



NCN: [2025] UKUT 357 (AAC)
Appeal No. UA-2025-000570-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

LAG (by her appointee LB)

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: In person

Respondent: Clare Pettet, DMA Leeds

On appeal from:

Tribunal:	First-Tier Tribunal (Social Entitlement Chamber)
First-tier Tribunal Case No:	SC337/23/00851
First-tier Tribunal Digital Case No:	1695-7237-6061-8889
First-tier Tribunal Venue:	Leeds (in person)
First-tier Tribunal Hearing Date:	1 October 2024

SUMMARY OF DECISION

PERSONAL INDEPENDENCE PAYMENT: ENGAGING WITH OTHERS (42.9)

The appellant has a diagnosis of Emotionally Unstable Personality Disorder and Anxiety Disorder. There was evidence that she had been confrontational in social situations, including involvement in violent altercations. There was also evidence that the appellant was avoiding social engagement in order to avoid confrontational situations. The First-tier Tribunal erred in law by failing to provide adequate reasons for concluding that the appellant did not satisfy daily living activity descriptor 9d on a majority of days ("cannot engage with other people due to such engagement causing either: (i) overwhelming psychological distress to the claimant; or (ii) the claimant to exhibit behaviour which would result in a substantial

risk of harm to the claimant or another person”). The Tribunal erred by proceedings on the basis that as the appellant had not in fact exhibited behaviour that posed a substantial risk of harm to herself or others on a majority of days descriptor 9d was not satisfied. The combined effect of regulations 4(2A) and 7 is that the descriptors need to be considered on the basis that a claimant is carrying out the activities as often as is reasonable for them to be carried out and, if the claimant is not carrying out the activities as often as is reasonable, the Tribunal needs to consider why the claimant is not doing so. If it is because of the claimant’s disability, then the Tribunal needs to consider whether the descriptor would apply on the majority of days if the claimant did in fact carry out the activity as often as was reasonable.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the following directions.

DIRECTIONS

1. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.
2. The new First-tier Tribunal should not involve the tribunal judge, medical member or disability member previously involved in considering this appeal on 1 October 2024.
3. The appellant is reminded that the new First-tier Tribunal can only consider the appeal by reference to their health and other circumstances as they were at the date of the original decision by the Secretary of State under appeal (namely 4 July 2023).
4. If the appellant has any further written evidence to put before the First-tier Tribunal relating to that period, including any further medical evidence, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.
5. The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the First-tier Tribunal's decision of 1 October 2024 allowing (but only in part) the appellant's appeal against the decision of the Secretary of State of 4 July 2023 in respect of the appellant's entitlement to Personal Independence Payment (PIP) under Part 4 of the Welfare Reform Act 2012 (WRA 2012) and The Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) (the PIP Regulations).
2. The appellant was from 2018 to 8 May 2023 in receipt of the daily living component at the standard rate. On 4 July 2023 her award was revised, the Secretary of State awarding her 2 points on the daily living activities and 0 points on the mobility activities, so that she ceased to be entitled to PIP. On appeal, the Tribunal awarded her 7 points on the daily living activities (insufficient for an award of the daily living component) and 10 points on the mobility component (entitling her to an award of the mobility component at the standard rate).
3. The First-tier Tribunal's Statement of Reasons (SoR) was issued on 12 November 2024 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 24 March 2025. The appellant filed the notice of appeal to the Upper Tribunal on 24 April 2025 (in time).
4. I granted permission to appeal in a decision sent to the parties on 4 June 2025. The Secretary of State supports the appeal and both parties have indicated they are content for me to decide the appeal without a hearing. I am satisfied that it is appropriate and in accordance with the overriding objective for me to decide the appeal without a hearing given the nature of the issue and the lack of dispute between the parties.

Factual background

5. The First-tier Tribunal records the factual background as follows:

9.[LAG] has a borderline personality disorder and has had this for many years. She has been under the care of mental health services including the crisis team, CMHT, Talking Helps and more recently she saw a mental health practitioner, [...]. She takes prescribed medication.

10.[LAG's] mental health was particularly troublesome for her around her pregnancy in 2017, and after her baby was born. Social services became involved and she had significant mental health input from professionals. However, by 2022 her situation had improved, and she was caring for her young child and managing a little bit of work.

