

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Case No.** CPIP/3017/2015

**Before:** A. Rowley, Judge of the Upper Tribunal

**Decision:** This decision is made under section 11 of the Tribunals Courts and Enforcement Act 2007. **The appeal is dismissed.** The decision of the First-tier Tribunal made on 11 May 2015 at Fox Court under reference SC/242/15/01099 did not involve the making of a material error of law.

**REASONS FOR DECISION**

**Background**

1. The claimant was born in 1968 and lives alone. Her case is that her mobility is limited by pain, stiffness and exhaustion. According to the claimant's allocated social worker, the claimant has a mental health condition which results in her experiencing psychotic symptoms and manic features. The claimant also experiences somatic complaints, the origin of which is unclear but which, in the opinion of her allocated social worker, may be related to her mental disorder. The claimant's allocated social worker also says that the claimant has no insight into her mental disorder, and she appears to feel that all her issues have a physical cause. This would appear to be consistent both with the claimant's statement that she does not think that she is mentally ill, and with the Health Professional's finding that there was nothing from the examination or informal observations of the claimant to indicate that she had any physical impairment that may have impeded her ability to move.
2. This is an appeal by the claimant against the decision of the First-tier Tribunal dated 11 May 2015. The tribunal had allowed the claimant's appeal against a decision dated 6 October 2014 to the extent that it decided that the claimant was entitled to the daily living component of Personal Independence Payment ("PIP") at the enhanced rate. However, the tribunal agreed with the decision maker's decision that the claimant was not entitled to the mobility component at any rate.
3. The claimant appealed to the Upper Tribunal with my permission. She challenged the tribunal's decision on the mobility component. Initially, in a submission dated 22 December 2015, the Secretary of State's representative, Ms Pepper, supported the appeal on the basis that the tribunal's consideration of mobility activity 1 ("planning and following journeys") was inadequate. However, on 21 December 2015 the Upper Tribunal issued a decision dated 17 December 2015 in the case of *HL v Secretary of State for Work and Pensions (PIP)* [2015] UKUT 0694 (AAC). In this decision I will refer to that case as "*HL*". It seems that Ms Pepper was unaware of *HL* when she was writing her submission. On 27 January 2016 I issued a Ruling, informing the parties of *HL* and giving each of them an opportunity to make a further submission. Ms Pepper's response was to withdraw her support for the appeal, but the claimant indicated that she wished to continue with her appeal.

**The principal issues on this appeal**

4. There are three principal issues on this appeal, namely:
- (a) Given the tribunal's findings that the claimant had mental health problems and satisfied daily living descriptor 9b ("needs prompting to be able to engage with other people") did it adequately explore, in relation to mobility descriptor 1d, how the claimant would go about undertaking a journey that was unfamiliar to her? What would happen if (for example) she needed to stop to ask for directions?
  - (b) Whether a limitation on the claimant's ability to move around due to somatic symptoms could fall within mobility activity 2.
  - (c) Whether the tribunal's reasons for its decision on mobility activity 2 were adequate.
5. For the reasons set out below I conclude that, in the light of the decision in *HL*, with which I respectfully agree, the tribunal did not make a material error of law in its consideration of mobility activity 1. I also conclude that the tribunal's reasons for its decision under mobility activity 2 did not involve the making of a material error of law. My decision may be of general interest as I observe that, in my judgment, a limitation on a claimant's ability to move around due to somatic symptoms could indeed fall within the provisions of mobility activity 2 in an appropriate case (paragraphs 16 – 18).

