

**IN THE UPPER TRIBUNAL**  
**ADMINISTRATIVE APPEALS CHAMBER**

**Case No. CPIP/3401/2015**

**Decision:**

‘The decision of the First-tier Tribunal of 21 August 2015 is not wrong in law.  
The appeal fails.’

**Background and procedural history**

1. The appeal relates to the personal independence payment (‘PIP’).
2. The claimant is a woman now aged 47 who suffers from depression, anxiety, panic attacks, asthma, recurrent boils, thyroid problems and night cramps. She had been entitled to the lower rate of the mobility component of disability living allowance (‘DLA’) from 7 April 2011 and on 22 November 2013 she made a claim for PIP.
3. The claimant completed a PIP questionnaire (PIP2) on 6 December 2013 on which she indicated that she had problems with the following activities:
  - (1) Preparing food (she lacked appetite and motivation);
  - (2) Eating and drinking (she needed encouragement);
  - (3) Managing treatments (her antidepressant medication had recently been increased in dosage);
  - (4) Washing and bathing (when she was ‘low’ she lacked motivation);
  - (5) Communicating (she did not like communicating even with people she knew and did not go out socially unless motivated by a friend);
  - (6) Mixing with other people (due to her anxiety and panic attacks);
  - (7) Making decisions about money (although she suffered from anxiety when dealing with correspondence she could generally manage);
  - (8) Going out (she had to be accompanied to both familiar and unfamiliar places);
  - (9) Moving around (she suffered from back and hip pain and tiredness).

(see pages 6 to 43 of the Upper Tribunal bundle)
4. On 20 February 2014 the claimant’s GP completed a report on the claimant (at pages 44 to 48 of the bundle). This was followed, on 11 August 2014, by a consultation with a learning disability nurse (the ‘HCP’) whose report is at pages 49 to 64 of the Upper Tribunal bundle. The opinion of the HCP was that the claimant needed prompting to take nutrition, to engage with other people, and to be able to undertake a journey so as to avoid overwhelming psychological distress. The claimant’s friend had accompanied her to the consultation with the HCP.

5. On 21 August 2014 the claim for PIP was rejected by a case manager on the grounds that as the claimant scored only six points for the daily living activities and four points for the mobility activities she did not have limited ability to carry out these activities. The award of DLA was terminated from 23 September 2014.

6. In coming to his decision the case manager had scored the claimant as follows:

<b>Daily living activity</b>	<b>Description</b>	<b>Points</b>
2. Taking nutrition	(d) Needs prompting to be able to take nutrition	4
9. Engaging with other people face-to-face	(b) Needs prompting to be able to engage with other people	2
<b>Mobility activity</b>	<b>Description</b>	<b>Points</b>
1. Planning and following journeys	(b) Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant	4

7. On 9 December 2014 the claimant’s representative wrote requesting that the decision of 21 August 2014 be reconsidered on the grounds that the claimant was entitled to both the daily living component and the mobility component of PIP at the standard rate. This was on the basis that, in relation to daily living activities, the claimant:

- (1) should also have scored two points for descriptor 3(c) (Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week); and
- (2) two points for descriptor 8(c) (Needs prompting to be able to read or understand complex written information) giving her a total of 12 points for the daily living activities.

In relation to mobility activities the claimant’s representative argued that the claimant should have received 10 points for descriptor 1(d) (Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid).

8. On 17 February 2015 the decision of 23 August 2014 was reconsidered but not changed.

9. On 2 March 2015 the claimant appealed against the decision of 23 August 2014 on the grounds summarised in paragraph 7 above. In relation to daily living activity 3(c) three therapies were particularised - smoking reduction/cessation therapy, exercise therapy and counselling therapy.

10. In his response to the claimant’s grounds of appeal the PIP case manager accepted that it was appropriate to award the claimant an additional point for daily living activities (descriptor 3(b)(ii)).

11. On 21 August 2015 the First-tier Tribunal heard and dismissed the claimant's appeal. The claimant attended the hearing and was represented.
12. The claimant appeals against the decision of 21 August 2015 with the permission of a Judge of the Upper Tribunal.
13. The grounds of appeal are set out in a letter dated 15 October 2015 from the claimant's representative (see pages 211 to 213 of the Upper Tribunal bundle) and are, in summary, that the First-tier Tribunal erred in law in not awarding points for the daily living activities descriptors 3(c), and 9(c) and mobility activities descriptor 1(d) when the evidence before them supported this.
14. The Secretary of State does not support the appeal.

### **The appeal**

15. An appeal to a Judge of the Upper Tribunal will be successful only if the decision of the tribunal below is erroneous in point of law. An appeal on a question of law is not a rehearing of all or parts of the evidence (Yeboah v. Crofton [2002] IRLR 634).
16. There will be an error of law if:
  - (1) The tribunal got the law wrong.
  - (2) The decision is not supported by the findings of fact made by the tribunal.
  - (3) The tribunal's decision was perverse, in other words, on the basis of the facts as found no person acting judicially and properly instructed as to the relevant law could have come to that decision.
  - (4) There has been a breach of natural justice.
  - (5) The tribunal did not give adequate reasons for its decision.

