<b>b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence.</b>	<b>2</b>
	<b>c. Needs supervision or prompting to be able to manage toilet needs.</b>	<b>2</b>
	<b>d. Needs assistance to be able to manage toilet needs.</b>	<b>4</b>
	<b>e. Needs assistance to be able to manage incontinence of either bladder or bowel.</b>	<b>6</b>
	<b>f. Needs assistance to be able to manage incontinence of both bladder and bowel.</b>	<b>8</b>
<b>6. Dressing and undressing.</b>	<b>a. Can dress and undress unaided.</b>	<b>0</b>
	<b>b. Needs to use an aid or appliance to be able to dress or undress.</b>	<b>2</b>
	<b>c. Needs either -</b>	<b>2</b>
	<b>(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or</b>	
	<b>(ii) prompting or assistance to be able to select appropriate clothing.</b>	
	<b>d. Needs assistance to be able to dress or undress their lower body.</b>	<b>2</b>
	<b>e. Needs assistance to be able to dress or undress their upper body.</b>	<b>4</b>
	<b>f. Cannot dress or undress at all.</b>	<b>8</b>
<b>7. Communicating verbally.</b>	<b>a. Can express and understand verbal information unaided.</b>	<b>0</b>
	<b>b. Needs to use an aid or appliance to be able to speak or hear.</b>	<b>2</b>
	<b>c. Needs communication support to be able to express or understand complex verbal information.</b>	<b>4</b>

	d. Needs communication support to be able to express or understand basic verbal information.	8
	e. Cannot express or understand verbal information at all even with communication support.	12
<b>8. Reading and understanding signs, symbols and words</b>	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
<b>9. Engaging with other people face-to-face</b>	a. Can engage with other people unaided.	0
	b. Needs prompting to be able to engage with other people.	2
	c. Needs social support to be able to engage with other people.	4
	d. Cannot engage with other people due to such engagement causing either –	8
	(i) overwhelming psychological distress to the claimant; or	
	(ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.	
<b>10. Making budgeting decisions</b>	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions.	2
	c. Needs prompting or assistance to be able to make simple	4

**budgeting decisions.**

**d. Cannot make any budgeting decisions at all.**

**6**

1 SS (PIP) Regs, Sch 1

## **Mobility Activities**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Activity</b>	<b>Descriptors</b>	<b>Points</b>
<b>1. Planning and following journeys.</b>	<b>a. Can plan and follow the route of a journey unaided.</b>	<b>0</b>
	<b>b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.</b>	<b>4</b>
	<b>c. Cannot plan the route of a journey.</b>	<b>8</b>
	<b>d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.</b>	<b>10</b>
	<b>e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.</b>	<b>10</b>
	<b>f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.</b>	<b>12</b>
<b>2. Moving around.</b>	<b>a. Can stand and then move more than 200 metres, either aided or unaided.</b>	<b>0</b>
	<b>b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.</b>	<b>4</b>
	<b>c. Can stand and then move unaided more than 20 metres but no more than 50 metres.</b>	<b>8</b>
	<b>d. Can stand and then move using an aid or appliance more than 20</b>	<b>10</b>

**metres but no more than 50 metres.**

**e. Can stand and then move more than 1 metre but no more than 20 12  
metres, either aided or unaided.**

**f. Cannot, either aided or unaided,– 12**

**(i) stand; or**

**(ii) move more than 1 metre.**

1 SS (PIP) Regs, Sch 1

## **Appendix 2 - UT and Court decisions**

### **The effect of Upper Tribunal and Supreme Court Decisions**

This Appendix informs Case Managers (CM) and Decision Makers (DM) of the effect of Upper tribunal and Supreme Court Decisions on the interpretation of PIP Mobility descriptors 1 and PIP Daily living descriptors 3, 4 and 9. It also deals with the definition of "Safely" in relation to how to apply the term to make a descriptor choice.

#### **Subpages**

- PIP The Meaning of "Safely" – effect of UT decision RJ, GMcL and CS v SSWP (PIP) [2017] UKUT 0105 (AAC)
- PIP Mobility Activity 1 – effect of UT decision MH v SSWP (PIP) [2016] UKUT 531 (AAC)
- PIP Daily Living Activity 3 – effect of UT decision SSWP v LB [2016] UKUT 530 (AAC)
- PIP Daily Living Activity 9 – effect of Supreme Court Judgement SSWP v MM [2019] UKSC 34
- PIP Daily Living Activity 4 – effect of UT decision KT and SH v SSWP (PIP) [2020] UKUT 252 (AAC)

# PIP The Meaning of “Safely” – effect of UT decision RJ, GMcL and CS v SSWP (PIP) [2017] UKUT 0105 (AAC)

## INTRODUCTION

1 This page is to advise decision makers about a three judge panel Upper Tribunal (“UT”) decision<sup>1</sup> (“RJ”) that deals with the definition of “safely” and the linked term “supervision,” and the measurement of risk to assess those terms.

1 [RJ, GMcL and CS v SSWP \(PIP\) \[2017\] UKUT 0105 \(AAC\)](#)

2 This explains how to apply the terms of the decision and to make the descriptor choice. For the practical steps to take to get the effective dates of the decision correct please see [PIP Mobility Activity 1 - effect of UT decision MH V SSWP \(PIP\) \[2016\] UKUT 531\(AAC\)](#).

## UPPER TRIBUNAL DECISION

### Background

1 Two of the cases before the UT concerned claimants with epilepsy and the other case concerned a deaf claimant with cochlear implants. The issue before the UT was how to determine what is meant by “safely”<sup>1</sup> and when there is a need for “supervision”<sup>2</sup>.

1 [reg 4 \(4\)\(a\)](#); 2 [SS \(PIP\) Regs, sch 1 part 1](#)

### The decision

2 The UT concluded that:

“In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. It follows that both the likelihood of the harm occurring and the severity of the consequences are relevant. The same approach applies to the assessment of a need for supervision.”<sup>1</sup>

1 [RJ, GMcL and CS v SSWP \(PIP\) \[2017\]UKUT 0105 \(AAC\)](#), para 56

## APPLICATION OF THE DECISION

3 For a descriptor to apply, a claimant must be able to carry out the activity “safely”, defined as “in a manner unlikely to cause harm to the claimant or to another person, either during or after completion of the activity”<sup>1</sup>. Where someone is unsafe doing an activity on the majority of days, but by being aided (by

the use of an aid, or by prompting, supervision or assistance<sup>2</sup>) the completion of the activity would be made safe, they satisfy the appropriate descriptor. Safety refers to both the safety of the claimant and other people.<sup>3</sup>

1 [SS PIP Regs, reg 4\(4\)\(a\) and \(c\)](#); 2 [reg 2 \(a\)](#); 3 [RJ](#) para 27

4 The pre-RJ guidance when assessing whether a task could be done “safely”, was that any harm had to be likely to occur, which we said meant “more likely than not” to occur – essentially that the event which created the risk had to happen on the majority of days. However, this approach can no longer be applied. The UT found that when assessing whether a person can carry out an activity safely consideration must be given to whether there is a “real possibility that cannot be ignored of harm occurring”, and confirmed this applied “even though the harmful event which triggers the risk actually occurs on less than 50% of the days”<sup>1</sup>. Factors to be considered are the nature and gravity of the potential harm in each case.

1 [RJ](#) Para 55

5 The question to be asked is whether there is a real possibility of harm to the claimant or another person when completing the activity. When asking this question both the severity of harm and the likelihood of harm should be considered. If there is a real possibility of harm that cannot be ignored, then a secondary question is can the activity be carried out safely if the claimant uses an aid, or has prompting, supervision or assistance. The answer to this question will determine the descriptor choice.

6 In cases where the effect of the condition occurs on the majority of days (e.g. where a claimant has total sight loss) there may be no significant change to how the decision maker considers safety. The type of cases where the approach will most differ is where the effect (or as the UT termed it, the “event”) of the condition does not occur on the majority of days. Examples of the kind of conditions which may have intermittent symptoms are epilepsy or mini-strokes.