11.[LAG] has generalised anxiety disorder. She is prescribed

Propananol which helps.

12.[LAG] has epilepsy. The condition is well controlled with medication. At the date of decision [LAG] had not had a daytime seizure for over 3 years. She did have some night time episodes which were improved by an increase in medication.

13.At the date of decision [LAG] was not working. She had attempted 4 jobs over the course of a year, but none of them lasted very long.

14.[LAG's] grandparents ring her daily and visit at weekends. They sometimes take their grandson away to give [LAG] a break. [LAG] still sees her partner, but they do not live together. Her partner helps out and collects their son from school.

6. The evidence in the First-tier Tribunal bundle of the appellant's interview with the Healthcare Practitioner (HCP) included the following:-

"She was removed from her last GP surgery due to behavioural issues. She now has a mental health GP, she is able to get appointments when she needs them She can see a therapist when required. She will be in contact with them if something major is happening in her life, she was having regular input for a year however she felt this overwhelming and he advised she could contact him if she felt the need. She last spoke to him 5 weeks ago.

Mental health conditions including anxiety and Emotionally unstable personality disorder diagnosed 2005- This was diagnosed by a psychiatrist,...She feels overwhelmed very easily while at work. She can take things personally, if she feels she is not being treated properly she can be upset and lose her temper easily. she has lived in her current street for the past 6-7 years...

She has had physical fights with 3 neighbours, She has had a recent altercation with her neighbour which became physical and the police were contacted. social services are now involved in regard to her sons welfare.

She has had suicidal thoughts and the police and social services have been involved due her threatening to overdose, this last happened 5 weeks ago following her altercation with her neighbour.

...She has previously overdose, the last time being around 2 years ago. She has self harmed however this was many years ago. Her GP is aware of this. She has been kept in a police cell overnight for her own safety due to threatening suicide..."

7. The appellant's mental health worker, Mr Sowter, provided a letter in support of her PIP appeal as follows:-

"I have known [LAG] since 2021 in my capacity as Mental Health Practitioner on the Special Allocation Scheme (SAS) at Cruddas Park Surgery. SAS provides primary health care for patients removed from the lists of their previous GP for aggressive and/or violent behaviour. I have provided two episodes of care to [LAG] since 2021 and these episodes comprise face to face appointments and telephone contacts as agreed with [LAG].

[LAG] has primary mental health diagnoses of Emotionally Unstable Personality Disorder (EUPD) and Anxiety Disorder. She also has a diagnosis of epilepsy. Her mental health problems manifest in significant difficulties in managing her daily life as follows;

- Difficulty in managing stress and interpersonal relationships. [LAG] finds herself in conflict with others on a regular basis and this includes employers, work colleagues, neighbours and shop workers. This conflict manifests in arguments and aggression including violence toward others and also episodes of self-harm.*
- Impulsive behaviour including aggression.*
- Problematic alcohol use as a way of managing stress, distress and seeking relief from anxiety and conflict.*
- Problems in using public transport. At times [LAG] requires support to attend appointments due to her anxiety and is unable to use buses.*
- Problems In maintaining daily activities. [LAG] requires the support of her ex-partner to undertake many daily tasks when she is unwell including practical support and prompts to maintain nutrition and hygiene for her and her son.*

EUPD is a chronic condition that will likely be present to some degree for the foreseeable future for [LAG]. It is a variable condition and there are times when [LAG] has been able to manage her daily affairs at a competent level, including periods of employment, however the nature of the disorder means that there are regular and frequent relapses that mean [LAG] requires personal and professional support."

