

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Case No.** CPIP/1491/2016

**Before Upper Tribunal Judge Robin C A White**

**Decision:** The decision of the tribunal of 8 February 2016 is not erroneous in law. I dismiss this appeal.

**REASONS FOR DECISION**

**Background and context**

1. The appellant, who was born on 1 October 1952, claimed a personal independence payment on 9 July 2015.
2. In his claim pack, the appellant reported his health problems as osteoarthritis in both wrists, fingers, ankles and left knee, the consequences of a heart attack causing chest pains, high cholesterol, sleep problems, and psoriasis.
3. The appellant reported difficulties in preparing food, eating and drinking, managing treatments, washing and bathing, managing toilet needs, dressing and undressing, communicating, making decisions about money, going out, and moving around.
4. The appellant was referred for a face-to-face consultation with a healthcare professional, in this case, a nurse. This took place on 25 September 2015. The outcome of the consultation was that the healthcare professional expressed the view that the appellant scored no points on either the daily living activities or the mobility activities for a personal independence payment assessment.
5. On 6 October 2015 a decision maker accepted the advice of the healthcare professional and disallowed the claim.
6. On 16 October 2015, the appellant asked for the decision to be reconsidered. He argued that he should have scored points for preparing food, managing treatments, washing and bathing, toilet needs, dressing and undressing, and moving around.
7. The decision was reconsidered on 11 November 2015 but was not changed.
8. On 30 November 2015, the appellant appealed against the decision on the grounds that the assessment had not acknowledged his difficulties in walking, preparing food, dressing, and managing his toilet needs.
9. A number of medical letters were adduced in evidence.
10. The appeal came before the tribunal on 8 February 2016. The appellant attended accompanied by his wife, but was not represented. The Secretary of State was not represented. There is a full and helpful record of the proceedings. The outcome of the appeal was that the decision of the Secretary of State of 6 October 2015 was confirmed, although the tribunal scored the appellant six points on the daily living descriptors and four points on the mobility descriptors. However, the points scores still did not reach the threshold for an award to be made. A statement of reasons was subsequently provided.

11. The appeal now comes before me with the permission of a judge of the Upper Tribunal.

### **The grounds of appeal**

12. The appellant had by this stage obtained representation and a number of grounds were put forward, but permission to appeal has been granted only in relation to the tribunal's consideration of daily living activity 10: making budgeting decisions.

13. This is what the appellant's representative had to say:

The claimants evidence was that he could not manage the household finances due to the pain he is in. It is assumed that this was because he would have extreme difficulty concentrating but this matter is not examined by the Tribunal and the HCP examination only examines his ability to make *simple* budgeting decisions.

The HCP records that this area cannot apply because he had "no learning disability, mental health cognitive impairment." The record of proceedings shows that the Tribunal do not examine this issue at all.

It is submitted that there is nothing in the descriptor to suggest that problems with complex budgeting decisions need to arise through mental health problems.

14. **Did the tribunal err in law?**

15. The representative of the Secretary of State does not support the appeal. She argues that the primary focus of the activity is on the inability to make budgeting decisions arising from a cognitive or intellectual impairment. She cites *CPIP/3015/2015* and *CPIP/0184/2016* in support. That being so, the way the tribunal has addressed the issue contains no error of law, since the tribunal has found that the appellant had no functional impairment as a result of any mental health problems and has specifically recorded, in relation to making budgeting decisions that they "found no reliable evidence to suggest that this descriptor should apply."

16. In response to the submission of the representative of the Secretary of State, the appellant's representative argues as follows;

We dispute, however, that the authorities are precedent for the view that the originating disability must be a mental health condition. Thus, the Activity area can apply where a physical condition has the effect of restricting mental functioning such that complex budgeting decisions are precluded or, at least, take more than twice as long. In this case the claimant's pain affected his ability to make budgeting decisions (presumably influencing his concentration).

17. Before addressing the proper approach to the interpretation of the descriptors in daily living activity 10, I want to make a number of observations about the appellant's evidence and argument in relation to the activity.

18. In his claim pack, the appellant has responded in the negative to the question, "Do you need someone else to help you understand how much things cost when you buy them or how much change you'll receive?". He has answered in the positive to the question, "Do you need someone else to help you manage your household budgets, pay bills or plan future purchases?" He has added the following further information:

I rely on my wife to manage most of my finances as due to the pain I am in there are days when I would not be able to manage my bills.

