



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. CPIP/1653/2019(V)

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

SE

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Ward

Hearing date: 24 November 2020

Representation:

Appellant: Mrs Catherine Morris, support worker

Respondent: Ms Julia Smythe, instructed by Government Legal Service

INTERIM DECISION

The interim decision of the Upper Tribunal is to allow the appeal to the following extent. The decision of the First-tier Tribunal made on 11 January 2019 under number SC065/18/00189 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside. I intend that the decision be remade by the Upper Tribunal and for that purpose give the following Directions:

Directions

- 1. The appellant may within 21 days of the date of the letter (or email) issuing this Decision file further evidence in the form of a witness statement by Mrs Morris addressing such matters as, in the light of this Decision, appear appropriate. A witness statement must contain a statement that the person making it believes its content to be true and be signed by the maker.**
- 2. The respondent, within 21 days of the date on which the further evidence of Mrs Morris is sent to her:**
 - (a) must file a copy of the assessment report in connection with the appellant's 2019 claim for employment and support allowance (unless previously supplied on behalf of the appellant); and**
 - (b) may file a witness statement with any further evidence on which she wishes to rely.**

REASONS FOR DECISION

1. The appellant appealed to the First-tier Tribunal (“FtT”) against a decision dated 28 October 2017 awarding 0 points for both the Daily Living and the Mobility component and so refusing her Personal Independence Payment (“PIP”). The FtT on 11 January 2019 dismissed the appeal. The appellant was found to suffer from migraines, nerve damage, a knee problem, poor bladder control, depression and anxiety and a previous eating disorder, but that is essentially background to the central features in this case, which concerns activity 8 “Reading and understanding signs, symbols and words” and activity 10 “Making budgeting decisions”. The appellant has been found to have an IQ of 72, said (by a chartered psychologist) to put her on the borderline of being classed as having a learning disability.

2. Permission to appeal was refused by the FtT: the judge considered that any errors of law (such as a failure to explain why the FtT thought the appellant could read “complex written information”) there might have been could not result in her achieving the necessary 8 points. I did not consider that that was necessarily so and so gave permission.

3. All legislative references in this decision are to the Social Security (Personal Independence Payment) Regulations 2013/377. Activities 8 and 10 in Schedule 1 are as follows:

8. Reading and understanding signs, symbols and words.	a. Can read and understand basic and complex written information either unaided or using spectacles or contact lenses.	0
	b. Needs to use an aid or appliance, other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
	c. Needs prompting to be able to read or understand complex written information.	2
	d. Needs prompting to be able to read or understand basic written information.	4
	e. Cannot read or understand signs, symbols or words at all.	8
10. Making budgeting decisions.	a. Can manage complex budgeting decisions unaided.	0
	b. Needs prompting or assistance to be able to make complex budgeting decisions.	2
	c. Needs prompting or assistance to be able to make simple budgeting decisions.	4
	d. Cannot make any budgeting decisions at all.	6

4. The relevant definitions, which have to be read back into these descriptors, are as follows (“C” in this context equates to a claimant):

“aid or appliance” –

- (a) means any device which improves, provides or replaces C's impaired physical or mental function; and
- (b) includes a prosthesis; (see reg 2(1))

(and for the remaining definitions, see Schedule 1, part 1)

“aided” means with –

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance;

“assistance” means physical intervention by another person and does not include speech;

“basic written information” means signs, symbols and dates written or printed standard size text in C's native language;

“complex budgeting decisions” means decisions involving –

- (a) calculating household and personal budgets;
- (b) managing and paying bills; and
- (c) planning future purchases;

“complex written information” means more than one sentence of written or printed standard size text in C's native language;

“prompting” means reminding, encouraging or explaining by another person;

“read” includes read signs, symbols and words but does not include read Braille;

“simple budgeting decisions” means decisions involving –

- (a) calculating the cost of goods; and
- (b) calculating change required after a purchase;

“supervision” means the continuous presence of another person for the purpose of ensuring C's safety; and

“unaided” means without –

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance.

5. It is also relevant to note reg 4(2A) which provides:

“(2A) Where C's ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so —

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

6. The appellant had for some time had the assistance of Mrs Morris, a support worker at a local church. The experience and knowledge of the appellant gained by Mrs Morris as a result enabled her to provide relevant evidence in the case, as well as acting as the appellant's representative in the FtT, as she has done in the Upper Tribunal proceedings also. The grounds of appeal to the Upper Tribunal which she had prepared were thoughtful in exploring some of the potential issues around activities 8 and 10, with the consequence that it appeared that the case would provide a useful vehicle for the Upper Tribunal to provide guidance for other cases as well as a necessary part of resolving this one.

