

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER****Case No.** CPIP/1998/2017**Before: A. Rowley, Judge of the Upper Tribunal**

Decision: I allow the appeal. As the decision of the First-tier Tribunal (made on 10 April 2017 at Haverfordwest under reference SC195/16/00552) involved the making of an error in point of law, it is **set aside** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Under section 12(2)(b)(ii) I **re-make** the decision that the First-tier Tribunal should have made, namely the claimant is entitled to the daily living component of PIP at the enhanced rate from 12 October 2016 to 11 October 2021 and to the mobility component of PIP at the enhanced rate from 12 October 2016 to 11 October 2021. The decision dated 12 September 2016 is revised accordingly.

REASONS FOR DECISION

1. The claimant is a 21 year old young man. He has hydrocephalus and secondary visual impairment. He also has learning difficulties, back pain and headaches. On his claim for PIP, in a decision dated 12 September 2016, he was awarded no points under either the daily living or mobility activities, and he appealed to the First-tier Tribunal.
2. His appeal was heard on 10 April 2017. The claimant and his father attended the hearing and gave evidence to the tribunal. The tribunal was clearly most impressed by them. It found them to be “very credible witnesses” and commented that not only was their evidence “consistent, measured and supported by the medical evidence” but also that the claimant “did not seek to exaggerate or embellish the impact of his health on his day to day life”.
3. The tribunal allowed the claimant’s appeal to the extent that it awarded him the enhanced rate of the daily living component (having awarded 15 points) and the standard rate of the mobility component (having awarded 10 points under descriptor 1d). The claimant appeals to the Upper Tribunal with my permission. He contends that the tribunal should have awarded the mobility component at the enhanced rate, as he satisfied descriptor 1f. The Secretary of State’s representative, Mr Naeem, supports the appeal.
4. At the relevant time, mobility descriptor 1d was in these terms: “cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid” whilst descriptor 1f provided as follows: “cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid”.¹
5. It seems to me that, in cases such as this, when considering whether a person with a visual impairment falls within mobility descriptors 1d and/or 1f, crucial issues that fall to be explored are the nature and extent of the visual impairment. The commonly used term “visual impairment” can cover a broad range of

¹ The amendments which were made to these descriptors by regulation 2 of the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 (SI 2017/194) have no material effect on the issues under consideration.

conditions, and there are varying degrees of severity. A person may be described as being visually impaired if their visual acuity is impaired, but others could similarly be referred to as visually impaired if, for example, they have difficulties in seeing in certain conditions (such as in bright light or in the dark) or if they have restriction of visual field or spatial awareness. Of course, they may have a combination of some or all of these. In other words, in many cases it will not be sufficient simply to say that a claimant is visually impaired. The position may be more nuanced.

6. In any event, it may well be that only when the answers to these issues have been established will it be possible adequately to consider the impact of a claimant's visual impairment on his functional ability, and its effect on his ability to satisfy the criteria of the appropriate descriptors. To proceed straight to the terms of the descriptors without first considering these matters may result in the tribunal making an error of law.
7. Further, the effect of regulation 4(2A)(a) and 4(4)(a) of the Social Security (Personal Independence Payments) Regulations 2013 (SI 2013/377) is that a claimant is to be assessed as being able to follow the route of a journey without another person, assistance dog or orientation aid only if he can do so safely, i.e. "in a manner unlikely to cause harm to [himself] or to another person ..." So, a tribunal should consider the risks to a visually impaired claimant from, for example, traffic or of being injured by obstacles of which he is unaware. This may include unexpected obstacles on routes which are otherwise familiar to him.
8. In this case there was no recent medical evidence of the extent of the claimant's visual impairment, save for the measurements by the Healthcare Professional (near vision: N18 with glasses, N24 without; distance vision: 6/18 with glasses, 6/24 without). However, the following evidence was before the tribunal. The claimant had optic atrophy in both eyes, with visual field loss in both eyes. He told the Healthcare Professional that he had lost three quarters of the sight in his right eye, and half in the left. He said that his eyes were affected if it was too sunny, and his sight was restricted if it was too dark. There was also evidence that he had reduced spatial awareness. He told the tribunal that he struggled to see things unless they were very close up, he would trip on kerbs and walk into things, had often tripped and fallen, and was at risk of being run over as he did not see cars.
9. It is right to say that the claimant told the tribunal that he was able to follow the route of a journey with which he was "particularly familiar" without assistance. However, this statement must be read in the context of the claimant's other evidence summarised in paragraph 8 above.
10. The tribunal found, without more, that the claimant was visually impaired. It accepted his evidence that he had a tendency to trip on kerbs. It went on to conclude that the claimant would be unable to follow the route of an unfamiliar journey on his own, because "his impaired vision would compromise his ability to undertake the journey reliably or safely". Accordingly, he satisfied mobility descriptor 1d. However, the tribunal said that it was not satisfied that the same restrictions would arise for the majority of the time with journeys that were familiar to the claimant, because on his own evidence he was usually able to "navigate such routes". Consequently, it found that he did not come within the provisions of mobility descriptor 1f.

11. In my judgment, the tribunal erred in law in a number of ways. First and foremost, it did not make sufficient findings as to the nature of the claimant's visual impairment, nor did it consider, even in general terms, the extent of the limits of his visual acuity, the extent of the contraction of his visual fields or his restricted ability to see in certain conditions. Had it done so, it may well have approached descriptor 1f in a different way. In its consideration of that descriptor, it failed sufficiently to consider whether the claimant could *safely* follow the route of a familiar journey without another person, taking into account, for example, the effect of lighting conditions, traffic and/or when there were unexpected obstacles. In any event, as Mr Naeem points out, given its finding that the claimant had a tendency to trip over kerbs, it is unclear how the tribunal concluded, without more, that he would have difficulties only on unfamiliar journeys.

12. I should add that, although the point takes the matter no further in this case, tribunals considering appeals by claimants with visual impairment should, in appropriate cases, enquire whether the claimant has or needs an orientation aid. If he does, on the face of it that of itself would bring him within the terms of descriptors 1d and/or 1f.

Conclusion

13. For the reasons set out above the decision of the First-tier Tribunal involved the making of errors in points of law, and I set it aside.

14. Mr Naeem submits that fresh findings of fact are required, and he invites me to remit the matter to be reheard by a new First-tier Tribunal. However, pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, I have a broad discretion. Given that the tribunal readily accepted the claimant's evidence, which included the nature and extent of his visual impairment as described above, the effect of which was that he struggled to see things unless they were very close up, he would trip on kerbs and walk into things, had often tripped and fallen, and was at risk of being run over as he did not see cars, it is plain on any view that, at the time of the decision under appeal, he was unable safely to "follow the route of a familiar journey without another person, an assistance dog or an orientation aid". He accordingly satisfies mobility descriptor 1f. As that scores 12 points, he is entitled to the mobility component at the enhanced rate. I can see no reason to interfere with the tribunal's conclusion as to the term of the award.

15. Accordingly, my decision is as set out above.

**A. Rowley, Judge of the Upper Tribunal
(Signed on the original)**

Dated: 22 November 2017