19. In the appellant's request for reconsideration of the decision dated 16 October 2015, the appellant lists a number of activities where he considers that he should score points. This does not include making budgeting decisions.
20. In the appellant's grounds of appeal dated 30 November 2015, there is no reference to making budgeting decisions.
21. The appellant did not raise difficulty in making budgeting decisions in his oral evidence before the tribunal.
22. The appellant's representative did not raise the issue of any error of law arising from the tribunal's consideration of the activity in seeking permission to appeal from the First-tier Tribunal. The issue is raised for the first time as a ground of appeal in the renewed application for permission to appeal. There is, of course, nothing improper in that.
23. I make these points simply to show that they suggest that the appellant has never done more than to assert in his claim pack that pain affects his ability to make complex budgeting decisions on some days, and that this activity was not viewed as a major feature of his claim for a personal independence payment. That said, if just two points were added to the points the tribunal assigned, the appellant would reach the threshold for the award of a personal independence payment at the standard rate in respect of daily living activities.
24. My final observation is that the appellant's representative says that the healthcare professional "only examines his ability to make *simple* budgeting decisions". I am not sure that is wholly accurate. At page 20 of her report the healthcare professional expresses the opinion that the appellant can manage complex budgeting decisions unaided. The appellant's representative would appear to be drawing his conclusion from the functional history where the healthcare professional reports the appellant as saying that his wife has always dealt with the household bills and the appellant has never done it, but that he can make transactions in shops and garages. I do not read the healthcare professional's observations as relating only to simple budgeting decisions.
25. Let me now turn to the proper approach to the descriptor in issue.
26. Section 77 of the Welfare Reform Act 2012 makes provision for personal independence payments, which are to include a daily living component and a mobility component.
27. Section 78 provides:
  - (1) A person is entitled to the daily living component at the standard rate if—
    - (a) the person's ability to carry out daily living activities is limited by the person's physical or mental condition; and
    - (b) the person meets the required period condition.
  - (2) A person is entitled to the daily living component at the enhanced rate if—
    - (a) the person's ability to carry out daily living activities is severely limited by the person's physical or mental condition; and
    - (b) the person meets the required period condition.
28. Section 80 makes provision for regulations for determining whether a person's ability to carry out daily living activities is limited or severely limited.

29. The regulations are the Social Security (Personal Independence Payment) Regulations 2013. Daily living activities are set out in Schedule 1 to the regulations. Regulation 4(2A) requires that a person is to be treated as able to carry out an activity only if he or she can perform the activity safely, to an acceptable standard, repeatedly and within a reasonable time period. The terms “safely”, “repeatedly”, and “reasonable time period” are defined in the regulation.
30. Regulation 5 provides that limited ability to carry out daily living activities arises where a person scores at least eight points in relation to daily living activities, and that severely limited ability to carry out daily living activities arises where a person obtains a score of at least twelve points in relation to those activities.
31. Regulation 7 makes provision for dealing with situations where a person’s ability to carry out daily living activities is variable.
32. Making budgeting decisions is a daily living activity listed in Part 2 of Schedule 1. It provides:
  10. Making budgeting decisions a. ( 0
  - b. 1 2
  - c. Needs prompting or assistance to be able to make simple budgeting decisions. 4
  - d. ( 6
33. A number of terms are defined in Part 1 of Schedule 1.
34. “Unaided” is defined as meaning without the use of an aid or appliance, or supervision, prompting or assistance.
35. “Assistance” is defined as physical intervention by another person and does not include speech.
36. “Prompting” is defined as reminding, encouraging, or explaining by another person.
37. “Complex budgeting decisions” are defined as decisions involving calculating household and personal budgets, managing and paying bills, and planning future purchases.
38. “Simple budgeting decisions” are defined as decisions involving calculating the cost of goods, and calculating change required after a purchase.
39. Two decisions of the Upper Tribunal have been cited to me.
40. The first is *CPIP/3015/2015*, which concerned a claimant with limitations arising from psoriasis, hepatitis C, oesophageal/stomach damage, liver damage, alcohol dependency, depression and shoulder dislocations. The claimant’s arguments in relation to the making budgeting decisions activity were that he could not adequately budget and if given housekeeping money he would buy cheaper items in order to have a balance to spend on alcohol. It was argued that the claimant’s alcohol dependency meant that he could not prioritise effectively and spends money on alcohol rather than essential items.