7 We would not expect claimants to be awarded lower scoring descriptors following the UT decision when compared to the descriptors that would have been chosen prior to the UT decision.

## **HOW TO ASSESS WHETHER AN ACTIVITY CAN BE PERFORMED SAFELY**

8 All of the following factors should be considered:

1. the **frequency** of the incident is such that there is a real possibility that harm would occur.
2. the **severity of harm** caused by the incident whilst performing the activity should be considered.
3. the extent to which the condition is **predictable, controlled** or risk can be **mitigated**. If the incidents are predictable, for example if they only happen at certain times (e.g. when sleeping), have certain triggers or warning symptoms before they occur, it may be that the claimant can reasonably avoid or minimise any risk of harm.

9 The UT stated “both the likelihood of the harm occurring and the severity of the consequences are relevant”. The assessment must be based on a consideration of both the frequency of the event which means that a claimant might not be able to complete an activity safely **and** the severity of harm that might occur.

10 If the severity of harm is very high then an activity might be considered unsafe, even if the frequency of occurrence is quite low. If the frequency of occurrence is high, then an activity might still be considered safe if the harm is only minor.

11 When assessing the severity of harm a decision maker must take into account not just the nature of the event, but also the nature of the activity. The activities will create different risks for each claimant depending on their condition. For example, Activity 1, preparing and cooking food, involves sharp objects and hot items, but in some circumstances this risk can be mitigated by carrying out the activity whilst sat down, or using aids, or by using a microwave and microwave-safe dishes, or having another person present to supervise.

12 It is important to remember that the severity of a condition can differ from person to person. Details will be required about the nature, frequency and duration of incident or symptoms, in order to understand the severity of the harm that might occur.

13 Some conditions may mean that a claimant has a recovery period after the initial incident. Recovery periods will vary between different individuals and conditions, but usually recovery periods would not cause a risk to safety as the person would be able to make themselves safe, even if they have not fully recovered from the incident. It is unlikely that a claimant will satisfy scoring descriptors on the basis of risk to safety during a recovery period, although this will depend on the nature of the condition. **One must also consider that the risk during recovery will be greater if the person is outside rather than inside, in the safety of the home – i.e. such risk may be greater for the mobility descriptors than for the daily living activities.** Decision makers should explore the length and impact of the recovery phase. For example, people with hypoglycaemic events will usually recover a few minutes after taking sugar, whereas some people with epilepsy may feel tired and need to rest after a seizure, but would not be at significant risk during this time.

14 When considering the frequency of incidents that could impact safety it is important to consider not just the number of days that incidents occur but also the likelihood that this happens at the exact moment when an individual is undertaking an activity that could cause harm. If an activity takes little time it is less likely that the intermittent incident may occur when the claimant is carrying out that activity.

15 For individuals who experience altered or loss of consciousness there is a risk that they may fall and in doing so come to harm whilst undertaking an activity. To assess whether this risk means that an individual cannot undertake the activity safely the decision maker should gather evidence about the ways in which the claimant is at risk of harm and the type of harm, as well as the likelihood of that harm occurring. The decision maker should also consider how the individual minimises this risk in other situations.

16 The decision maker may find it helpful to consider the whole picture of how the claimant's condition affects them. For example, there might be relevant evidence which may help demonstrate a real possibility of risk, such as that a claimant has seizure alarms, or has adapted their house to reduce the harm of potential falls. As always it is important to assess the consistency of the evidence. Key pieces of information could include whether they see specialists or have medical input which would support the frequency or severity of incident. It may also be helpful to consider if the claimant is able to undertake activities (such as cycling, swimming, working in a hazardous environment or taking young children out of the house alone), where the severity of harm could be grave. For example, any claimant with a valid driving licence would be very unlikely to score points due to experiencing symptoms of altered or loss of consciousness, because if they are considered safe to drive, they usually should also be considered safe to carry out the descriptors.

## **EXAMPLES**

17 The following examples are for illustration only. They are not designed to provide any guidance on specific conditions but to show the approach and thought processes involved. It is up to decision makers to consider the balance of risk for each individual case.

### **Example 1**

The claimant has severe learning disabilities and does not have an awareness of danger. They attend a specialist day centre during the week and are cared for at home by their parents. They are supervised at all times due to their learning disability. On the grounds of safety, the decision maker awards 1e because the claimant would be unable to determine whether food is safe to eat, for example, that meat is properly cooked; 3b because the claimant would be at risk of accidental overdose when taking medication; 4c because the claimant would not think to check whether the water was too hot before bathing; and mobility 1f because the claimant would not be able to work out where to go, follow directions or deal with unexpected changes to a familiar journey. In this case, the descriptors are the same as those that would have been awarded before the UT decision. The claimant also scores on other descriptors, but not on grounds of safety.

### **Example 2**

The claimant has diabetes with hypoglycaemic events which at their most severe can cause them to lose consciousness. However, they receive warning symptoms of profuse sweating. This warning is sufficient to allow them time to reduce the likelihood of harm. For instance, if an incident did occur when they were cooking then claimant would be able to turn off the cooker and find a place to sit or lie down and have something to eat or drink. Due to this warning, it is reasonable to find that for this claimant the risk of harm is too remote to satisfy any scoring descriptors on the grounds of safety in any of the relevant activities.

### **Example 3**

The claimant has narcolepsy events which cause them to lose consciousness. They previously struggled

to manage their condition. Now they have better control over the incidents by having a strict sleep routine, changes to their diet, exercise and medications. The claimant has their condition under control and has not had any events for 3 months. As such it is reasonable to find that the risk of harm is too remote for the claimant to satisfy any of the scoring descriptors in any of the relevant activities.

#### **Example 4**

The claimant has absence seizures, without warning, trigger or pattern, up to a few of times a day, which involve them losing focus and entering a trance like state. Usually the trance only lasts for a few seconds or up to half a minute. If they are holding items at the time of the absence they wont drop them, they would not fall or make any other movements. The claimant takes reasonable precautions by using safe crossings when making journeys. The claimant reports no injuries or incidents occurring as a result of these absences. Although the frequency of the incidents is common, no harm is likely to come as a result of these absences so it is reasonable to find that that the claimant satisfies no aids and appliances or supervision descriptors.

#### **Example 5**

The claimant has seizures, for which they receive a brief warning. Although they do not result in falls, during and after the seizure the claimant is in an extremely disorientated state for a significant period of time. The claimant is able to make themselves safe when in the home and rest whilst the episode subsides. The decision maker decides that there is not sufficient risk of harm for the daily living activities. However, when outside the home the claimant cannot make themselves safe and is deemed so vulnerable during the seizure and recovery period that they would be at risk of harm. Balancing the frequency of the events and the severity of harm that could occur the decision maker decides to award mobility descriptor 1f, as the claimant would need accompaniment on all journeys in order to do them safely.

#### **Example 6**

The claimant has had episodes of status epilepticus. This is a life-threatening condition for the claimant where if their seizure lasts longer than five minutes the claimant needs emergency treatment. Their partner has been trained to administer the treatment when necessary in accordance with the claimant's epilepsy care plan. The last time this happened was 6 months ago, and before that about 12 months ago. Although the episodes occur infrequently, the claimant is at risk of severe harm if it occurs. A decision is made that there is a sufficient risk during all relevant activities - someone is always to be supervising in order to administer emergency treatment if necessary. The claimant scores 1e, 2b(ii), 3b (iii) (supervision to monitor their health condition), 4c, 5c and mobility descriptor 1f. The decision maker awards standard rate daily living component (11 points) and enhanced rate mobility component (12 points).

#### **Example 7**

The claimant has epilepsy with tonic-clonic seizures. There are no warning symptoms or triggers and the incidents can happen at any time of the day. When the clamant has a seizure their body will become stiff

and then their arms and legs will start twitching. They may drop any items they are holding and will fall from a standing position. Incidents happen once per week on average. A decision is made with regard to each activity where there may be a safety risk for this claimant.