7. In the event, in her written submission, the respondent supported the appeal, but in terms which meant that not all the potential issues were addressed. Consequently, I prepared a draft decision as a vehicle for establishing the parties' positions on matters which I considered needed to be addressed. From those submissions, it was apparent that limited areas of disagreement remained, both with the other party's position and with aspects of my draft decision. I consequently directed an oral hearing which was held on 24 November 2020 by Kinly CVP, with the agreement of both parties. The bundle consisted of 234 pages. Additionally, I and the parties had the benefit of a bundle of legislative material and case-law prepared by the respondent's solicitors which had been filed and served on 19 November. Representation was as set out above: I am grateful to both representatives for their measured and constructive approach to the issues in the case. Both confirmed that they had been able to make such points as they wished to make.

8. It was common ground that the FtT's decision was in error of law. As to whether the case should be remitted to the FtT or remade by the Upper Tribunal, Mrs Morris favoured the latter and, in a short post-hearing submission, the respondent was content with this approach, provided the respondent was given the opportunity to file further evidence for which the Directions now provide.

9. As there is evidence I am yet to receive, I say as little as possible in this Interim Decision about the evidence in the case so far beyond setting out relevant extracts from the FtT's decision. If I go beyond that, it is to be taken as background rather than as findings of fact.

Activity 8: Reading (etc.)

10. The FtT dealt with this as follows:

"The appellant claims in the claim pack that she requires assistance with reading as she was not taught properly at school. A psychological assessment report dated 24 November 2011 notes that she is borderline on the learning disability range (page 135). The HCP noted that she can use a mobile phone, she wore glasses at the examination. She attended school until 15 and had learnt to read. Reading causes migraines apparently. However, we note according to the HCP they only occur once a month. The Tribunal were told she can read simple words, recognise road signs and fire escape signs. As regards her medication she recognises the packaging. On the basis of the above evidence the Tribunal find as a fact that she can read and

understand basic and complex written information aided or unaided using glasses or contact lenses.”

11. There are unresolved conflicts in the evidence and the Secretary of State supports the appeal on, among others, this basis. In view of that support and as I am giving Directions for further evidence to be filed I do not go further into the evidence at this stage. It suffices to note that the style of the FtT’s statement of reasons was to address each of the activities in turn. It recites parts of the evidence, without indicating which parts it finds as fact and which not. All it says that it finds as fact is its conclusion that the appellant can manage the activity in the relevant descriptor unaided. The FtT does not make adequate findings of fact in support of its conclusion. Nor does it address the contrary evidence, in particular that contained in the completed questionnaire and in the written evidence Mrs Morris had provided, so the reader does not know which is preferred, or why. The respondent correctly accepts that the decision was erroneous in law.

12. I turn to examining which descriptor the appellant might qualify for. The respondent makes certain preliminary points: first, that in order to obtain points for reading, the inability must result from a person’s condition, rather than from failure to learn. That submission is correct: see *KP v SSWP (PIP)* [2017] UKUT 30 (AAC) and *IV v SSWP (PIP)* [2016] UKUT 420 (AAC). Secondly, that as pointed out in *SSWP v GJ (PIP)* [2016] UKUT 8 and approved in *SSWP v SH (PIP)* [2017] UKUT 301 (AAC), “basic written information” for the purpose of PIP is very basic indeed, and “complex written information” is hardly more so. That is true, seen from the perspective of those without limitation of understanding, and the authorities make the important point that the definition of “complex written information”, in particular, is far different from the understanding of that phrase one might have as a matter of everyday use of language. However, Mrs Morris is in my view correct to say that “basic written information”, whilst indeed basic, is nonetheless concerned with matters of real practical utility and that the bar must not be set so low in interpreting the phrase so as to be testing only an ability of no practical consequence.

13. I note that there are two distinct groups of people who may be able to score points under activity 8: those with visual problems and those who, as a result of their condition, have difficulties of understanding, and so the range of descriptors has to do duty in both of these contexts. There is evidence which (if accepted) suggests that the appellant can spell out individual letters and can read some individual words but not a whole sentence. Descriptor (b), because of the nature of what is an “aid or appliance” appears targeted at people who need physical help. What constitutes “*basic written information*” for descriptor (d) - signs, symbols and dates written or printed standard size text in C’s native language – clearly requires an ability to read some actual words, otherwise the reference to “C’s native language” would be redundant. Ms Smythe, for the respondent, accepts this. The definition of “read” is consistent with this view. Thus, it is not relevant that it would be possible to express each of signs, symbols and dates using at most figures, plus images. When descriptor (d) is so understood, descriptor (e) makes a little more sense. Even though it refers to “words” where descriptor (d) used “dates”, “dates” is used as an example of the sort of words a person needs to be unable to read to achieve descriptor (d): e.g. “Friday and “January” in “Friday January 31”. What is a “sign” for this purpose is also problematic. Does it mean for instance that a person can understand a printed