41. After drawing attention to the distinction between simple and complex budgeting decisions, Judge West said at paragraph 31 of his decision:

A “simple budgeting decision” is not a demanding act and requires only the ability to do a single sum or a series of single sums, an understanding of the concept of money and a basic grasp of addition and subtraction. Only those with significant cognitive/intellectual impairment should satisfy the descriptor. By contrast, the concept of “complex budgeting decisions” measures a wider range of abilities (calculations, management and planning for the future) and therefore a wider range of conditions can cause functional loss. The examples provided of (a) someone with no control over his alcohol intake whatsoever and who spent every single penny on alcohol, leaving nothing aside for food or anything else and (b) a functioning alcoholic who may be dependent upon alcohol, but still have judgment when it comes to budgeting are a good guide along the spectrum of self-control; there will be gradation of impairment and there will be a point at which an individual claimant crosses the line from (a) to (b) and vice versa. The answer to the question of whether a person comes within descriptors 10(a) or (b) is therefore a fact sensitive one and will be a matter for assessment and judgment for the individual tribunal depending on the circumstances of the individual case. Assessment of descriptors 10(a) and (b) can therefore include considerations of questions of lack of prudence as well as questions of cognitive/intellectual impairment, but the weight to be accorded to those respective factors will vary from case to case depending on the nature of the evidence before the tribunal.

42. The second case is *CPIP/0184/2016*, which concerned a claimant with limitations flowing from a stroke and some pre-existing mental health difficulties. It was said that the claimant’s depression and difficulties in concentration coupled with fatigue affected her ability to make budgeting decisions. Judge Grey QC observed:

28. The Tribunal’s focus on the appellant’s decision-making capabilities, as opposed to any need for more practical assistance was a proper one, in my view. The issue under [the making budgeting decisions activity] is the ability to make “decisions” about financial issues, and this requires a focus upon intellectual capacity. I do not consider that the inclusion of the reference to “decisions involving ... paying bills” [in the definition of complex budgeting decisions] should shift the focus to the need for assistance in coping with tiredness which, in turn leads to practical difficulties in completing the physical actions involved in paying a bill, if that involves going to a shop, for example.

43. I would first note that, in both the cases cited to me, there were elements of both physical and mental health issues. I would also note that there is nothing in either decision which suggests that physical disabilities are excluded in relation to the activity of making budgeting decisions.
44. I agree with both decisions in so far as they indicate that the primary focus of the activity of making budgeting decisions is the cognitive or intellectual function of making decisions which fall within the definitions of simple and complex budgeting decisions.
45. It is plain to me that there is nothing in relation to the activity of making budgeting decisions which excludes the presence of difficulties flowing only from physical disabilities from being the source of limitations in relation to making budgeting decisions. The statutory language refers to a person’s ability to carry out daily living activities being limited by the person’s physical or mental condition.
46. However, it will only be in the most extreme set of circumstances that limitations flowing from a physical disability alone will result in a person having limitations in relation to making budgeting decisions as set out in daily living activity 10.

- Those circumstances are likely to be so extreme—and the consequences so obvious—that they are highly unlikely to be the subject of appeals to tribunals.
47. Furthermore, a person in such circumstances is highly unlikely to need to rely on points from the making budgeting decisions activity in order to meet the threshold for an award.
48. In the appeal before me, it is argued that pain flowing from the appellant's musculoskeletal problems limits his ability to make complex budgeting decisions. The appellant concedes that he is able to make simple budgeting decisions.
49. When seen by the healthcare professional, the appellant reported that his pain flowing from his osteoarthritis (which seems mainly to affect his knees and ankles) was managed by paracetamol prescribed by his GP. His chest pain is said to be well controlled by prescribed medication.
50. I note that the tribunal record the appellant as saying that no painkillers worked for him. Then at paragraph 10 of its decision, the Tribunal records:
- We found that more medical referral would be likely and effective painkillers prescribed for the substantial difficulties asserted by the appellant, and that such treatment would be expected to have a beneficial effect. We did not accept that the asserted pain and discomfort was sufficient for the purposes of PIP criteria.
51. The tribunal also found that the appellant had no functional impairment at all as a result any mental health problem. The tribunal specifically addresses the making budgeting decisions activity as follows:
15. Making budgeting decisions. We found no reliable evidence to suggest that this descriptor should apply.
52. The appellant's physical disabilities are such that they are very far from the threshold that would result in limitations flowing solely from them on his ability to make complex budgeting decisions.
53. When read as a whole, the tribunal's decision in relation to the making budgeting decisions activity contains no error of law. Accordingly, I dismiss this appeal.

**Signed on the original  
on 26 August 2016**

**Robin C A White  
Judge of the Upper Tribunal**