The claimant is able to reduce the risk related to preparing food by using food choppers, slicers and dicers rather than knives. They are able to further reduce the risk by using the microwave rather than a hob, and by using microwave-safe dishes (dishes with lids and valves, that do not heat up in the microwave or break if dropped). They sit to prepare meals, and whilst waiting for them to cook. Therefore the decision maker reasonably concludes that the claimant can minimise the risk associated with cooking by using aids and appliances and a microwave and decides on descriptor 1c.

### **Activity 2 – Taking Nutrition**

This activity is undertaken sitting down, so any risk of falling from standing is removed. The claimant is not at risk when cutting up food and conveying it to their mouth because if they had a seizure when undertaking these parts of the activity they would simply drop the cutlery causing some spillage, but would be highly unlikely to cause any harm to them. However, the last part of the activity, chewing and swallowing food, may be relevant. **During a seizure or event often the mouth will clench and people bite their tongue, any food in the mouth would remain there and the person having the seizure breathes through their nose. Alternatively, depending on the nature of the seizure, the swallowing reflex may be maintained so that the person swallows the food, even whilst semi-conscious. Also the length of time spent swallowing is short. The claimant has never choked in the past nor mentioned that risk.** The decision maker reasonably concludes that there is no risk of harm sufficient to satisfy any scoring descriptor and chooses descriptor 2a.

### **Activity 3 – Managing therapy or monitoring a health condition**

It is highly unlikely that the claimant would need supervision at the time of taking medication due to the risk of choking as this is a momentary action. The claimant requires some time to recover after a seizure, however, the claimant simply takes their medication later, once they have recovered, and no harm occurs as a result. The decision maker considers whether an incident could cause harm by delaying any medications but reasonably concludes that because a delay will not harm the claimant, and chooses descriptor 3a.

### **Activity 4 – Washing and bathing**

With this activity there is a risk of drowning, even though the likelihood of a seizure happening at the time of washing and bathing is low, the severity of the consequences are high. The decision maker concludes that the claimant requires supervision to bathe, so decides on descriptor 4c.

### **Activity 5 – Managing toilet needs or incontinence**

This activity does not take into account mobilising to and from the toilet and there is a very low risk of harm in this activity if the claimant falls from the toilet. The likelihood of an event occurring at the time of

toileting is also low. The decision maker decides on descriptor 5a.

### **Mobility Activity 1 – Planning and following journeys**

The claimant falls during their seizures. This is deemed to count under mobility activity 1 rather than mobility activity 2 as it is on account of their cognitive impairment (the losing of consciousness), not their physical ability to stand and move. The claimant has experienced injuries as a result of these falls. The decision maker considers the frequency of incidents and the severity of harm that could occur and finds that the risk is sufficient so that the person reasonably needs another person with them to make those journeys safely. The decision maker deems that descriptor 1f is the correct choice.

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

**DMA Leeds: June 2018**

# **PIP Mobility Activity 1 – effect of UT decision MH v SSWP (PIP) [2016] UKUT 531 (AAC)**

## **INTRODUCTION**

1 The purpose of this page is to inform CMs about a decision of the UT<sup>1</sup>, MH v SSWP (PIP) [2016] UKUT 531(AAC) (“MH”), which deals with the interpretation of the descriptors under mobility activity 1.

1 [MH v SSWP \(PIP\) \[2016\] UKUT 0531 \(AAC\)](#);

## **THE UT DECISION**

2 The UT decision is dated 28.11.2016. DWP appealed it to the Court of Appeal and also made a change to the regulations governing mobility activity 1 which countered some aspects of the decision<sup>1</sup>. The amendments to mobility activity 1 were quashed by the High Court<sup>2</sup>. The appeal of MH to the Court of Appeal was withdrawn. Therefore the decision of MH is the leading decision on the interpretation of mobility activity 1.

1 [Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017 SI 2017/194](#), 2 [RF v SSWP \[2017\] EWHC 3375 \(Admin\)](#)

## **MOBILITY ACTIVITY 1 BEFORE MH**

3 The position before MH was that descriptors 1d and 1f, which contain the phrase “follow the route” were restricted to measuring the ability of a claimant to navigate the route. Descriptor 1b and 1e, containing the phrase “overwhelming psychological distress” were the only descriptors where distress was relevant. If a person needed accompanying on routes by another person in order to avoid that overwhelming psychological distress (on the majority of days) they satisfied descriptor 1b.

## **RJ, GMcL AND CS v SSWP (PIP)[2017] UKUT 105 (AAC)**

4 Since the MH decision date there has been another UT decision which impacts directly on the application of mobility activity 1. On 09.03.2017 a decision, RJ, GMcL and CS v SSWP (PIP)[2017] UKUT 105 (AAC) (“RJ”), was handed down. The guidance prior to RJ was that when assessing whether a task could be done “safely”, any harm had to be likely to occur, which we said meant “more likely than not” to occur – essentially that the event which created the risk had to happen on the majority of days. In RJ the UT stated that “In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. It follows that both the likelihood of the harm occurring and the severity of the consequences are relevant.”<sup>1</sup> Details on the effect of RJ can be found in [PIP The Meaning of “Safely” – effect of UT decision RJ, GMcL and CS v SSWP \(PIP\) \[2017\] UKUT 0105 \(AAC\)](#)

1 [RJ, GMcL and CS v SSWP \(PIP\) \[2017\]UKUT 0105 \(AAC\)](#), para 56

## WHAT THE UT DECIDED IN MH

5 As well as explaining the significance of the MH decision for decision making it is important to note that for claim periods after the relevant determination date of RJ (09.03.17) a decision may have to change in order to account for that. A decision which covers a claim period that begins prior to the MH determination date (28.11.16) and continues after the RJ determination date could have three different descriptors chosen – one prior to MH, one where MH is applied, and one where MH is applied in accordance with RJ.

6 In MH the UT held that:

- 1. “Follow the route” (in 1d and 1f) is not restricted to navigation only; it means making one’s way along a route or going along a route safely.** Previous to MH descriptors 1d and 1f were restricted to navigation only, so problems with psychological distress were not considered. Previous to RJ the problems with following the route had to manifest on the majority of days, but post-RJ one has to apply the RJ decision of how safely is to be assessed.
- 2. Adjusting to road works or navigating past other unexpected obstacles such as a traffic accident is all part of following the route.** This is the the pre-MH position.
- 3. An inability to communicate effectively so as to correct oneself when lost is not relevant to following the route, as once lost a person has already ceased to follow the route.** This point was the pre-MH position.
- 4. A claimant who suffers overwhelming psychological distress whilst on the journey and who needs to be accompanied to overcome the overwhelming psychological distress may satisfy descriptor 1d or 1f.** Pre-MH this person could only satisfy 1b. Previous to RJ the problems with following the route had to manifest on the majority of days, but post-RJ one has to apply the RJ decision of how safely is to be assessed.
- 5. Descriptor 1b is relevant where a claimant needs prompting to overcome overwhelming psychological distress when setting off on the journey.** As someone who needs another person when travelling along a route would satisfy 1d or 1f, descriptor 1b only applies in practice in the circumstance where someone needs prompting to set off on the journey (but would not need another person whilst on the journey itself). Pre-MH someone in this position would have satisfied descriptor 1b also.
- 6. Distress or anxiety short of overwhelming psychological distress is not enough to bring a claimant within descriptor 1d or 1f.** The tribunal stated that “Although regulation 4(2A) applies so that the question is whether, if unaccompanied, the claimant can follow a route safely, to an acceptable standard, repeatedly and within a reasonable time period, the fact that a claimant suffers psychological distress that is less than overwhelming does not mean that the claimant is not following the route safely and to an acceptable standard. The threshold is a very high one. Thus, the facts that the claimant was “anxious” and “worried”...and was “emotional”...were not sufficient for those claimants to satisfy the terms of descriptors 1d or 1f because they could in fact complete journeys unaccompanied without being

overwhelmed”. Although pre-MH overwhelming psychological distress is not a factor for 1d and 1f (as this is only taken into account for 1b and 1e), the high threshold definition is in line with the term ‘overwhelming’ so should be applied to the pre-MH period and onwards.

