

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

CPIP/2337/2016

Before: Upper Tribunal Judge Paula Gray

Decision

This appeal by the SOS is dismissed. The decision of the first Tier Tribunal sitting at Sheffield under case number SC 147/15/02096 is correct as a matter of law and it stands.

Reasons

The appeal before the FTT

1. The case concerned the appellant's entitlement to a Personal Independence Payment (PIP). The Secretary of State's decision had awarded 4 points to the appellant in the daily living category, insufficient for an award to be made. He appealed to the first-tier Tribunal (FTT). Having heard evidence from the appellant and his father the FTT awarded an additional 8 points for problems under the daily living activities but no points for mobility difficulties, and made an award of the enhanced rate of the daily living component.
2. The FTT accepted that the appellant had suffered from Obsessional Compulsive Disorder (OCD) since childhood, which affected him considerably. In relation to daily activities certain things took him much longer than a person without the disorder. As to mobility, although he had some difficulties, they were not so severe as to warrant points under the relevant descriptors; this matter has not been the subject of challenge, and I need say no more about it.
3. The SOS sought a statement of reasons and subsequently applied for permission to appeal, in the first instance to the FTT.

The appeal to the Upper Tribunal

4. The District Tribunal Judge who had chaired the tribunal refused permission to appeal and the application was renewed before me. The Secretary of State argued that it was inconsistent for the FTT to award two points each for the descriptors which related to prompting, but eight points in relation to the other activity in contention, washing and bathing. I granted permission on the basis that the point was arguable.
5. Submissions are now before me, and the parties are content that I decide the matter without an oral hearing. It is appropriate and fair that I should do so.

The relevant regulations

6. I set out the regulations which have relevance to this appeal below. They are from the Social Security (Personal Independence Payment) Regulations 2013 and schedule 1 of those regulations.

7. The three potentially applicable activities were:

Activity 1

Preparing Food

- a. can prepare and cook a simple meal unaided. 0 points
- b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal. 2 points
- c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave. 2 points
- d. Needs prompting to be able to either prepare or cook a simple meal. 2 points
- e. Needs supervision or assistance to either prepare or cook a simple meal. 4 points
- f. Cannot prepare and cook food. 8 points

Activity 4

Washing and Bathing

- a. Can wash and bathe unaided. 0 points
- b. Needs to use an aid or appliance to be able to wash or bathe. 2 points
- c. Needs supervision or prompting to be able to wash or bathe. 2 points
- d. Needs assistance to be able to wash either their hair or body below the waist. 2 points
- e. Needs assistance to be able to get in or out of the bath or shower. 3 points
- f. Needs assistance to be able to wash their body between the shoulders and waist. 4 points
- g. Cannot wash and bathe at all and needs another person to wash their entire body. 8 points

Activity 6

Dressing and undressing

- a. Can dress and undress are needed. 0 points
- b. Needs to use an aid or appliance to be able to dress or undress. 2 points
- c. Needs either- 2 points

GP v Secretary of State for Work and Pensions (PIP)
[2016] UKUT 0444 (AAC)

- (i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or
 - (ii) prompting or assistance to be able to select appropriate clothing.
- d. Needs assistance to be able to dress or undress their lower body. 2 points.
- e. Needs assistance to be able to dress or undress their upper body. 4 points.
- f. Cannot dress or undress at all. 8 points.

8. The activities must be considered in the light of regulations 4 and 7:

Regulation 4

"Assessment of ability to carry out activities".

4(2A) where C's ability to carry out an activity is assessed, C is to be assessed as satisfying descriptor only if he can do so-

- (a) safely
- (b) to an acceptable standard;
- (c) repeatedly; and
- (d) within a reasonable time period;

(3) omitted

(4) in this regulation-

(a) "safely" means in a manner likely to cause harm to see or to another person, either during or after completion of the activity;

(b) "repeatedly" means as often as the activity being assessed is reasonably required to be completed; and

(c) "reasonable time period" means no more than twice as long as the maximum period that 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 7

Scoring.

