IN THE UPPER TRIBUNAL **Case No.** CPIP/239/2016
ADMINISTRATIVE APPEALS CHAMBER

Before: A. Rowley, Judge of the Upper Tribunal

Decision:
I allow the appeal. As the decision of the First-tier Tribunal (made on 29 October 2015 at Runcorn under reference SC121/15/00268) involved the making of an error in point of law, it is **set aside** under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is **remitted** to the tribunal for rehearing by a differently constituted panel.

REASONS FOR DECISION

1. This is an appeal by the claimant from a decision of the First-tier Tribunal dated 29 October 2015. The tribunal upheld the decision dated 30 April 2015 of the Secretary of State for Work and Pensions to the effect that the claimant was entitled to the enhanced rate of the daily living component of PIP, but only the standard rate of the mobility component (having scored 8 points under mobility descriptor 2c) from 3 June 2015 to 13 April 2018. The tribunal rejected the claimant's contention that she was entitled to the enhanced rate of the mobility component. I granted permission to appeal to the Upper Tribunal. The Secretary of State supports the appeal.
2. I have allowed the appeal because the tribunal failed to consider relevant matters in relation to mobility activity 2. However, this decision may be of more general interest as I discuss whether a satellite navigation system may fall within the definition of an "orientation aid" under descriptors 1d and 1f of the mobility activities (paragraphs 7 – 14 inclusive).
3. The claimant had a heart transplant in 2008, following which she has had lung dysfunction. The claimant also has chronic pain which affects her body and legs, and she has anxiety and depression. The claimant's case is that she relies on her car to get about, as her ability to walk is limited and she tries not to use public transport due to the infection risk of being with crowds of people, her natural immunity having been lowered by anti-rejection medication and the risk of even a simple infection being life threatening.
4. Moving around (mobility activity 2) is a problem for the claimant, due to shortness of breath and pain. The Secretary of State's representative, Ms Powell, agrees with the claimant's representative that the tribunal erred in its consideration of mobility activity 2. It is not apparent from the Statement of Reasons that the tribunal considered the activity having regard to the factors set out in regulation 4(2A) of the Social Security (Personal Independence Payment) Regulations 2013, particularly "to an acceptable standard," "repeatedly[1]" and "within a

[1] i.e. "as often as the activity being assessed is reasonably required to be completed." (regulation 4(4)(b))

reasonable time period."[2] As Upper Tribunal Judge Parker said in *CPIP/2377/2015:*

> "6… Matters such as pain, and its severity, and the frequency and nature, including extent, of any rests required by a claimant, are relevant to the question of whether a claimant can complete a mobility activity descriptor "to an acceptable standard." I do not agree with the comment at page 771 of Volume 1 of the 2015/16 annotated Social Security Legislation that arguably "… the test should envisage a single unbroken progress to the requisite distance." Such might provide a simpler scheme but, in my view, does not accord with reality. A stop may amount to a mere one second or, alternatively, extend to one hour; such rests may be required once in an appropriate distance or several times. Given the potential vast disparity in circumstances, it is then a matter of judgment, and thus for the good sense of the tribunal, whether a claimant falls within a particular descriptor, having regard to the approach mandated under regulation 4.,..
> 7. Whether a claimant can stand then move a particular distance "to an acceptable standard", inevitably links with two of the further relevant matters under regulation 4(2A): "repeatedly" and "within a reasonable time period…"

5. In this case the tribunal did not consider any of these matters. Given the claimant's evidence that she stopped walking when in pain, I agree with the parties that it should have done so. Its failure to do so amounted to an error of law.

6. It is for this reason that I set aside the tribunal's decision. As fresh findings of fact are required the matter must be remitted to a new tribunal for a rehearing.

7. In the circumstances, it is not strictly necessary for me to deal with the other grounds of appeal relied upon by the claimant. However, to assist the new tribunal I will consider the claimant's representative's submission in relation to whether the claimant's satellite navigation system ("SatNav") constitutes an "orientation aid" within the meaning of descriptor 1d of the mobility activities. The claimant's representative contends that the SatNav which, at the claimant's request, was built-in to a car obtained under the Motability Scheme, does indeed fall within the definition of "orientation aid."

8. Descriptor 1d of the mobility activities applies where a claimant "cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid." Whilst not in issue in this case, it should be noted that descriptor 1f has similar provision in relation to a familiar journey.

9. "Orientation aid" is defined in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 in the following terms:

> " 'orientation aid' means a specialist aid designed to assist disabled people to follow a route safely."

10. Ms Powell for the Secretary of State has referred me to the decision of Upper Tribunal Judge May QC in *CSPIP/229/2015.* Judge May QC pointed out that the navigation system used by the claimant in that case was a generically available SatNav system. There was no evidence to suggest that any modifications had

[2] i.e. "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." (regulation 4(4)(c))

been made to the system. There was no evidence to suggest that the SatNav was a "specialist aid" within the meaning of the regulations. In the circumstances, it was not an "orientation aid."

11. I adopt a similar approach. In contrast to the general definition of "aid or appliance" in regulation 2, the definition of "orientation aid" is expressly limited to a "*specialist* aid" which is "*designed* to assist disabled people to follow a route safely" (my emphasis).

12. Thus, if a claimant's SatNav is one which is in fact commonly available, without a particular modification or specially designed feature as envisaged by the definition, it will not, in my judgment, constitute an "orientation aid" under mobility descriptors 1d or 1f.

13. In this case there was no evidence before the tribunal to suggest that the claimant's SatNav would constitute a "specialist" aid which was "designed to assist disabled people to follow a route safely." The mere fact that it was built-in to a car obtained under the Motability Scheme, without more, would not be sufficient. If there is "more," the claimant may provide evidence of it to the new tribunal.

14. Further, of course, even if the new tribunal is satisfied, on the basis of evidence which may be presented to it by the claimant, that the claimant's SatNav is an "orientation aid," the claimant would only be entitled to points under mobility descriptor 1d if, because of her physical or mental condition, she would be unable to follow the route of an unfamiliar journey without it.

15. I do not need to deal with any other error on a point of law that the tribunal may have made. Any that were made will be subsumed by the re-hearing.

16. I conclude by giving directions in relation to the rehearing of the claimant's appeal by the new tribunal. These directions may be added to or amended by a District Tribunal Judge. Upon listing the rehearing the First-tier Tribunal should note the claimant's representative's request that it be heard in Liverpool.

17. The new tribunal:

(a) should not involve any judge or other member who has previously been a member of a tribunal involved in this appeal. It must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration. Whilst the tribunal will need to address the grounds on which I have set aside the decision, it should not limit itself to those, but must consider all aspects of the case entirely afresh.

(b) is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different conclusion to that of the previous tribunal.

(c) must not take account of circumstances that were not obtaining at the time of the decision: see section 12(8)(b) of the Social Security Act 1998. Later evidence is admissible, provided that it relates to the time of the decision. In other words, the new tribunal will be looking at the claimant's health problems as at the date of decision under appeal, namely 30 April 2015. For any further

evidence or medical information to be of assistance, it will need to shed light on the claimant's health problems at that time.

18. If the claimant has any further written evidence to put before the new tribunal, this should be sent to the new tribunal within one month of the date of the letter sending out this decision.

19. For the sake of completeness I should add that the fact that this appeal has succeeded on a point of law says nothing one way or the other about whether the claimant's appeal will succeed on the facts before the new tribunal, which will make its decision having considered all the relevant evidence before it and made appropriate findings.

A. Rowley, Judge of the Upper Tribunal

(Signed on the original)

Dated: 28 June 2016