

Memo ADM 09-21: PIP Daily Living Activity 4 – Effect of Upper Tribunal decision

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INTRODUCTION

1. The purpose of this memo is to inform decision makers (DM) about a decision of the Upper Tribunal, KT and SH v Secretary of State for Work and Pensions (PIP) [2020] UKUT 252 (AAC)¹ (“KT & SH”), which dealt with the interpretation of ‘safely’ for the daily living activity 4 descriptors (“washing and bathing”).
2. It is important to be aware that this decision will be subject to an administrative exercise. As a non-administrative exercise decision maker you will only take this decision into account from the normal effective date of decision before you. Any relevant period of entitlement prior to the effective date you are dealing with will be picked up by the decision makers working on the administrative exercise.

[1 KT and SH v Secretary of State for Work and Pensions \(PIP\) \[2020\] UKUT 252 \(AAC\)](#)

BACKGROUND

3. The decision concerned an appeal by two claimants, both with hearing impairments who removed their hearing aids before having a bath or shower. The main issue before the UT was to determine whether in each case the claimant could wash and bathe ‘safely’ within the meaning of regulation 4(4)(a)¹ upon removing their hearing aids as they would be unable to hear a standard fire or smoke alarm when showering.

[1 The Social Security \(Personal Independence Payment\) Regulations 2013, reg 4](#)

4. The position of the Secretary of State prior to the decision has been that a claimant can wash and bathe unaided safely upon removing their hearing aids when washing or bathing.

WHAT WAS DECIDED IN KT & SH

5. The Upper Tribunal concluded that both KT and SH could not wash or bathe unaided safely upon removing their hearing aids as they would not be able to hear a standard fire alarm when showering¹. They could not be expected to leave the door open whilst washing or bathing as that would mean the activity was not being undertaken to 'an acceptable standard'².

[1 KT and SH v Secretary of State for Work and Pensions \(PIP\): \[2020\] UKUT 252 \(AAC\); 2 The Social Security \(Personal Independence Payment\) Regulations 2013 reg 4 \(2A\)\(b\)](#)

6. Therefore, in each case the claimants needed to use an aid or appliance to enable them to wash and bathe safely. If the claimant cannot benefit from the use of a relevant aid or appliance, then they will need supervision to wash and bathe safely. It was accepted in each appeal that severity of harm occurring was to such a degree that the claimants reasonably needed an aid or appliance, or supervision on over 50% of the days¹ within the required period to enable them to wash and bathe safely.

[1 The Social Security \(Personal Independence Payment\) Regulations 2013 reg 7](#)

APPLYING THE DECISION

7. The DM will need to consider from the evidence available to them whether if upon removing their hearing aids a deaf or hearing impaired claimant can or cannot hear a standard fire alarm when undertaking the activity of washing and bathing. If the DM concludes that the claimant cannot hear a standard fire alarm while washing and bathing, then they must go on to consider whether the claimant needs an aid or appliance to wash and bathe safely. An example of such an aid is a visual alarm specifically produced for people with hearing impairments.

8. If the DM concludes on the facts of the case that the claimant cannot use an aid or appliance to enable them to wash or bathe safely then they must consider the need for supervision whilst washing and bathing.

Example 1

The claimant has been diagnosed with mild sensorineural hearing loss in their left ear. They wear a hearing aid in their left ear to manage this condition. The claimant does not wear a hearing aid in their right ear as they have no hearing difficulties in this ear. The DM notes from the evidence that the claimant has to remove the hearing aid from their left ear when having a shower. The DM concludes from evidence available to them that upon removing the hearing aid the claimant can hear a standard fire alarm whilst washing and bathing. The DM selects descriptor 4a.

Example 2

The DM notes from the evidence available to them that the claimant has been diagnosed as having severe bilateral hearing loss. The claimant has provided evidence confirming that upon removing their

hearing aids they have difficulty hearing against background noise. The claimant states that they keep the door open when washing and bathing as they will need another person to alert them to a fire. The DM accepts the claimant cannot hear a standard fire alarm upon removing their hearing aids when washing and bathing. The DM concludes that the claimant needs an aid or appliance such as a visual alarm to be able to wash and bathe safely and to an acceptable standard. Descriptor 4b is selected.

Example 3

The DM finds the claimant is profoundly deaf and has been diagnosed with photosensitive epilepsy. The DM accepts that the claimant cannot hear anything upon removing the external component of their cochlear implant. The DM considers whether the claimant can wash and bathe safely using an aid such as a flashing alarm. The DM concludes that the claimant cannot use such an aid as it could trigger their photosensitive epilepsy and in this case they would need supervision. The DM selects descriptor 4c.

DECISION MAKING

Relevant determination

9. The decision in KT & SH is a “relevant determination”¹. The date of the determination is 21/08/2020. The decision only applies from that date onwards.

1 [Social Security Act 98, s27](#)

CONTACTS

If you have any queries about this memo (Memo ADM 09-21), please write to Decision Making and Appeals (DMA) Leeds, 3E19, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo ADM 07/19](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: May 2021

The content of the examples in this document (including use of imagery) is for illustrative purposes only