7-(1) the descriptor which applies to see in relation to each activity in the tables referred to in regulations 5 and 6 is-

(a) where one descriptor is satisfied on over 50% of the days of the required period, that is descriptors;

(b) where 2 or more descriptors that each satisfied on over 50% of the days of the required period, the descriptor which scores were higher or highest number of points; and

(c) when they descriptor is satisfied on over 50% of the days of the required period but 2 or more descriptors (other than a descriptor which scores zero

GP v Secretary of State for Work and Pensions (PIP)
[2016] UKUT 0444 (AAC)

points) are satisfied her periods which, when added together, amount to over 50% of the date of the required period-

(i) be descriptor which are satisfied with a greater or greatest proportion of days of the required period; or,

(ii) where both or all descriptors are satisfied to the same proportion, the descriptor which scores the higher or highest number of points.

(2) for the purposes of paragraph (1) the descriptor is satisfied on a day in the required period of it is likely that, if she had been assessed on that date, but it would have satisfied that descriptor.

9. Regulation 7 (3) refers to the required period and is not relevant.
10. The FTT in the decision notice issued on the day of the hearing stated that the appellant had scored 12 points, and set out in tabular form the activities considered. Of those the appellant scored points under the three activities which I set out above; two points were scored under activity 1d; eight points under activity 4g and two points under activity 6c. The chosen descriptors apparently indicate that the appellant could not wash or bathe, but he could prepare food and dress and undress if prompted.
11. Of particular note here is regulation 4 (c) the effect of which is to treat a person as unable to carry out an activity where the time that it would take them to do so is more than twice as long as someone without a disability would take.
12. The factual findings of the FTT set out in the statement of reasons were that the time that the appellant took to wash and bathe was more than twice the time somebody without the disorder would take, and that entitled him to eight points under activity 4g, the maximum for the activity.
13. As to the other scoring descriptors, the decision of the Secretary of State (who had been represented at the hearing by a Presenting Officer) had been to award two points each for activities 1d and 6c on the basis of a need for prompting. The tribunal's decision to award the eight points, together with the existing points which it did not feel it appropriate to reduce or extinguish, entitled the appellant to an award of the daily living component at the enhanced rate. Although it did not deal specifically with the facts in relation to any descriptor other than the one for which eight points had been awarded, a sentence in the statement of reasons makes it plain that a similar view was taken in respect of the other scoring descriptors: *"On many occasions the appellant fails to make appointments because of the inordinate length of time it takes him to wash, dress and eat."*
14. It seems probable that, had the tribunal needed to decide the matter it would have increased the four points already awarded in line with the findings in relation to activity of washing and bathing, that is to say that prompting was insufficient and the appellant was in law unable to

**GP v Secretary of State for Work and Pensions (PIP)
[2016] UKUT 0444 (AAC)**

perform these activities given the length of time that it took him to complete them, but that is immaterial to the outcome, as the FTT recognised.

15. On close scrutiny the statement of reasons makes it is clear that the FTT saw no need to engage in a detailed examination of the two lesser scoring descriptors which were not placed in issue by the Secretary of State. The exercise would have been futile given that the existing lower scores were sufficient for the highest possible award.
16. This procedure is justifiable and, when the context is understood, it does not demonstrate an inconsistent approach by the FTT. The time of the tribunal is precious, and such a judicious shortcut is appropriate case management given the terms of rule 2 of the Tribunal Procedure (First-Tier Tribunal) (SEC) Rules 2008; satisfaction of the overriding objective to deal with cases fairly and justly includes consideration of dealing with the case in ways which are proportionate to its importance, the complexity of the issues and the anticipated costs. The use of tribunal time in purposeless enquiry is not compatible with the overriding objective.
17. In such cases it is good practice for the decision notice issued immediately following the hearing to state that, given that the points added by the tribunal result in the maximum possible award, it has not been necessary to consider whether further points are merited in respect of the descriptors for which points are already awarded, or indeed any other descriptor. That is to avoid misapprehension such as occurred here or subsequently should a supersession of the award be contemplated.

Upper Tribunal Judge Paula Gray

Signed on the original on 11 October 2016