The First-tier Tribunal's decision

8. In relation to daily living activity 9 (engaging with others face to face), the First-tier Tribunal concluded that the appellant scored 4 points for “needs social support to be able to engage with other people”. The Tribunal reasoned as follows:-

30. *“The test for this activity is whether [claimant] could engage socially ie interact with others in a contextually and socially appropriate manner, understand body language and establish relationships. [Claimant] was awarded 2 points under 9b in respect of prompting, both in 2018 and in 2023. She described significant problems to HCP in 2023, page 215. She was confrontational, has been in a fight with a neighbour; had been removed from her GP surgery and generally struggled to be around people. Today, she confirmed she had assaulted people and lost control of herself, mainly when she was drinking alcohol. She had lost friends through this. She told us today that she takes her nanna with her to appointments. She had some support from her parents and sister. She told the HCP she was able to go to parents evening with her partner, page 216. She told the UC HCP in 2022 that she was able to speak to unfamiliar work colleagues and to customers at work; she could speak to teachers and her social worker; she could speak to unfamiliar staff and people in the shop, page 188.*

31. *Considering all of the evidence before us today, we found that [claimant] required more than just prompting to engage. She was getting social support from her grandparents, as she was today. Most of the social support she was getting was contemporaneous. Previously, she'd had social support from her partner. With the right social support from family and her mental health worker Mr Sowter, she was able to engage appropriately most of the time. Without that support, she struggled to engage with others.*

32. *In the submission, we were asked to consider 9d: Cannot engage with other people due to such engagement causing either - (i) overwhelming psychological distress to the claimant; or (ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person. Whilst we accept that on occasions [claimant] had exhibited behaviour likely to result in harm to others, this was not for the majority of days, and mainly when she had been drinking excessively. She had been arrested for assault a long time ago, but the GP records did not support that she was a danger to other people or herself at the date of decision. Her behaviour had improved with time. We awarded 4 points under 9c.”*

The grant of permission

9. In granting permission to appeal in relation to daily living activity 9, I observed as follows:-

13. *In this case, the First-tier Tribunal's decision is on its face well-reasoned and the Tribunal has properly directed itself as to the law. However, I consider it arguable that the First-tier Tribunal has erred in its consideration of daily living activity 9 (engaging with other people face to face). It is arguable that the Tribunal at [30]-[32] has failed to take into account and/or to give adequate reasons for rejecting the evidence from Mr Sowter. Although reference is made to Mr Sowter at [31], as he was not a witness at the hearing, it is unclear how what he said in his "to whom it may concern" letter has turned into an assessment that with his support she could engage appropriately most of the time, or on what basis the Tribunal concluded that her behaviour had improved with time.*

The approach of the Upper Tribunal

10. An appeal to the Upper Tribunal under section 11 of the Tribunals, Courts and Enforcement Act 2007 (TCEA 2007) can only succeed if there is an error of law in the decision of the First-tier Tribunal. Errors of law include misunderstanding or misapplying the law, taking into account irrelevant factors or failing to take into account relevant factors, procedural unfairness or failing to give adequate reasons for a decision.
11. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts is perverse. That is a high threshold: it means that the conclusion must be irrational or wholly unsupported by the evidence. An appeal to the Upper Tribunal is not an opportunity to re-argue the case on its merits.
12. These principles are set out in many cases, including *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[13] and *R (Wasif) v Secretary of State for the Home Department* [2016] EWCA Civ 82; [2016] 1 WLR 2793 at [13].
13. In scrutinising the judgment of a First-tier Tribunal, the Upper Tribunal is required to read the judgment fairly and as a whole, remembering that the First-tier Tribunal is not required to express every step of its reasoning or to refer to all the evidence, but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: cf *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57]. That case also makes the point (at [58]) that where the First-tier Tribunal has correctly stated the law, the Upper Tribunal should be slow to conclude that it has misapplied it.

Why I am allowing the appeal

14. In order to score more points for daily living activity 9, the appellant would need to meet the following descriptor:

*d. Cannot engage with other people due to such engagement causing either –
overwhelming psychological distress to the claimant; or
the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person. 8 points.*