**7. Logically where descriptor 1e is satisfied on the majority of days (because the claimant needs to avoid overwhelming psychological distress by not undertaking any journey) the claimant cannot also satisfy descriptor 1f, as this must mean they can undertake a journey (with another person, assistance dog or orientation aid) on the majority of days.** This is the pre-MH position.

**8. Mobility activity 1 is designed to cover limitations on mobility deriving from mental health conditions and cognitive and sensory impairments, whereas mobility activity 2 is designed to cover limitations on mobility from physical restrictions.** This is the pre-MH position.

## APPLYING THE MH DECISION

7 From the above one can see that points 1, 4, 5 and 6 of the above are the main points of change that need to be considered (although all must be taken into account where relevant). Here are some examples to show how the impact of the MH determination could materially alter the decision making (and how these points themselves may alter once the RJ interpretation is factored in).

### Examples

**Please note that all examples are for illustrative purposes and are not exhaustive**

<p>The claimant suffers from epilepsy and has seizures without warning approximately once a week, which has resulted in injuries from falls in the past. Although they have no physical problems with walking, when they have a seizure they lose consciousness which amounts to a cognitive and sensory impairment. That brings the problem within the ambit of mobility activity 1.</p>		
<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
<p>The CM decides that the claimant does not suffer from a navigational problem on the majority of days, and satisfies descriptor 1a.</p>	<p>The CM decides that the claimant does not have a problem with following the route on the majority of days, and therefore satisfies 1a.</p>	<p>The CM decides that claimant cannot travel on any routes (familiar or unfamiliar) safely without another person, due to the risk of injury from falls, as per the RJ rationale. The CM decides the claimant</p>

		satisfies 1f.
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The claimant suffers from episodes of narcolepsy, once or twice a week, which causes the claimant sudden tiredness resulting in a deep sleep, with little warning beforehand. Although they have no physical problems with walking, the narcolepsy, due to resulting in a loss of consciousness, is considered a sensory and cognitive impairment. The CM therefore attributes this issue to mobility activity 1. The claimant does not fall and is able to lower themselves to the ground or a seated position without harm before falling asleep. However, once asleep they will be unconscious for a significant amount of time, will not be readily wakened, and during that period will be extremely vulnerable.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
The CM decides that the claimant does not suffer from a navigational problem on the majority of days, and satisfies descriptor 1a.	The CM decides that the claimant does not have a problem with following the route on the majority of days, and therefore satisfies descriptor 1a.	The CM decides that claimant cannot travel on any (familiar or unfamiliar) routes safely without another person, due to the risk of harm whilst the claimant is vulnerable, as per the RJ rationale. The CM decides the claimant satisfies descriptor 1f.

The claimant has PTSD. When they are outside, if there are loud noises, such as an emergency vehicle siren, they are likely to suffer an overwhelming panic attack and cannot travel further without the help of another person to help overcome that distress. The fear of these panic attacks happening has itself become so great that the claimant suffers severe anxiety at the thought of travelling alone.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
The CM decides that the claimant's problems do amount to overwhelming psychological distress. As	The claimant needs accompaniment to travel on all routes in order to avoid the effect of	This would not have impact as descriptor 1f is already awarded.

the claimant is able to travel routes if accompanied, the CM decides the claimant satisfies descriptor 1b.	overwhelming psychological distress. The CM decides to award descriptor 1f.	
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An autistic claimant is able to navigate familiar routes. They are able to navigate unfamiliar routes but only when following the exact description of the route they have to take. However, if the unfamiliar route is altered by the slightest degree, such as by the specific footpath they are following being inaccessible due to maintenance, they are unable to get themselves back onto the correct track or continue to follow the planned route.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
As the claimant's problems are related to their ability to navigate, the CM decides to award descriptor 1d.	The MH reasoning would not change this approach –the CM decides 1d is the correct descriptor.	The RJ reasoning would not change this approach –the CM decides 1d is the correct descriptor.

The claimant becomes anxious before any journey and they are only able to get out of the door if someone provides encouragement and reassurance that there are no dangers or threats as a result of going outside. However, once they are out they are able to follow a route independently without help.

	<b>MH</b>	<b>POST-RJ</b>
The CM decides that, in order to overcome overwhelming psychological distress, the prompting of another person is required for the claimant to set off on a journey. The CM chooses descriptor 1b. (NB –if the help was for both setting off on the journey and whilst on the journey the	The MH reasoning would not change this approach. As the help to overcome overwhelming psychological distress is only in order to help the claimant set off on the journey –the CM decides 1b is the correct descriptor. (NB – if the	The RJ reasoning would not change this approach –the CM decides 1b is the correct descriptor.

claimant would still only score 1b).	help was for both setting off on the journey and whilst on the journey the claimant would score 1d or 1f).	
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The claimant suffers from low mood. They state they prefer their sister to accompany them on unfamiliar journeys as they get worried and nervous when going to new places. However, on the occasions when their sister was not available and the claimant had to travel on unfamiliar routes alone, although nervous beforehand, they were able to complete these journeys.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
The CM, examining whether descriptor 1b is satisfied or not, decides that the wish to be accompanied was a preference rather than a requirement and was not needed to overcome overwhelming psychological distress. Descriptor 1a is chosen. (NB –the threshold of OPD is the same throughout the pre-MH, MH and RJ periods).	The CM, examining whether descriptor 1d is satisfied or not, decides that the wish to be accompanied was a preference rather than a requirement and was not needed to overcome overwhelming psychological distress. Descriptor 1a is chosen.	The RJ reasoning would not change this approach –the CM decides 1a is the correct descriptor.

The claimant, who suffers from agoraphobia, asks for descriptor 1f to be awarded. However, they state that cannot leave the home on the majority of days to their condition, irrespective of any help they could receive.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
The CM decides that as the claimant cannot leave the home on the majority	The same reasoning is unchanged due to MH – the CM chooses descriptor	The same reasoning is unchanged due to RJ – the CM chooses

of days due to overwhelming psychological distress (and therefore satisfies descriptor 1e) they cannot satisfy descriptor 1f.	1e.	descriptor 1e.
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The claimant has periods of severe anxiety where they are unable to travel on routes they do not know unless they are accompanied (but they are always able to travel on routes familiar to them). When they are not suffering from a period of severe anxiety they are able to manage unfamiliar routes without problem. It is determined that these severe periods do occur for the majority of days in the required period, and that they do amount to overwhelming psychological distress.

<b>PRE-MH</b>	<b>MH</b>	<b>POST-RJ</b>
The CM decides that as the claimant can undertake familiar journeys on the majority of days they cannot satisfy descriptors 1b or 1e (which require that all journeys are affected). Descriptor 1a is chosen.	The CM decides that the claimant satisfies descriptor 1d as on the majority of days they would need another person in order for them to overcome OPD on unfamiliar routes.	The same reasoning is unchanged due to RJ – the CM chooses descriptor 1d.

## DECISION MAKING

### Relevant determination

8 The decisions of the UT in MH and RJ are “relevant determinations”<sup>1</sup>. The dates of the determinations are 28.11.16 (MH) and 9.3.17 (RJ). The following paragraphs set out the practical steps to take to get the effective dates of the decision correct when applying MH and MH as impacted by RJ.

[1 SS Act 98, s27\(link is external\)](#)

## NEW CLAIMS AND REASSESSMENTS

### Deciding claims made on or after the relevant determinations

9 Claims to PIP which are made on or after 28.11.16 should be decided in accordance with MH and claims

which are made on or after 9.3.17 should be decided in accordance with MH and RJ. The 3 month qualifying period condition for PIP can be met where, applying the approach in the relevant determinations, the claimant would have been found to have limited or severely limited ability to carry out relevant activities in the 3 months prior to the relevant determination.

### **Deciding claims made before the relevant determinations**

10 The relevant determinations should not be applied to claim periods on or before 27.11.16 and/or 8.3.17 (but see the paragraph above regarding the qualifying period condition). This is because the Secretary of State must only apply relevant determinations for periods from the date of the judgment<sup>1</sup>. This means that where, for example, claims are made before 9.3.17 the DM will have to determine the claim by consideration of the relevant descriptors in 2 ways. Firstly for the period up to and including 8.3.17 by consideration of the relevant descriptors using the approach applied in MH, and secondly by consideration of the relevant descriptors from and including 9.3.17, in accordance with the relevant determination in RJ. This may mean that in some cases the DM decides that there is no entitlement to PIP from the date of claim to 8.3.17 but that an award can be made from 9.3.17.

