

**THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
DECISION OF THE UPPER TRIBUNAL JUDGE**

The appeal is allowed.

The decision of the tribunal given at Hamilton on 30 June 2014 is set aside.

The case is referred to the First tier Tribunal (Social Entitlement Chamber) for rehearing before a differently constituted tribunal in accordance with the directions set out below.

REASONS FOR DECISION

1. The claimant has appealed against the decision of the tribunal recorded at page 80. The grounds of appeal are in short compass that they are as follows:

“The Tribunal have erred in law by failing to consider that the appellant requires her husband to organise her medication and that she uses a biscuit tin as an aid/appliance to store her medication. They have given no reasoning or explanation as to why this evidence has not been accepted.

Furthermore their points in paragraph 17 under activity 5 are inconsistent with their findings under activity 6. The tribunal have stated under activity 5 that the appellant manages her own toilet needs without assistance from another person. Under activity 6 the Tribunal have stated that she required assistance by reason of her shoulder injury to dress her lower body. These findings are inconsistent and contradict each other. The appellant requires assistance with her toilet needs as she needs to adjust clothing on her lower body and by reason of her shoulder injury she is unable to do this on her own. The tribunal have failed to give an adequate explanation for failing to recognise her needs under activity 5 but thereafter accepting the same needs under activity 6.”

2. The Secretary of State does not support the appeal on the grounds stated in the grounds. However he supports it on other grounds as set out in his submission. The claimant was given the opportunity of responding to the Secretary of State’s submission but has not done so.

3. In respect of the first ground of appeal the Secretary of State responds with the following submission:

“9. In my submission I do not support the claimant’s contention that a biscuit tin is an “aid or appliance”. These words are defined in regulation 2 of the PIP Regulations as:

- (a) *means any device which improves, provides or replaces C’s impaired physical or mental function; and*
- (b) *includes a prosthesis;*

It is my submission that “*aids or appliances*” are used where the claimants are unable to manage their medication due to their health condition or impairment and include items such as dosette boxes, alarms etc. It is difficult to see how a biscuit tin could fall within this definition and so I would submit that descriptor 3b(i) does not apply.”

I find myself in agreement with that submission. Keeping medication in one place in my view does not fall within the definition of “aid or appliance” as set out in the regulations referred to by the Secretary of State.

4. In respect of the second ground of appeal the Secretary of State submits:

“12. With regard to the claimant’s contention that the First Tier Tribunal’s findings under activity 5 are inconsistent with their findings under activity 6 I do not support this contention. Activity 6 concerns dressing and undressing and in this case the claimant’s ability to dress her lower body. Activity 5 concerns the activities such as getting on and off an unadapted toilet, evacuating the bowel and/or bladder and cleaning oneself afterwards. It does not concern the ability to undress/dress before or after any of these activities. It is my submission that activities 5 and 6 are separate and distinct. Accordingly the First Tier Tribunal’s findings regarding activity 6 do not any impact on activity 5.”

Again I agree with the Secretary of State’s submission that the tribunal did not err in law on the grounds asserted. I am satisfied that the Secretary of State is correct when he submits that Activities 5 and 6 are separate and distinct and thus the inconsistency referred to in the grounds of appeal does not arise.

5. The support for the appeal by the Secretary of State is given in paragraphs 10 and 11. I consider that there is substance in that support and in these circumstances hold that the tribunal’s decision errs in law and must be set aside.

6. In remitting the case to a freshly constituted tribunal I direct them to follow what I have said in relation to descriptor 3(b)(i) and that Activities 5 and 6 are separate and distinct.

(Signed)
D J MAY QC
Judge of the Upper Tribunal
Date: 15 December 2014