15. In relation to each descriptor, the First-tier Tribunal needs to consider as required by regulation 4(2A) whether the claimant can carry out the activity safely, to an acceptable standard, repeatedly and within a reasonable time. By regulation 4(4) “safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity, “repeatedly” means as often as the activity being assessed is reasonably required to be completed; and “reasonable time” means 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. By regulation 7(1)(a), the claimant must normally satisfy the descriptor on over 50% of the days of the required period (as defined in that regulation). By regulation 7(2), a descriptor is to be regarded as satisfied on a day if it is likely that, if the claimant had been assessed on that day, they would have satisfied that descriptor. Further, by regulation 7(1)(b) where two or more descriptors are each satisfied on over 50% of the days, the descriptor which scores the highest number of points is the relevant one.
16. In this case, the First-tier Tribunal’s reasons were in my judgment inadequate to explain why the appellant did not score 8 points on daily living activity 9.
17. The First-tier Tribunal stated: *“Whilst we accept that on occasions [claimant] had exhibited behaviour likely to result in harm to others, this was not for the majority of days, and mainly when she had been drinking excessively. She had been arrested for assault a long time ago”*. However, the HCP had reported that the claimant *“...had a recent altercation with her neighbour which became physical and the police were contacted. social services are now involved in regard to her sons welfare. She has had suicidal thoughts and the police and social services have been involved due her threatening to overdose, this last happened 5 weeks ago following her altercation with her neighbour...”*. Moreover, Mr Sowter stated: *“...[LAG] finds herself in conflict with others on a regular basis and this includes employers, work colleagues, neighbours and shop workers. This conflict manifests in arguments and aggression including violence toward others and also episodes of self-harm...”*. The appellant had also given evidence, which her appointee emphasises in this appeal, that she sought to minimise confrontational situations by avoiding social situations altogether.
18. In the light of the evidence, there are in my judgment three errors of law in the First-tier Tribunal’s reasons.
19. First, the Tribunal should have been focusing on the situation at the time of the Secretary of State’s decision (as required by section 12(8)(b) of the Social Security Act 1998). It is not clear that it adhered to this requirement when considering daily living activity 9.
20. Secondly, given the evidence from the HCP and Mr Sowter as to recent and frequent conduct that posed a risk of harm to the appellant and others, the Tribunal’s reasons are inadequate to explain why it concluded that the claimant’s risky behaviour was only occasional and that it had improved.

21. Thirdly, as there was evidence that the appellant was avoiding social engagement in order to avoid confrontational situations, the Tribunal could not simply proceed on the basis that as the appellant had not in fact exhibited behaviour that posed a substantial risk of harm to herself or others on a majority of days descriptor 9d was not satisfied. The combined effect of regulations 4(2A) and 7 is that the descriptors need to be considered on the basis that a claimant is carrying out the activities as often as is reasonable for them to be carried out and, if the claimant is not carrying out the activities as often as is reasonable, the Tribunal needs to consider why the claimant is not doing so. If it is because of the claimant's disability, then the Tribunal needs to consider whether the descriptor would apply on the majority of days if the claimant did in fact carry out the activity as often as was reasonable.
22. These principles are well explained in two decisions of Judge Hemingway. The first is *TR v SSWP* [2016] AAC 23 where Judge Hemingway held as follows (emphasis added):

*30. I would certainly accept Ms Pepper's contention that **if a descriptor does apply at any point during a 24 hour period that must be a direct consequence of a claimant's physical or mental condition**. That follows logically from the wording of section 78(1)(a) and section 79(1)(b) of the Welfare Reform Act 2012. Ms Pepper also submits that the de minimis principle applies. Put simply, that is a legal doctrine by which a court refuses to consider a trifling or trivial matter. So, if that argument is right, then a brief or momentary inability to perform a task within a 24 hour period will not mean that a descriptor relevant to that task will be satisfied for the relevant day.*

31. Clearly Ms Pepper's contention, in this regard, is an entirely sensible and logical one. A personal independence payment is designed, in broad terms, as is disability living allowance which it is replacing, to assist persons who are disabled mentally or physically to lead a normal life and to get about. It would be inconsistent with that legislative approach and intention if a claimant who was incapable of performing a task or function for only a fleeting or trivial period to be able to satisfy one or more of the descriptors for that reason.

32. Following the above reasoning, therefore, it seems to me that for a descriptor to apply, on a given day, then the inability to perform the task or function must be of some significance, that is to say something which is more than trifling or, put another way, something which has some tangible impact upon a claimant's activity and functioning during a day but not more than that. So, by way of illustration, to use the example given in the PIP Assessment Guide, if a person were to take his painkilling medication at the start of the day and it was to take effect quickly, so that his normal daily routine would not be inhibited in any way, then the relevant descriptors, in this context perhaps those relating to functions such as dressing, washing and toileting, would not be satisfied such that no points would be scored. If,

however, the medication did not start to work for a period such as to delay his going about his daily business then it would be satisfied. Such a claimant, having taken his medication, could not be expected to await embarking upon his washing, dressing and toileting for a significant period for his medication to take effect. This, again, would seem to be in accordance with the overall legislative intention and seems to me to be consistent with the Government's response.