1 [SS Act 98, s27\(link is external\)](#)

### **Example**

A claim to PIP is made from 8.2.17. A DM is deciding the case on 3.5.18. The claimant's case is affected by MH and RJ – prior to RJ they satisfied the standard rate of the mobility component and following RJ they will score more points sufficient to give them the enhanced rate of the mobility component. The DM applies MH from 8.2.17; and RJ from and including 9.3.17 but not to the period before 9.3.17. The claimant is awarded the standard rate from 8.2.17 to 8.3.17 and the enhanced rate from 9.3.17 onwards.

### **Reassessment cases**

11 In accordance with ADM P5062-P5063, in a DLA to PIP reassessment case the DM should apply the reasoning in MH and RJ and award PIP where appropriate following the 28 day run on period<sup>1</sup>.

1 [PIP \(TP\) Regs, reg 17\(1\) & \(2\)\(link is external\)](#)

### **Example 1**

The claimant is entitled to DLA and is invited to claim PIP on 1.3.17 (i.e. before RJ). The DM makes a decision on 3.4.17 (after the relevant determination in RJ) that following RJ she is entitled to the enhanced rate of the mobility component of PIP. In accordance with ADM P5062 – P5063, the first pay day after the determination is 5.4.17 therefore the claimant's DLA will terminate on 2.5.17 and the payment of the enhanced rate of the mobility component of PIP will commence on 3.5.17.

### **Example 2**

The claimant is entitled to DLA and is invited to claim PIP on 1.12.16 (i.e. after MH but before RJ). The DM makes a decision on 5.1.17 (again, after the relevant determination in MH but before RJ) that following MH and then RJ she is entitled to the standard rate of the mobility component (MH) and then the enhanced rate of the mobility component of PIP (RJ). In accordance with ADM P5062 – P5063, the first pay day after the determination is 11.1.17 therefore the claimant's DLA will terminate on 7.2.17. The payment of the standard rate of the mobility component will commence on 8.2.17 and the payment of the enhanced rate of the mobility component of PIP will commence on 9.3.17.

### **Award Reviews and the LEAP exercise**

12 Decisions made in the period on or after 28.11.16 and 9.3.17 to the date of this guidance being issued and all PIP awards in payment on 28.11.16 and 9.3.17 will be reviewed in an independent exercise (called a LEAP exercise). Award reviews should be decided as set out below and it is important to understand how the LEAP exercise interacts with these decisions.

## **AWARD REVIEWS**

13 On planned and unplanned award reviews where the claimant has not specifically asked for their award to be looked at in the light of MH and/or RJ, it may be that the claimant benefits from the relevant determination(s). However, given the planned LEAP exercise, it has been decided that a supersession decision made on review should only be effective from the date that would normally apply when superseding on the grounds raised by the review. Any increase in entitlement for a period prior to that will be captured in the LEAP exercise.

### **Example 1 – Planned review - condition unchanged – award increased**

The claimant has an award of the daily living component only. A planned review is initiated on 1.2.18. The AR1 indicates that the claimant's condition and their ability to carry out activities has remained the same. Normally, all that would be needed would be a supersession decision to extend the period of the award. However, following MH the claimant has satisfied the conditions for an increase since 28.11.16. The DM takes MH and RJ into account and supersedes so as to award the increase from the date of decision<sup>1</sup> (receipt of medical evidence). The period from 28.11.16 to the day before the date of the new decision will be considered in the LEAP exercise.

- 1 [UC, PIP, JSA & ESA \(D&A\) Regs., reg 26\(1\)\(a\)](#) & s10(5)

### **Example 2 – Planned review – supersession carried out on the basis of a change of circumstances**

A planned award review is initiated on 1.2.18. The AR1 indicates that the claimant's condition has deteriorated and the DM identifies a relevant change of circumstances (such that the 3 month QP has been met by 1.2.18). The DM makes a decision to supersede the award on the grounds of a relevant change<sup>1</sup> from 1.2.18, taking into account both MH, RJ and the deterioration. The period from 28.11.16 to 31.1.18 will be considered in the LEAP exercise.

- [1 UC,PIP,JSA & ESA \(D&A\) Regs, reg 23 & Sch 1, Part 2](#) para 18

### **Example 3 – Unplanned review - supersession carried out on the basis of a change of circumstances**

The claimant notifies deterioration in their condition and increased needs on 13.2.18. The increased needs arose from 1.11.17. The DM determines that the QP was met on 1.2.18 and that the claimant applied for supersession within a month of that date. It is noted that the claimant would be affected by MH and RJ prior to the deterioration. The DM makes a decision to supersede the award from 1.2.18 as a result of the change of circumstances<sup>1</sup> taking into account RJ. The period from 28.11.16 to 31.1.18 will be considered in the LEAP exercise.

- [1 UC,PIP,JSA & ESA \(D&A\) Regs, reg 23 & Sch 1, Part 2](#) para 15

### **Example 4 – Unplanned review - supersession carried out on the basis of a change of circumstances**

The claimant (who has a daily living component award only at the standard rate) notifies a deterioration in their condition and increased needs on 4.9.17, but those increased needs date back to 4.11.16. The QP was met from 4.2.17. Although the claimant did not report the change in their condition on time, the DM decides that the time limit for notifying the change can be extended<sup>1</sup>. The new needs create an award of the mobility component at the standard rate (MH), but it is noted that the effect of RJ would be to raise the mobility component to the enhanced rate. Taking into account both the change of circumstances and the relevant determinations, the DM supersedes to award both components at the standard rate with effect from 4.2.17 on the grounds of a relevant change of circumstances<sup>2</sup>. The DM makes a further supersession decision, on the grounds of error of law<sup>3</sup>, to award the enhanced rate from 9.3.17 as a result of RJ (See ADM A4250 to A4252 – reinterpretation of the law). The period from 28.11.16 to 3.2.17 will be considered in the LEAP exercise.

- [1 UC,PIP,JSA & ESA \(D&A\) Regs, reg 36, 2 reg 23 & Sch 1, Part 2 para 15. 3 Regs 24 & 35\(5\)](#)

## **MR REQUESTS**

14 A claimant might apply for MR of a supersession decision where the DM has followed the guidance in paragraph 13 and left a period to be considered in the LEAP exercise. If the application:

- does not specifically ask for the earlier period to be looked at in the light of MH and RJ, the DM should only consider whether the decision is correct from the effective date calculated in accordance with paragraph 13
- specifically asks for the earlier period to be looked at in the light of MH and RJ, the DM should refer these cases to the LEAP team.

## **ADVANCE CLAIMS**

15 Fixed term awards may generate advance claims. A notification is generated 14 weeks before the end date of the award which tells the claimant that entitlement is due to end and they should submit a new

claim if they want to. If a new claim is made on time and it is decided that entitlement should continue, a new award will be made from the day after the end of the current award.

### **Example**

An award of standard rate mobility component is due to end on 1.3.18. The claimant makes an advance claim on 1.2.18. The DM decides that the enhanced rate of PIP is appropriate from 2.3.18 (MH and/or RJ applying to the case). The DM should not apply MH and RJ to the case from 28.11.16 to 1.3.18 as this will be considered in the LEAP exercise. The enhanced rate should be awarded from 2.3.18.

## **APPEALS**

**To Note** – The following paragraphs 19-21 apply to cases where the decision maker has not considered/applied MH and/or RJ.

### **Appeals against decisions made after 9.3.17**

16 Where the claimant has appealed against a decision that was made after 9.3.17, the FtT must take MH into account when deciding it but cannot apply it to periods before 28.11.16. The FtT must also take into account RJ but cannot apply it to periods before 9.3.17. (See the addendum to this Appendix for an explanation of the supporting legislation and case law.) The Secretary of State's response to the FtT should ask them to take MH into account from 28.11.16 and RJ into account from 9.3.17 onwards.