### **The statutory framework**

6. Section 79 of the Welfare Reform Act 2012 sets out the conditions of entitlement to the mobility component. One criterion is that the person's ability to carry out mobility activities is limited by the person's "physical or mental condition." The "mobility activities" are set out in column 1 of the table in Part 3 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013:

<i>Column 1 Activity</i>	<i>Column 2 Descriptors</i>	<i>Column 3 Points</i>
1. Planning and following journeys.	a. Can plan and follow the route of a journey unaided.	0
	b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant.	4
	c. Cannot plan the route of a journey.	8
	d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid.	10
	e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.	10
	f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid.	12
2.	a. Can stand and then move more than 200	0

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Moving around.	metres, either aided or unaided.	
	b. Can stand and then move more than 50 metres but no more than 200 metres, either aided or unaided.	4
	c. Can stand and then move unaided more than 20 metres but no more than 50 metres.	8
	d. Can stand and then move using an aid or appliance more than 20 metres but no more than 50 metres.	10
	e. Can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided.	12
	f. Cannot, either aided or unaided- (i) stand; or (ii) move more than 1 metre.	12

7. Regulation 7 of the 2013 Regulations provides that a descriptor has to be satisfied for more than 50% of the time. Whilst it is not relevant to the issues on this appeal, for completeness I should add that by regulation 4(2A) a person is to be assessed as satisfying a descriptor only if they can do so safely, to an acceptable standard, repeatedly and within a reasonable time period.

**Mobility activity 1**

8. On her claim form the claimant answered “no” to each of the questions directed at mobility activity 1. The tribunal nevertheless considered whether the activity applied. In finding that it did not, the tribunal noted that on her own evidence the claimant visited familiar and unfamiliar places alone. The tribunal did not, however, explore how the claimant would go about undertaking a journey that was unfamiliar to her. It did not consider what would happen if (for example) she needed to stop to ask for directions. This may have been a problem for the claimant, particularly as the tribunal had found that she needed prompting to be able to deal with other people (daily living descriptor 9b).
9. As at the date of the hearing, on 11 May 2015, the Upper Tribunal had not issued any decisions or guidance in relation to the interpretation of mobility descriptor 1d. Since then it has considered a fundamental issue, namely whether the descriptor is concerned simply with navigation along a route, or whether it includes dealing with other possible problems (such as personal interactions in asking for directions) that may be met on the journey.
10. Shortly after the tribunal hearing two conflicting decisions were issued by the Upper Tribunal (*DA v Secretary of State for Work and Pensions* [2015] UKUT 0344 (AAC) on 17 June 2015 and *RC v Secretary of State for Work and Pensions* [2015] UKUT 0386 (AAC) on 23 June 2015). They were considered in detail by Upper Tribunal Judge Ward in *HL*. Judge Ward preferred the reasoning of Upper Tribunal Judge Jacobs in *DA*. In that case Judge Jacobs had decided that descriptor 1d “deals with navigation and excludes dealing with other difficulties that may be encountered along the way.” On the natural meaning of the words, the relevant descriptors dealt with “following” the route, a route which had been

planned. Difficulties such as getting lost and asking for directions or encountering crowds which arose on the way were not difficulties with “following” the route.

11. At paragraph 32 of *HL* Judge Ward answered the question “what does it entail to ‘follow the route’?” in the following way:

*“I agree with the Secretary of State that the words “follow the route must be taken to have been adopted advisedly; that “route” refers to (in the broad sense) the pathway to somewhere and that to follow has connotations of keeping to such a pathway. I accept the submission that the deliberate use of the words “follow” and “route” focuses us upon the claimant’s ability to navigate along pathways and is not concerned with other possible problems that a claimant may have when being in the natural environment.”*

12. Whilst adding his own caveat in respect of circumstances which do not affect this case, Judge Ward agreed with Judge Jacobs’ analysis of why descriptor 1d could not apply where the issue faced by a claimant concerned the ability to ask others for help. I respectfully agree with, and adopt, Judge Ward’s reasoning.
13. I have already said that, when the tribunal heard the claimant’s appeal, it did not have the benefit of any guidance from the Upper Tribunal on this descriptor. However, the law operates on the basis of superior courts (in this case, the Upper Tribunal) declaring what the law has always been. In my judgment *DA* and *HL* are taken to have stated what the law was at the date of the tribunal hearing.
14. It follows that the tribunal’s failure to investigate what would happen if the claimant needed to have personal interactions along the route of a journey did not amount to a material error of law.
15. For the sake of completeness I should add these comments. The tribunal did not appear to consider descriptors 1b, 1e or whether overwhelming psychological distress could have made the claimant unable to navigate a route (in which case she may have satisfied the criteria of descriptor 1d – see paragraph 38 of *HL*). There was, however, no evidence to suggest that this claimant fell within any of these categories. There was no material error of law.

