

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

Before Upper Tribunal Judge Gray

CPIP/2335/2016

Decision: This appeal by the claimant succeeds.

Having given Permission to appeal on 22 August 2016 in accordance with the provisions of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set aside the decision of the First-tier Tribunal sitting at Wolverhampton and made on 1 March 2016 under reference SC 053/15/01740. I refer the matter to a completely differently constituted panel in the Social Entitlement Chamber of the First-tier Tribunal for a fresh hearing and decision in accordance with the directions given below.

Directions

1. These directions may be supplemented or changed by a District Tribunal Judge giving listing and case management directions.
2. The case will be listed as an oral hearing in front of a freshly constituted tribunal. The appellant is advised to attend.
3. He should be aware that the new tribunal will be looking at his health problems in relation to the qualifying periods for entitlement to a Personal Independence Payment, but that it must not take into account matters which did not obtain at the date that the decision under appeal was made 26 October 2015. That does not mean that later matters are never relevant, but their relevance is limited to them shedding light on what the position was likely to have been at that time.
4. The new panel will make its own findings and decision on all relevant descriptors.

Reasons

1. Both parties agree that the decision of the tribunal was made in error of law. I need not give detailed reasons, but I will explain the background briefly.
2. The appeal below concerned the appellant's possible entitlement to a Personal Independence Payment. The First-tier Tribunal (FTT) awarded him 6 points under the daily living activities, and 8 points under the mobility activities. This confirmed the decision of the Secretary of State; although adding two additional points under the daily living category it was insufficient for an award of the daily living component, but the award made of the mobility component at the standard rate was maintained. Mr Kempson, a Welfare Rights Officer of Sandwell Metropolitan Borough Council who acted on the appellant's behalf sought permission to appeal. That application was ultimately put before me.
3. The grounds of appeal were that the FTT failed to consider the appellant's ability to get to unfamiliar places independently. That point seemed to me to be arguable, and I directed a response from the Secretary of State. That

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response was provided in October 2016 by Ms Franckevic, however by that stage, given the issue in relation to mobility activity 1 the case was held back pending the decision of a 3 judge panel of the Upper Tribunal in *MH & others –v- Secretary Of State for Work and Pensions [2016] UKUT 531 (AAC)*.

4. The Secretary of State's initial submission did not support the appeal, but following the decision in *MH* I directed a further submission as to the effect of that decision on the case. In a helpful concession Ms Franckevic resiles from her earlier position and accepts that in the light of *MH* this matter should be remitted and reheard. The grounds of appeal and the submission of the Secretary of State will be before the fresh tribunal. I would point out that as a matter of law the position set out in *MH* may be applicable, but the result will of course depend upon the facts that the tribunal find.
5. It has been widely reported that the decision in *MH* did not represent Parliamentary intention, and new regulations have been made. They came into effect on 16 March 2017, as I understand it. Whilst I do not now need to consider what cases they affect, I can say that they will have no effect on this appeal, which must be conducted by the fresh FTT on the basis that they are bound by the decision in *MH*, and that point is apparent from the Secretary of State's submission. There has been no application by the Secretary of State to stay any cases affected by *MH* pending any further appeal, and *MH* represents the law up to the point where and insofar as the new regulations change that.
6. Although I have remitted on this basis, that is not to ignore any other points. The tribunal must of course consider them fully; they will be, in legal language, subsumed in the new appeal, that is to say that the new tribunal will start again, and take all relevant matters into account.
7. The appellant must understand that the fact that his appeal has succeeded at this stage is not to be taken as any indication as to what the tribunal might decide in due course.

Paula Gray

Judge of the Upper Tribunal

Signed on the original on 5 April 2017