### **Appeals against decisions made on or before 9.3.17 but after 28.11.16**

17 Where the claimant has appealed against a decision that was made on or before 9.3.17 but after 28.11.16, the FtT can apply RJ to the whole period covered by the decision under appeal – both before and after 9.3.17. This is because the legislation that limits the application of a relevant determination does not apply to decisions made on or before the date of the relevant determination.<sup>1</sup> (See paragraphs 7 and 8 of the Addendum to this Appendix.)

The appeals officer should mention RJ in their response to the FtT and ask them to take the decision into account. The DM should not revise the decision in the light of RJ prior to the hearing and lapse the appeal because any revision decision made after 9.3.17 would only be able to take RJ into account from 9.3.17. It is therefore potentially more advantageous to the claimant to allow the tribunal to decide the matter.

**However** the reinterpretation in MH (if appropriate) cannot be applied to periods before 28.11.16 (See the addendum to this Appendix for an explanation of the supporting legislation and case law.)

[1 SS Act 98, s 27\(1\)\(b\)](#)

### **Appeals against decisions made on or before 28.11.16**

18 Where the claimant has appealed against a decision that was made on or before 28.11.16 the FtT can apply MH and/or RJ to the whole period covered by the decision under appeal – both before and after

28.11.16 and 9.3.17 (See paragraphs 7 and 8 of the Addendum to this Appendix.)

The appeals officer should mention MH and RJ in their response to the FtT and ask them to take the decisions into account. The DM should not revise the decision in the light of MH and RJ prior to the hearing and lapse the appeal because any revision decision made after 28.11.16 and 9.3.17 would only be able to take MH into account from 28.11.16 and RJ into account from 9.3.17. It is therefore potentially more advantageous to the claimant to allow the tribunal to decide the matter.

## **ADDENDUM - GUIDANCE FOR APPEALS OFFICERS**

1 These notes are intended as a guide to help appeals officers write submissions to the FtT where MH and RJ apply to the decision under appeal and the decision covers a period before 28.11.16 and 9.3.17.

2 The UT decisions in *MH v SSWP (PIP)* [2016] UKUT 0531 (AAC) and *RJ, GMcL and CS v SSWP (PIP)* [2017] UKUT 0105 (AAC) are “relevant determinations” that re-interpret the law. Their effect is that other decisions that incorporate any other interpretation of the law are wrong in law (see ADM A4250 to A4252). The dates of the relevant determinations are 28.11.16 (MH) and 9.3.17 (RJ).

3 Paragraph 3(a) of Section 27 of the Social Security Act 1998 says that where a decision falls to be made on a date **after** a relevant determination was made:

“In so far as the decision relates to a person's entitlement to a benefit in respect of—

(a) a period before the date of the relevant determination; or

(b) .....,

- it shall be made as if the adjudicating authority's decision had been found by the Upper Tribunal or court not to have been erroneous in point of law.”

4 This means that when making a decision after 28.11.16, the DM cannot apply MH to any period before 28.11.16. When a decision is made after 9.3.17, the DM cannot apply RJ to any period before 9.3.17. Any award or increase that the claimant is entitled to on account of MH is only effective from 28.11.16 and any award or increase that the claimant is entitled to on account of RJ can only be effective from 9.3.17<sup>1</sup>

<sup>1</sup> [UC, PIP, JSA & ESA \(D&A\) Regs, regs. 24 & 35\(5\)](#)

5 When a FtT decides an appeal, they make a decision that the Secretary of State could have made on the date on which the decision was made. This was explained by a Tribunal of Commissioners (now Upper Tribunal Judges) who said the following in paragraph 25 in *R(IB) 2/04*:

“Taking the simple case of an appeal against a decision on an initial claim, in our view the appeal tribunal has the power to consider any issue and make any decision on the claim which the decision-maker could

have considered and made. The appeal tribunal in effect stands in the shoes of the decision-maker for the purpose of making a decision on the claim.”

6 It follows that if the DM was bound by Section 27 when making a decision, the FtT are bound by it when standing in the DM’s shoes. This was confirmed by UT Judge (then Commissioner) Jacobs in [CH/0532/06](#). In considering the equivalent provision to Section 27 for Housing Benefit, he said the following in paragraph 14:

- “As the decision-maker was bound by paragraph 18, the tribunal must be also. The same result is produced by the consideration that, were it otherwise, the effect of paragraph 18 could be avoided by the simple expedient of lodging an appeal against the local authority’s decision”.

7 However, a FtT is only bound by Section 27 if the DM was bound by it on the date on which the decision was made. If Section 27 did not apply when the decision under appeal was made because it was made on or before the relevant determination date, the FtT cannot apply it when considering an appeal against that decision.

8 This means that if a claimant appeals against a decision made on or before 28.11.16, the FtT can apply the interpretation in MH to the whole of the period covered by the decision, even if some of it is before 28.11.16. If a claimant appeals against a decision made on or before 9.3.17, the FtT can apply the interpretation in RJ to the whole of the period covered by the decision, even if some of it is before 9.3.17.

9. In the cases above, the DM should mention MH and RJ in their response to the FtT and ask them to take them into account. The DM should not revise the decision prior to the hearing and cause the appeal to lapse because their revised decision (now being made after 28.11.16 or 9.3.17) could only take MH into account from 28.11.16 and/or RJ into account from 9.3.17. It is therefore more advantageous to the claimant to allow the FtT to decide the matter.

**DMA Leeds: June 2018**

# PIP Daily Living Activity 3 – effect of UT decision SSWP v LB [2016] UKUT 530 (AAC)

## INTRODUCTION

1. The purpose of this page is to inform Case Managers about a decision of the Upper Tribunal (UT), SSWP v SSWP v LB [2016] UKUT 0530 (AAC) UKUT 530 (AAC) (“LB”)<sup>1</sup>, which deals with the interpretation of the descriptors under daily living activity 3. The relevant determination date of this decision is 28.11.16 (meaning this decision only applies from that date forwards). This decision is the subject of an administrative exercise (AE). This means that as an ordinary decision maker you will only apply the LB decision from the effective date **that would normally apply to the decision in the course of business as usual**. Any period prior to that ‘usual’ effective date **shall** be dealt with by the specialist AE decision makers.

[1 SSWP v LB \[2016\] UKUT 530 \(AAC\)\(CPIP/721/2016\)](#)

2. Please note that the daily living activity descriptor of 3(b) referred to is taken from Part 2 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 as at the date of decision, 28 November 2016, prior to the regulation change that came into force on 16 March 2017<sup>1</sup> which changed that descriptor (and some definitions). Please see the addendum for the differences between the Schedules following that regulation change. **Please note that the descriptors and definitions must be applied to the correct time periods.**

[1 Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#)

## THE UT DECISION

### BACKGROUND

3. The appeal concerned a claimant with type 1 diabetes who stated she required assistance from her partner to constantly monitor her blood sugar levels and help her with her sugar and insulin intake. The main issues before the UT were (i) whether the help the claimant received from her partner fell under monitoring a health condition and managing medication thus satisfying descriptor 3(b)(ii) or whether it was therapy so that the claimant satisfied a higher scoring descriptor, and (ii) whether actions taken by another person to help the person with managing a special diet could come under the definition of therapy.

### WHAT THE UT DECIDED

4. There are **two elements** to the UT’s decision:

1. The UT decided that in certain circumstances a combination of the two limbs of descriptor 3(b)(ii)

(managing medication, and monitoring a health condition) could be classed as therapy (and move the claimant to descriptors 3(c) to 3(f), or to a higher scoring descriptor if already at 3(c) to 3(e)).

From now on, this is referred to as the “**MAM element**” (medication and monitoring)

2. The UT decided that supervision, prompting or assistance with the management of a special diet could be classed as part of managing therapy. From now on, this is referred to as the “**DAT element**” (diet as therapy).

## **APPLICATION OF THE DECISION**

5. Please take particular note that the **MAM** and **DAT** elements of this decision are to be applied differently. The effect of the **MAM element** was reversed by the Social Security (Personal Independence Payment) (Amendment) Regulations 2017, which came into force on 16 March 2017. This means that it only has effect from 28 November 2016 until 15 March 2017. **However, the DAT element was not affected by that regulation change** so applies from 28 November 2016 onwards.