33. It may be, though, that with respect to at least some of the descriptors there will be a little more to consider. **With respect to matters such as washing, dressing and toileting these are functions which, in general, will obviously need to be performed at some point during each 24 hour period. The position with respect to venturing out-of doors, for example, might be somewhat different. A person might, for example, simply have a lifestyle as a matter of choice not linked to disability which does not involve venturing out-of-doors during periods of dusk or darkness at all. So, in such a case, there may have to be a factual enquiry as to whether it is the disabilities or something else which is preventing such an activity.** That is probably why Ms Pepper suggests, in this case, that there will need to be findings about the journeys the appellant embarks upon to and from work. However, it seems to me that detailed inquiries of that nature would be rare. Many people may tend to venture out-of-doors during the hours of daylight more than during the hours of darkness. Nevertheless, there are many reasons why a person might want to venture out after dark perhaps, dependent upon taste, to attend night school classes, or to visit the theatre, restaurants or perhaps even public houses. These activities might not be pursued every day and might indeed be pursued only rarely but if a person is effectively debarred from following the route of an unfamiliar journey or a familiar one without another person, an assistance dog or an orientation aid, which is in part what this appellant is contending, during the hours of dusk or darkness, then that person would not have to show, for the descriptor to be satisfied, that they would wish to undertake such a journey every day or anything like that but would only have to show that the particular disability which impacts upon them is sufficient to mean that that option is not, without the necessary assistance, available to them such that their lifestyle is restricted to more than a trivial extent.

34. **The key to all of this is the definition of repeatedly. In the examples above, it cannot properly be said that a claimant is able to wash, dress and attend to his or her toileting as often as the relevant activities are reasonably required to be completed if he or she is obliged to wait for a disruptive period of time until painkillers take effect. It cannot properly be said that a claimant is able to follow the route of a journey repeatedly if he or she cannot do so for a part of each day such that the claimant is obliged to live a restricted lifestyle.**

23. In the second decision, *GG v SSWP (PIP)* [2016] UKUT 0194 (AAC), Judge Hemingway explained the proper approach as follows at [7] (emphasis):

*“7....The mere fact that a claimant might be sufficiently motivated to perform a task when there is specific or unusual impetus to do so does not, of itself, inform as to the overall position and the generality of the situation. So, it is not appropriate to limit the scope of the enquiry to such days. True an ability to perform a task without prompting when there is particular pressure to do so might be indicative of a claimant simply exercising a choice not to perform such a task on impetus absent days but that will not necessarily follow. **What has to be undertaken is a more general and all-encompassing consideration. So, there needs to be an assessment, in such cases, of why it is that, on days when a claimant does not perform certain tasks, he/she does not do so. If it is because, without any specific impetus, he/she is not motivated to do so as a result of health difficulties and that such days exist for more than 50% of the time in the relevant assessment period, then absent other pertinent considerations, the relevant descriptor or descriptors will apply.** That was not this tribunal’s approach, and I conclude that, in consequence, it did err in law.”*

24. Applying these principles to the present case, the First-tier Tribunal needed to consider the evidence as to why the appellant was not engaging with others on a daily basis and, if it was because she was seeking to avoid situations in which harm would arise to herself or others, the Tribunal needed to consider whether if she sought to engage with others on a reasonably frequent basis she would on the majority of days exhibit behaviour that posed a substantial risk of harm to herself or others.

Conclusion

25. The First-tier Tribunal in this case accordingly erred in law in its consideration of daily living activity 9. The errors were material as, if the appellant had scored more points on daily living activity 9 she would have qualified for the daily living component of PIP at the standard rate. I therefore set the decision of the First-tier Tribunal aside and remit the case for re-hearing before a fresh Tribunal panel.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 20 October 2025