arrow meaning “go to” some other part of a leaflet? Or does it refer to signs in the public realm (“Caution – electric fence”; “Park closes at 5.30pm”)? Both representatives agree, as do I, that the descriptor in referring to “sign” is addressing the ability to read the words, typically few in number, used to convey a message on a sign. While “printed” is at first sight an odd word to use in respect of (say) an “Exit” sign in a cinema, in context it is being used in contrast to “written”, i.e. handwritten. By “standard size text” is meant the size in which such signs are typically presented. The descriptor thus performs a similar function to “dates” in identifying a relatively restricted range, and small number, of words by which to judge a person’s ability to read. It also provides a practical, real-life test against which to assess visual limitations.

14. In reaching these views, I have considered the possible relevance of alternative communication systems: however, at para 5.58 in the Government’s response to the consultation on the Personal Independence Payment assessment criteria and regulations (13 December 2012), the Government confirmed that:

“We received suggestions that the definition of aid and appliance in relation to communicating should include specialist communication systems and aids such as the Picture Exchange Communication System (PECS) or Alternative and Augmentative Communication (AAC) systems. We can confirm that these would be considered aids in this activity.”

I have some difficulty in seeing how this plays out in the context of Activity 7 (it appears to be via the definition of “communication support”¹ rather than the route stated in the Government’s Response), but it does tend to bear out that it was not such matters that the references to “sign” and “symbol” in activity 8 were aimed at by the legislator.

15. It is also necessary to consider whether “prompting” (as defined) would make any difference. From that definition, “reminding, encouraging or explaining by another person”, encouraging or explaining may help some people, in some circumstances, but that will not be every case. I emphasise that the descriptors are concerned with what is needed to help a claimant achieve the activity (e.g. reading or understanding basic written information) themselves. “Explaining” what a piece of basic written information is, so that the person does not need to read it, is not prompting them to read it.

16. There is then the question of whether the activity can be accomplished in accordance with reg 4(2A), set out above. As to whether the activity can be accomplished “to an acceptable standard”, the nature of what constitutes “basic written information”, in particular what may be found on signs, makes it likely to be very important that it is understood correctly. Mrs Morris had drawn attention in the claim form to the appellant’s ability “reliably ...to tell what the writing is about” (emphasis added). A person who, as an alternative to giving up, makes a guess (perhaps because they do not wish to ask for help) is unlikely to be doing so “to an

¹ “communication support” means support from a person trained or experienced in communicating with people with specific communication needs, including interpreting verbal information into a non-verbal form and vice versa;

acceptable standard” where important signs, particularly those advising of possible danger, are concerned.

17. Even therefore if one were to accept Ms Smythe’s submission in relation to another limb of reg 4(2A) that reading is not an inherently dangerous activity and so merely because the result of a person’s inability to read might be dangerous does not mean that they cannot read “safely”, that possibility is addressed via the requirement that reading be accomplished “to an acceptable standard” in any event.

18. It will also be necessary to consider whether a person struggling with reading because of their condition will be able to accomplish it “within a reasonable time”. That expression is defined by reg 4(4)(c) to mean

“no more than twice as long as the maximum period that a 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.”

For people without difficulties in this area, reading a short sign will be almost instantaneous.

19. Descriptor (e) needs to be construed sensibly as part of the overall suite of descriptors for the activity. I can see no sensible reason why a person who can read what is involved in “basic written information” as described above to an acceptable standard with “prompting” should get points, while someone who, because of their disability, can read yet fewer words should not. I interpret the “at all” in (e) “Cannot read or understand signs, symbols or words at all” not as requiring total inability to read any word, but as requiring an inability to do so to the extent involved in descriptor (d). This is accepted by Ms Smythe on behalf of the respondent.