### **Mobility activity 2**

16. In giving permission to appeal I asked whether an inability to move around due to somatic symptoms comes within mobility activity 2. I accept Ms Pepper’s submission that it does.
17. As I have already observed, under section 79 of the Welfare Reform Act 2012 a person is entitled to the mobility component (under either activity at either rate) if the person’s ability to carry out the mobility activities is limited by his or her “physical or mental condition.” There is nothing in the wording of the enabling legislation, regulations, mobility activity 2 or its descriptors to suggest that a claimant whose psychosomatic condition manifests an inability to move around will not qualify. In my judgment the simple question is whether the claimant genuinely suffers pain to such an extent that his or her ability to move around is limited.
18. In other words, if it is accepted that a claimant’s symptoms are being genuinely experienced (and that is a matter of fact for the tribunal), then mobility activity 2

falls to be considered in respect of them, irrespective of whether the symptoms are physical or somatic in origin.

19. In this case it is self-evident from the tribunal's decision that it accepted that the claimant's somatic symptoms were genuine and fell to be considered in relation to mobility activity 2. It noted and did not dismiss the fact that the claimant had somatic symptoms, and it went on to consider her ability to mobilise in the light of them.
20. The tribunal referred to the letter dated 26 November 2013, in which the claimant's allocated social worker had said that the claimant had claimed to be unable to leave her home due to crippling pain, and had told her allocated social worker that she spent the majority of her time in bed as she was unable to walk any significant distance.
21. However, the tribunal noted that this was "at variance with," and it relied on, the claimant's own evidence that she went out several times a week – she went to the shops to get newspapers and went to the library once a day, as well as going to a French class. The tribunal also based its decision, in part, on the evidence that the claimant had walked from her home to the assessment centre. This was a significant distance away (Pimlico to Putney) and had taken around one and a half hours.
22. The tribunal concluded that the claimant was able to mobilise for a distance of over 200 metres unaided. In doing so, it did not expressly consider the distances to those places which the claimant visited, nor did it expressly consider the matter through the lens of regulation 7. Did these omissions amount to material errors of law?
23. I agree with Ms Pepper's submission that the evidence and the tribunal's findings amply justified the tribunal's conclusion that the claimant could walk for over 200 metres.
24. Further, given its finding that the claimant went to the shops and the library *daily*, any failure specifically to address regulation 7 did not amount to a material error. My decision on this is affirmed by other evidence which was before the tribunal: on her claim form the claimant had said that whilst she could not walk at her worst times, she had just started going "out of my area" and had done so in four days on the previous week; she stated that at her worst she was housebound or bedbound, but that was "not often" the case at the time of her claim; and the claimant told the Health Professional that she could only "occasionally" not go out due to pain. This suggests that the claimant could mobilise the distance found by the tribunal for more than 50% of the time.

### **The other grounds of appeal**

25. I will deal briefly with the other grounds of appeal.
26. In giving permission to appeal I asked whether the tribunal ought to have adjourned to obtain medical evidence. I am satisfied that, in the circumstances of this case, the tribunal did not err in proceeding with the hearing. There is nothing to indicate that it was hindered in any way by a lack of medical or other evidence.
27. I also asked whether the tribunal should have sought a full copy of the document at page 95. However, I accept Ms Pepper's explanation that in fact page 91

appears to be a continuation of that document. The claimant does not suggest otherwise in her response to Ms Pepper's submission.

28. The other grounds of appeal relied on by the claimant amount either to a disagreement with the tribunal's findings, the raising of fresh factual issues, or a description of her present/recent condition. None of them gives rise to an error of law in relation to the tribunal's decision.

**Conclusion**

29. For the reasons appearing above the decision of the tribunal did not involve the making of a material error of law. Accordingly, the claimant's appeal to the Upper Tribunal is dismissed.

**A. Rowley, Judge of the Upper Tribunal**

**(Signed on the original)**

**Dated:** 16 March 2016