### **Reasons for decision**

17. The First-tier Tribunal's decision was that the claimant did not meet the threshold for an award of either component of PIP as the claimant scored only the following points:

<b>Daily living activity</b>	<b>Description</b>	<b>Points</b>
2. Taking nutrition	(d) Needs prompting to be able to take nutrition	4
3. Managing therapy or monitoring a health condition	(b) Needs ...  (ii) supervision, prompting or assistance to be able to manage medication or monitor a health condition	1

9. Engaging with other people face-to-face	(b) Needs prompting to be able to engage with other people	2
<b>Mobility activity</b>	<b>Description</b>	<b>Points</b>
1. Planning and following journeys	(b) Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant	4

18. The Statement of Reasons for Decision (at pages 190 to 196 of the bundle) shows that, in coming to its decision, the First-tier Tribunal weighed the evidence before it. The tribunal dealt with each of the submissions made on behalf of the claimant.

19. In relation to the daily living activities the tribunal's reasoning was as follows:

- (1) Descriptor 3(c) (Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week) (see paragraph 16 of the Statement of Reasons at pages 192 to 193 of the Upper Tribunal bundle)

In essence, the tribunal's decision on this descriptor was that the smoking cessation advice and encouragement the claimant received from her GP and friends did not qualify as therapy as it was generic. It came to the same conclusion in relation to the help and encouragement given to the claimant to exercise.

Therapy is limited by paragraph 1 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (the 'PIP Regs') to 'therapy to be undertaken at home which is prescribed or recommended by a ... registered ... doctor...nurse ..or pharmacist.' 'Therapy' itself is not defined and so bears its ordinary meaning which is 'the medical treatment of disease; curative medical or psychiatric treatment' (Oxford English Dictionary).

Neither the weight loss/exercise advice nor smoking cessation advice given to the claimant qualified as therapy for the following reasons:

- (i) Advice and/or encouragement given by friends was excluded by paragraph 1 of the PIP Regs as it was not provided by a registered doctor, nurse or pharmacist;
- (ii) To the extent that the weight loss/exercise advice related to attendance at keep fit classes and attending appointments for counselling and 'Let's Talk-Wellbeing' it was not 'to be undertaken at home' as required by the PIP Regs;
- (iii) Even where provided by a GP and to be undertaken at home, the smoking cessation and weight loss advice was not the medical treatment of disease nor was it curative treatment. There was no evidence that either the smoking

or obesity caused or exacerbated any of the claimant's existing medical conditions. .

- (2) Descriptor 9(c) (Needs social support to be able to engage with other people) (see paragraph 18 of Statement of Reasons for Decision at page 194 of the bundle).

To qualify for four points under this descriptor the claimant must need 'social support' which is defined for the purposes of the PIP Regs as 'support from a person trained or experienced in assisting people to engage in social situations.'

It had been accepted by the PIP case manager that the support and encouragement given by the claimant's friend amounted to 'prompting' for the purposes of descriptor 9(b). 'Prompting' is defined in the PIP Regs as 'reminding, encouraging, or explaining by another person.' There was no evidence that the friend's intervention amounted to more than prompting as so defined.

The claimant's representative argues that the difference between 'social support' (descriptor 9(c)) and 'prompting' (descriptor 9(b)) is simply the status of the provider. If the 'reminding, encouraging, or explaining' was given by a person who was 'trained or experienced in assisting people to engage in social situations' it was social support, otherwise it was prompting. It is accepted by the Department of Work and Pensions that 'experienced' people can include friends and family who know the claimant well. The claimant's friend was 'experienced' for this purpose therefore the claimant was entitled to an award of four points under descriptor 9(c).

'Social support' is not defined but I agree with the Secretary of State's submission that as a claimant requiring social support to be able to engage with other people scores double the points of a claimant who requires prompting to do so there must be a qualitative difference between the two descriptors, not simply a difference of provider. It seems to me that the assistance given to the claimant by her friend to enable her to engage with other people was no more than 'prompting' as defined above and did not amount to social support.

The tribunal concluded that the evidence did not justify an award under descriptor 9(c) (see paragraph 18 of the Statement of Reasons at page 194 of the Bundle) and confirmed the award of two points under descriptor 9(b). I cannot find any fault with this conclusion.

20. In relation to the mobility activities the essence of the representative's argument in his submission to me is that the tribunal ignored the evidence before it which was that the claimant needed someone to go with her on all journeys due to anxiety and panic attacks and that this evidence supported an award under either descriptor (d), or (f) of mobility activity 1.
21. In relation to the ability to 'follow' a route referred to in mobility descriptors 1(d) and 1(f) I agree with the analysis of Upper Tribunal Judge Jacobs in *DC v Secretary of State for Work and Pensions* [2015] UKUT 0344 (AAC) and Upper Tribunal Judge May QC

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in *CSPIP/255/2015* as adopted by Upper Tribunal Judge Ward in *HL v Secretary of State for Work and Pensions* [2015] UKUT 694 (AAC) that these descriptors concern the ability to navigate only.

22. The claimant's representative has pointed out that the Government's consultation on the PIP assessment criteria and regulations (13 December 2012) confirmed that individual must be able to follow the route safely and this is reflected in regulation 9(2A) of the PIP Regs. There was no evidence that the claimant could not follow a route safely.
23. The tribunal's decision was that the evidence did not support the conclusion that the claimant could not follow the route of either an unfamiliar or familiar journey (descriptor 1(d) and (f) respectively). It was clear that she was able to do both (see paragraph 20 of the Statement of Reasons at page 195 of the bundle). I can find nothing wrong with this conclusion.
24. For the above reasons the decision of the First-tier Tribunal of 21 August 2015 is not wrong in law. The appeal fails.'

(signed on the original)

**A L Humphrey**  
**Upper Tribunal Judge**  
**20 May 2016**