

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Case No.** CPIP/2685/2016

**Before E A L BANO**

**Decision:** My decision is that the decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the tribunal's decision and remit the case for hearing before a differently constituted tribunal.

**REASONS FOR DECISION**

1. This appeal, brought with the permission of Judge Wright, concerns the entitlement to a personal independence payment (PIP) of a claimant now aged 49 with severe diabetes, a depressive disorder, hypertension, and COPD with sleep apnoea. The PIP2 claim form which the claimant returned on 25 November 2015 asserted that he required support and reassurance because he found social settings hard to manage, and avoided meetings or gatherings because they made him feel anxious, stressed and ill.

2. The nurse who carried out a face to face consultation with the claimant on 26 January 2016 assessed him as scoring no points under PIP Activity 9 (engaging with other people face to face) because she considered that his statement that he did not engage with others was inconsistent with her observations of the claimant engaging with her confidently and clearly at the consultation, his attendance at hospital appointments and at 'a government group for those out of work', GP visits, and visits to the claimant's house by his friends. The claimant's score in respect of other descriptors was insufficient to qualify the claimant for an award of PIP in respect of either daily living or mobility activities, and consequently a decision rejecting the claim was made on 29 January 2016. The decision was maintained on mandatory reconsideration and the claimant appealed against it on 7 March 2016.

3. The claimant did not attend the hearing of the appeal on 9 June 2016 (although he probably intended to do so), but in a statement dated 26 April 2016 he volunteered the information that he was in the ESA support group and denied attending any 'government group'. The tribunal dismissed the appeal, awarding the claimant no points under Activity 9 for the same reasons as the nurse who carried out the face to face consultation, including the claimant's attendance at government groups for those out of work.

4. In giving permission to appeal on 12 September 2016, Judge Wright rejected three of the grounds of appeal advanced by the claimant's representative, but observed that the tribunal's finding that the claimant attended government support groups was inconsistent with his written statement of 26 April. Judge Wright continued:

"Given that the tribunal awarded [the claimant] six points for daily living, it seems to me at least arguable that that this error led the tribunal to err materially in law in not having regard to relevant evidence when deciding

whether [the claimant] even needed prompting most of the time to engage with others: per descriptor 9b. In particular, if the tribunal had appreciated that the evidence was to the opposite effect-that is, that [the claimant] did not go to government support groups and was not required to do so because he was in the support group-this might have sufficiently coloured its view of the other evidence to have led it to also award [the claimant] at least 2 points for descriptor 9b.”

In a written submission dated 4 November 2016, the Secretary of State accepts that the tribunal’s finding that the claimant attends government support groups runs counter to the claimant’s statement, but submits that the evidence before the tribunal nevertheless supported their finding that descriptor 9b.was not satisfied.

5. The drafting of PIP Activity 9 is unsatisfactory. Schedule 1, Part 1 paragraph 1 to the Social Security (Personal Independence Payment) Regulations 2013 provides that ‘engage socially’ means:

- (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language;
- (c) establish relationships

Although Activity 9 does not specifically refer to engagement in a social context, the Secretary of State nevertheless accepts (para. 9 of the submission) that Activity 9 involves the ability to function in a social environment.

6. As Judge Mark pointed out in *AM v Secretary of State for Work and Pensions* [2015] UKUT 215 (AAC), the term ‘engage socially’ does not appear anywhere else in Schedule 1 to the PIP Regulations. However, descriptor 9c. applies to claimants who need ‘social support to be able to engage with other people’, and ‘social support’ is defined in paragraph 1 of Schedule 1 as ‘support from a person trained or experienced in assisting people to engage in social situations’. Descriptor 9c. is therefore concerned with the support required by claimants in social situations. Although it applies to claimants who need a higher level of support in such situations than mere prompting, there is no reason to suppose that descriptors 9b. and 9 c. are concerned with a claimant’s ability to engage with other people in different factual contexts. That construction of Activity 9 explains why ‘engage socially’ is defined in Schedule 1, and without wishing to express a concluded view on the issue in a case in which it has not been argued, I therefore consider that the whole of PIP Activity 9 is concerned with a claimant’s ability to engage with other people face to face in social situations. It would follow that in all cases in which Activity 9 is in issue decision makers should apply the definition of ‘engage socially’ in Schedule 1 and should consider a claimant’s ability to interact with others in a contextually and socially appropriate manner, the claimant’s ability to understand body language, and the claimant’s ability to establish relationships in a social context.

7. In his statement of 26 April 2016 the claimant specifically challenged the assertion by the medical assessor that he took part in government activities for those out of work, because he was in the ESA support group. The tribunal did not resolve that conflict, and I cannot accept the Secretary of State’s submission that that failure

must be regarded as immaterial. Assessments of a claimant's ability to engage with other people may be nuanced and finely balanced, and I cannot exclude the possibility that the tribunal would have assessed the claimant's ability to engage with other people differently if they had found that he did not in fact take part in any form of work-related activity. Such a finding would also have called into question the reliability of the medical assessor's evidence in other areas where it conflicted with that of the claimant, and like Judge Wright I consider that there is a real possibility that the tribunal's error in this regard may have infected their other findings of fact.

8. For that reason, I consider that the tribunal's decision was in error of law and must accordingly be set aside. The Secretary of State has opposed Judge Wright's suggestion that the Upper Tribunal should substitute its own decision applying descriptor 9b and awarding the claimant two additional points, so as to entitle him to an award of PIP. Since the tribunal did not carry out a proper investigation of the claimant's ability to interact with other people in social situations, I do not consider that there are adequate findings of fact for me to make my own decision on Activity 9. I therefore refer the case to the First-tier Tribunal for rehearing before a fresh tribunal.

9. I direct that the evidence before the new tribunal should include any evidence which is available leading to the claimant's award of ESA.

**E A L BANO  
24 November 2016**