Activity 10: Budgeting

20. The FtT dealt with this as follows.

“The final Daily Living Activity to consider is making budgeting decisions. The HCP was told although the [appellant] was not able to do sums at school, she did state that she had to pay £90 to get out of debt. She pays bills on cards and has a TV card she tops up. Examination revealed no significant cognitive impairment. The Tribunal were told her phone, electricity and gas are topped up on cards. She goes to the bank to get money out. She pays different sums on two cards and her TV licence is separate. She has a direct debit to pay for a charity contribution. She did state that she asked for help in the bank. She knew she got paid every fortnight. She knew that 24 tins of dog food costs £8.50, although she claimed not to know the change. Her taxi is £3.50 and she gives the driver extra for a drink. The [appellant] exhibited a good degree of knowledge regarding her finances and how they are paid. On the basis of the above evidence the Tribunal found as fact that the [appellant] can manage complex budgeting decisions unaided.”

21. The comments made in relation to the FtT’s approach in the Reasons to activity 8 apply equally here.

22. There was, again, conflicting evidence which the FtT failed to address and then to make relevant findings.

23. The Secretary of State supports the appeal in relation this activity also, on the basis that the FtT failed to explore whether the appellant needs prompting or assistance² to be able to make simple budgeting decisions, to make the necessary findings and to explain its decision to a legally sufficient standard. I consider the support is correct.

24. In CPIP/3015/2015 Upper Tribunal Judge West said at [31]:

“I accept the submission of the Secretary of State as set out in paragraphs 22-28 above. A “simple budgeting decision” is not a demanding act and requires only the ability to do a single sum or a series of single sums, an understanding of the concept of money and a basic grasp of addition and subtraction. Only those with significant cognitive/intellectual impairment should satisfy the descriptor. By contrast, the concept of “complex budgeting decisions” measures a wider range of abilities (calculations, management and planning for the future) and therefore a wider range of conditions can cause functional loss.”

25. As to which descriptors the appellant might be eligible for, Mrs Morris makes two valid and important points about the definitions of “complex budgeting decisions” and “simple budgeting decisions”. First, that the requirements in each are cumulative, so an ability to do each limb is required. I would add to that that the subject matter of limbs (a) and (b) of the definition each contains two sub-limbs, as it were. “Paying” bills is not enough; a meaning must be attributed to “managing” them as well. I am not intending to provide determinative guidance on this aspect, as much will be specific to the circumstances of individual claimants, but I accept that such activities as prioritising which bill to pay in the light of competing demands, or the need to avoid or minimise late payment charges, or the need to take stock of bills which will inevitably be coming up and to plan accordingly, may fall to be considered. A “household budget” may well be more complex than a “personal budget”, with housing costs, utility charges and possibly the finances of others to be factored in.

26. The effect of the requirements in relation to “simple budgeting decisions” being cumulative is perhaps less striking, but nonetheless real. Effect must be given to “calculating” which is not the same as “knowing”. The appellant is said to “know” that 24 tins of dog food cost £8.50. That is not a matter of calculation unless, for instance, 12 tins are known to cost £4.25 and the cost of 24 has to be worked out.

27. The second point made by Mrs Morris, equally validly, is that the definitions refer to “decisions involving” the matters in limbs (a) to (c), or (a) to (b), of the respective definitions. This means not merely being able (in the case of simple budgeting decisions) to do the calculation, but to have sufficient understanding of the outcome and its implications to take a decision based on it. In CPIP/184/2016 Upper Tribunal Judge Grey QC explained (at [28]) that

² Given that “assistance” must involve physical intervention, “prompting” is the more likely to be in issue.

“The issue under Activity 9 [the judge must have meant Activity 10] is the ability to make “decisions” about financial issues, and this requires a focus upon intellectual capacity.”

28. It does respectfully seem to me that what is said at para 31 of CPIP/3015/2015 regarding a “simple budgeting decision” may fail to give sufficient weight to the requirement for a “decision”. Even though the paragraph references an earlier paragraph recording a submission by the Secretary of State that the activity is concerned with the “decisions” themselves, that was in distinction to the physical acts (e.g. seeing the price tag) involved in the process. While that is true, the requirement for a “decision” in my view is not so limited. I do however accept Ms Smythe’s submission that the focus of “simple budgeting decisions” is on the decision immediately in front of the person. Contemplating future purchases will tend to fall within limbs (c) and, to some extent, (a) of the definition of “complex budgeting decisions”.

29. In conclusion on activity 10, Ms Smythe confirmed that the respondent accepts that an inability to make any budgeting decision “at all” (thereby satisfying descriptor 10(d)) will be demonstrated by a person who is unable to satisfy descriptor 10(c) because they are unable to make simple budgeting decisions even with prompting or assistance: there is no gap between descriptors 10(c) and 10(d), correctly understood. The position is thus similar to that discussed at [20] in relation to descriptors 8(d) and 8(e).

C.G.Ward
Judge of the Upper Tribunal
Authorised for issue on 5 January 2021