6. Please also note that there may be an interaction between this decision and that of the decision in RJ, GMcL and CS v SSWP [2017] UKUT 0105 (AAC) (now reported as [2017] AACR 32). RJ had a relevant determination date of 9 March 2017. This means that RJ did not apply at the time of the relevant determination in LB (28 November 2016). There may be circumstances where the award you give on account of this LB decision will change once one reaches 9 March 2017, and one applies RJ, rather than the pre-RJ interpretation - see [PIP The Meaning of “Safely” – effect of UT decision RJ, GMcL and CS v SSWP \(PIP\) \[2017\] UKUT 0105 \(AAC\)](#) - for those differing interpretations - and may change again effective from 16/03/2017 due to the change in law which cancelled-out the MAM element of LB. Please see example 5, paragraph 9, and example 4, paragraph 10 for illustration.

7. For the **MAM element** (for the period between 28 November 2016 to 15 March 2017), the combination of managing medication **and** monitoring a health condition would apply as follows:

7.1 if the claimant requires supervision, prompting or assistance with **only one limb** of descriptor 3(b)(ii) (i.e. only managing medication, or only monitoring a health condition) on over 50% of the days in the required period then they should continue to satisfy descriptor 3(b)(ii);

7.2 descriptors 3(c) – 3(f) can be satisfied where a claimant meets **both** limbs of the descriptor (i.e. they require supervision, prompting or assistance to be able to manage medication **and** supervision, prompting or assistance to monitor a health condition) in combination on over 50% of the days in the required period (NB – overlapping days, where they satisfy both limbs on the same day, count as one day, not two days, in the majority of day calculations), and

7.3 where both limbs (i.e. managing medication **and** monitoring a health condition) are present on the majority of weeks in the required period. In order for descriptors 3(c) to 3(f) to be satisfied the help with the therapy must be required on the majority of weeks (rather than the usual majority of days). Therefore, if help with either limb is required for less than the majority of weeks, then it could not contribute to the satisfaction of descriptors 3(c) to 3(f). The correct descriptor choice would then be 3(b)(ii), rather than 3(c);

7.4 where in combination the two limbs of descriptor 3(b)(ii) occur on the majority of days, and also both limbs are present on the majority of weeks, the claimant should be considered as receiving help to manage therapy (and the time taken for the supervision, prompting or assistance must be measured in hours per week in order to decide which descriptor from 3(c) - 3(f) applies, added together with any time already measured for therapy using the regular definitions);

7.5 where a claimant receives medication as part of the 'take action' aspect of monitoring a health condition that will be considered as satisfying both monitoring a health condition and also managing medication, and therefore will be classed as therapy (if that takes place on the majority of days, and also the majority of weeks).

NB - When measuring the time taken to monitor a health condition one only counts the time taken to detect a significant change (not all the monitoring time), and then the time taken to take the action to prevent the deterioration. The definition of 'monitor health/monitor a health condition' is "(a) detect significant changes in C's health condition which are likely to lead to a deterioration in C's health; and (b) take action advised by a-(i) registered doctor; (ii) registered nurse; or (iii) health professional who is regulated by the Health Professional Council, without which C's health is likely to deteriorate".

8. For the **DAT element** (for periods from and including 28 November 2016), supervision, prompting or assistance with the management of a special diet, this could be classed as part of managing therapy where;

8.1 the diet has been prescribed or recommended by a health professional (a registered doctor, nurse or other health professional regulated by the Health and Care Professions Council), and

8.2 managing the requirements of the special diet means it is necessary to pay attention to both the nature and timing of food and/or drink (i.e. if the special diet concerns only the nature of the food that is not enough); and

8.3 failing to adhere to the special diet would result in a deterioration of the condition within an immediate or short period of time. This requirement is so that general dietary advice, which any person may receive from their doctor (e.g. lose weight, eat healthier meals), and which may prevent deterioration in general health over a longer term, is not classed as being part of a special diet. Whether such a deterioration is deemed to occur within an immediate or short period of time will be a matter for the judgement of the decision maker in the circumstances of each case

Only the time required for supervision, prompting or assistance with the management of the special diet will count towards therapy time, not time spent preparing & cooking food (measured within Daily Living Activity 1) or eating the food (measured within Daily Living Activity 2). Instead, it is the additional time to undertake the additional actions necessary to manage the special diet. This could include weighing out food or checking food to ensure the correct nutritional content is prepared correctly. The time spent on the special diet would be added together with any other time designated as therapy in order to ascertain which descriptor from 3c to 3f would apply.

## **Examples**

### **9. For the MAM element (a combination of medication and monitoring a health condition being classed as managing therapy)**

#### **Example 1**

The claimant needed assistance with managing medication every day. They also needed assistance with monitoring a health condition one day a week. Previously they would have satisfied 3(b)(ii) as they needed assistance to manage medication on the majority of days. However, post-LB (for the closed period of 28 November 2016 to 15 March 2017) the combination of needing both medication and monitoring a health condition, on the majority of days in combination, and with both limbs occurring on the majority of weeks, means they are counted as needing supervision, prompting or assistance with therapy. The claimant moves to descriptors 3(c) to 3(f). The DM counts the time taken for the help needed to manage medication and the time taken for the help with monitoring health (which means the time taken to detect the significant change and time taken to help take the action which prevents the deterioration), in order to decide which descriptor from 3(c) to 3(f) applies (up to 15 March 2017).

#### **Example 2**

The claimant needs help to manage medication on a daily basis. They also need help with monitoring a health condition once every three weeks. Although in combination the need for help occurs on the majority of days, as help with monitoring a health condition does not occur on the majority of weeks, that is not frequent enough for MAM to become therapy. The DM selects descriptor 3(b)(ii).

#### **Example 3**

#### **Example 4**

The claimant needs another person to monitor their health, in the form of checking their blood with a test. On the majority of days that blood test reveals a deterioration in their condition which can then be remedied by helping the claimant take a drug (as the claimant cannot do this themselves). As the method by which the remedy occurs involves the taking of medication, following LB it is considered as simultaneously being managing medication and monitoring a health condition and is therefore classed as therapy. The DM counts the time taken for the help needed to manage medication and the time taken for the help with monitoring health (which means the time taken to detect the significant change and time taken to help take the action which prevents the deterioration), in order to decide which descriptor from 3(c) to 3(f) applies (for the closed period of 28 November 2016 to 15 March 2017).

#### **Example 5 – RJ applies**

The DM decides that the claimant does not require help to manage medication nor to monitor a health condition on the definition prior to RJ. However, following RJ (from 9 March 2017 onwards) the claimant would need help with both limbs of descriptor 3b(ii). After working out that 6 hours per week are required

the DM gives the claimant descriptor 3d. However, that only applies from 9 March 2017 until 15 March 2017, when the regulation change takes effect. From 16 March 2017 the MAM element no longer has effect, meaning that the award level is reduced back to descriptor 3(b)(ii).

#### **10. For the DAT element (supervision, prompting or assistance with the management of a special diet)**

##### **Example 1**

The claimant states they need help to deal with a special diet which involves avoiding certain foodstuffs. However, the diet was not prescribed or recommended by any of their medical professionals, rather it is something they found on the internet. As such it does not meet the definition of therapy so the DM decides that any time spent helping the claimant with that diet is excluded from any therapy duration calculation.

##### **Example 2**

The claimant states they need help to deal with their diet. Their GP has recommended they lose some weight and eat a healthier diet. As this diet does not involve any immediate deterioration in the claimant's condition should the claimant fail to adhere to it, the DM decides that it does not meet the guidance for being a special diet as therapy, and any time spent helping the claimant with that diet is excluded from any therapy duration calculation.

