

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Case No CPIP/285/2019

Before UPPER TRIBUNAL JUDGE WARD

Decision: The appeal is allowed. The decision of the First-tier Tribunal sitting at Sunderland on 16 October 2018 under reference SC236/18/00317 involved the making of an error on a point of law and is set aside. The case is referred to the First-tier Tribunal (Social Entitlement Chamber) for rehearing before a differently constituted tribunal in accordance with the directions set out in paragraph 6 of the Reasons.

REASONS FOR DECISION

1. Both the appellant's representative and the representative of the Secretary of State have expressed the view that the decision of the First-tier Tribunal ("FtT") involved the making of an error on a point of law and have agreed to a rehearing. That makes it unnecessary to set out the history of the case or to analyse the whole of the evidence or arguments in detail. I need only deal with the reason why I am setting aside the tribunal's decision.
2. The appellant has (among other things) neurological problems affecting his balance. He had appealed to the FtT against a decision dated 30 December 2017 refusing him personal independence payment. The FtT awarded him a further 2 points for the daily living component, taking the total to 6, and 10 points for the mobility component.
3. The appellant sought to appeal further and following an oral hearing in Gateshead I gave permission, limited to the FtT's treatment of activity 6 ("dressing and undressing") in the following terms:

"It is clear from the evidence that what he sat on was the bed, not a wheelchair. *CW v SSWP (PIP)* [2016] UKUT 0197 (AAC) is a reported decision and so commanded the broad assent of the majority of salaried judges of this Chamber. It was followed by Judge Markus QC in *AP v SSWP (PIP)* [2016] UKUT 501 (AAC), in which there was a head-on challenge to the correctness of *CW v SSWP*. Sitting on a bed to dress (without more), because a person without disability may do so in order to dress, is ruled out by those cases.

However...the ... evidence ... appear[s] to tell a broadly consistent story - that the appellant sits on the bed to dress, but then has to rise, using his crutches and stand with support from, I assume, 1 of them while inserting his second leg into his trousers and (at the risk of spelling out the obvious) pulling the trousers fully into position and doing them up. What arguably distinguishes this case from the unsuccessful cases where a bed was sat on to dress is the use of crutches to get up from it and then to aid balance to finish off the

dressing process. The FtT arguably fails to make findings about how the appellant could dress (completely) whilst seated (Reasons para 38) and, if there is a final stage [in] relation to trousers which cannot be performed whilst seated, how the appellant can safely perform that without an aid or appliance (crutches).”

4. The Secretary of State submits that given what the appellant had said at the hearing about the need to stand up using a crutch to put his trousers on, the FtT needed to make a finding as to whether he did need to or whether he could manage whilst sat down; if the former, then it would be open to an FtT to conclude that the appellant needed an aid (his crutches) to dress and undress. That potentially offered a further 2 points which taken with the 6 already awarded would take the appellant to the threshold for an award of the daily living component. Thus, the FtT had materially erred in law.

5. I do not need to deal with any other error on a point of law that the tribunal may have made. Any that were made will be subsumed by the rehearing.

6. I direct that the tribunal must conduct a complete rehearing of the issues that are raised by the appeal and, subject to the tribunal’s discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration. While the tribunal will need to address the grounds on which I have set aside the decision, it should not limit itself to these but must consider all aspects of the case, both fact and law, entirely afresh. The tribunal must not take into account any circumstances that were not obtaining at the date of the decision appealed against – see section 12(8)(b) of the Social Security Act 1998- but may take into account evidence that came into existence after the decision was made and evidence of events after the decision was made, insofar as it is relevant to the circumstances obtaining at the date of decision: R(DLA)2/01 and 3/01.

7. The appellant has since reported a change of circumstances and has now been awarded the standard rate of the daily living component and the enhanced rate of the mobility component from 11 December 2018 to 18 February 2022. The present case, when remitted, will therefore concern a “closed” period.

8. The fact that this appeal has succeeded on a point of law carries no implication as to the likely outcome of the rehearing, which is entirely a matter for the tribunal to which this case is remitted.

(signed)

C.G.Ward
Judge of the Upper Tribunal
23 September 2019