##### **Example 3**

The claimant states they need help to deal with their diet (and the DM accepts that they are unable to manage this themselves). Due to their condition the claimant has been instructed by a health professional to eat regularly through the day, and to avoid certain foods. The DM determines that failure to comply with this would result in an immediate deterioration. Someone must prompt the claimant to eat at the right times, and must also check their meals to ensure they contain the correct content. As the help is with the nature and timing of the claimant's diet the DM adds together the time spent prompting the claimant and the time spent checking each meal in order to determine which therapy descriptor (3c to 3f) applies.

##### **Example 4 – RJ applies**

The DM decides that the claimant does not require diet as therapy as they do not require help using the pre-RJ interpretation of risk. However, as at 9 March 2017, following RJ relevant determination, the claimant would require that help with diet as therapy. 2 hours help per week are required so the DM gives them descriptor 3(c) from 9 March 2017 onwards.

##### **Example 5 – MAM and DAT at same time**

condition, in combination on the majority of days, which is therefore treated as therapy. That requires 3 hours per week of help from another person, so 5 hours in total in combination with the DAT element time. For the period of 28 November 2016 to 15 March 2017 the claimant is awarded descriptor 3(d), for needing more than 3.5 but less than 7 hours of help per week. Then, from 16 March 2017 onwards, removing the MAM element from consideration, the claimant is moved to descriptor 3(c), as only 2 hours of help remain.

**Addendum - Schedule 1 Of The Social Security (Personal Independence Payment) Regulations 2013 – Before And After Regulation Change Dated 16 March 2017**

APPLIES UP TO AND INCLUDING 15 MARCH 2017	APPLIES FROM 16 MARCH 2017 ONWARDS
Schedule 1 - Part 1 Interpretation	Schedule 1 - Part 1 Interpretation
“therapy” means therapy to be undertaken at home which is prescribed or recommended by a – (a)registered – (i) doctor (ii) nurse; or (iii)pharmacist; or (iv) health professional regulated by the Health Professions Council	“therapy” means therapy to be undertaken at home which is prescribed or recommended by a – (a)registered – (i) doctor (ii) nurse; or (iii)pharmacist; or (iv) health professional regulated by the Health Professions Council; but does not include taking or applying, or otherwise receiving or administering, medication (whether orally, topically or by any other means) or any action which, in C’s case, falls within the definition of “monitor a health condition”
Part 2 – Daily Living Activities	Part 2 – Daily Living Activities
3b. Needs either-  (i) to use an aid or appliance to be able to manage medication; or  (ii) supervision, prompting or assistance to be able to manage medication or monitor a health condition	3b. Needs any one or more of the following-  (i) to use an aid or appliance to be able to manage medication;  (ii) supervision, prompting or assistance to be able to manage medication.  (iii) supervision, prompting or assistance to be able to monitor a health condition.

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



# PIP Daily Living Activity 9 – effect of Supreme Court Judgement SSWP v MM [2019] UKSC 34

## Introduction

1. The purpose of this page is to inform decision makers (DM) about a judgment of the Supreme Court. The Upper Tribunal case of [2016] UKUT 191 (AAC)<sup>1</sup>, 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 57<sup>2</sup>, which itself was appealed to the Supreme Court in SSWP v MM, [2019] UKSC 34<sup>3</sup>.

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”<sup>1</sup>) 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 person<sup>1</sup>) 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”<sup>1</sup>), then that could be classed as social support, not prompting<sup>2</sup>.

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 member<sup>1</sup>, then descriptor 9c cannot be met (9b would apply in that instance).

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**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)<sup>1</sup>.

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"<sup>1</sup>. 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.

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

**DMA Leads: September 2020**

# PIP Daily Living Activity 4 – effect of UT decision KT and SH v SSWP (PIP) [2020] UKUT 252 (AAC)

## Introduction

1. The purpose of this page is to inform decision makers (DM) about a decision of the Upper Tribunal, KT and SH v Secretary of State for Work and Pensions (PIP) [2020] UKUT 252 (AAC)<sup>1</sup> (“KT & SH”), which dealt with the interpretation of ‘safely’ for the daily living activity 4 descriptors (“washing and bathing”).

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 KT and SH v Secretary of State for Work and Pensions \(PIP\) \[2020\] UKUT 252 \(AAC\)](#)

## Background

3. The decision concerned an appeal by two claimants, both with hearing impairments who removed their hearing aids before having a bath or shower. The main issue before the UT was to determine whether in each case the claimant could wash and bathe ‘safely’ within the meaning of regulation 4(4)(a)<sup>1</sup> upon removing their hearing aids as they would be unable to hear a standard fire or smoke alarm when showering.

[1 The Social Security \(Personal Independence Payment\) Regulations 2013, reg 4](#)

4. The position of the Secretary of State prior to the decision has been that a claimant can wash and bathe unaided safely upon removing their hearing aids when washing or bathing.

## What was decided in KT & SH

5. The Upper Tribunal concluded that both KT and SH could not wash or bathe unaided safely upon removing their hearing aids as they would not be able to hear a standard fire alarm when showering<sup>1</sup>. They could not be expected to leave the door open whilst washing or bathing as that would mean the activity was not being undertaken to ‘an acceptable standard’<sup>2</sup>.

[1 KT and SH v Secretary of State for Work and Pensions \(PIP\): \[2020\] UKUT 252 \(AAC\)](#) [2 The Social Security \(Personal Independence Payment\) Regulations 2013 reg 4 \(2A\)\(b\)](#)

6. Therefore, in each case the claimants needed to use an aid or appliance to enable them to wash and

bathe safely. If the claimant cannot benefit from the use of a relevant aid or appliance, then they will need supervision to wash and bathe safely. It was accepted in each appeal that severity of harm occurring was to such a degree that the claimants reasonably needed an aid or appliance, or supervision on over 50% of the days<sub>1</sub> within the required period to enable them to wash and bathe safely.

[1 The Social Security \(Personal Independence Payment\) Regulations 2013 reg 7](#)

## Applying the decision

7. The DM will need to consider from the evidence available to them whether if upon removing their hearing aids a deaf or hearing impaired claimant can or cannot hear a standard fire alarm when undertaking the activity of washing and bathing. If the DM concludes that the claimant cannot hear a standard fire alarm while washing and bathing, then they must go on to consider whether the claimant needs an aid or appliance to wash and bathe safely. An example of such an aid is a visual alarm specifically produced for people with hearing impairments.

8. If the DM concludes on the facts of the case that the claimant cannot use an aid or appliance to enable them to wash or bathe safely then they must consider the need for supervision whilst washing and bathing.

### Example 1

The claimant has been diagnosed with mild sensorineural hearing loss in their left ear. They wear a hearing aid in their left ear to manage this condition. The claimant does not wear a hearing aid in their right ear as they have no hearing difficulties in this ear. The DM notes from the evidence that the claimant has to remove the hearing aid from their left ear when having a shower. The DM concludes from evidence available to them that upon removing the hearing aid the claimant can hear a standard fire alarm whilst washing and bathing. The DM selects descriptor 4a.

### Example 2

The DM notes from the evidence available to them that the claimant has been diagnosed as having severe bilateral hearing loss. The claimant has provided evidence confirming that upon removing their hearing aids they have difficulty hearing against background noise. The claimant states that they keep the door open when washing and bathing as they will need another person to alert them to a fire. The DM accepts the claimant cannot hear a standard fire alarm upon removing their hearing aids when washing and bathing. The DM concludes that the claimant needs an aid or appliance such as a visual alarm to be able to wash and bathe safely and to an acceptable standard. Descriptor 4b is selected.

### Example 3

The DM finds the claimant is profoundly deaf and has been diagnosed with photosensitive epilepsy. The DM accepts that the claimant cannot hear anything upon removing the external component of their cochlear implant. The DM considers whether the claimant can wash and bathe safely using an aid such as a flashing alarm. The DM concludes that the claimant cannot use such an aid as it could trigger their

photosensitive epilepsy and in this case they would need supervision. The DM selects descriptor 4c.

## **Decision making**

### **Relevant determination**

9. The decision in KT & SH is a “relevant determination”<sup>1</sup>. The date of the determination is 21/08/2020. The decision only applies from that date onwards.

[1 Social Security Act 98, s 27](#)

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**DMA  
Leeds  
s:  
May  
2021**