



Neutral Citation Number: [2026] UKUT 276 (AAC)
Appeal No. UA-2024-001760-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MICHAEL WOOD

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

Before: Upper Tribunal Judge Stout

Hearing date: 4 June 2026

Mode of hearing: By video

Representation:

Appellant: Keely Gabriel (Welfare Rights Service, assisted by CPAG Upper Tribunal Project)

Respondent: Katharine Elliot (counsel)

On appeal from:

Appellant: Mr Michael Wood

Respondent: The Secretary of State for Work and Pensions

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)

First-tier Tribunal Case No: SC306/23/00161

First-tier Tribunal Digital Case No: 1684313686945617

First-tier Tribunal Venue: Lincoln (in person)

First-tier Tribunal Hearing Date: 18 July 2024

SUMMARY OF DECISION

**PERSONAL INDEPENDENCE PAYMENT – Daily living activity 1 (preparing food)
(42.1)**

The Upper Tribunal decides that mobilising, including mobilising while carrying food, is not part of daily living activity 1 (preparing food). *MP v SSWP (PIP)* [2025] UKUT 240 (AAC) approved and followed.

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 dismiss the appeal. The decision of the First-tier Tribunal did not involve an error of law.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the First-tier Tribunal's decision of 18 July 2024 refusing his appeal against the decision of the Secretary of State of 7 February 2023 that he was entitled to Personal Independence Payment (**PIP**) at the enhanced rate for the mobility component but (only) the standard rate for the daily living component.
2. The issue raised on this appeal concerns the interpretation and application of daily living activity 1 (preparing food) in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (**the PIP Regulations**). Specifically, the issue is whether the activity of 'preparing' a simple meal includes the activity of mobilising, including mobilising whilst carrying items, between workstations in the kitchen.
3. The appeal was stayed pending the outcome of *MP v SSWP (PIP)* [2025] UKUT 240 (AAC) (**MP**), which also considered the issue of moving within daily living activity 1. It was anticipated that the outcome in *MP* would determine the outcome in this case, but the appellant's position is that it did not, so this appeal was accordingly listed for hearing.
4. The hearing took place by video. The appellant himself was not present, but both parties were represented, and I am grateful to both representatives for their helpful written and oral submissions.
5. The structure of this decision is as follows:-

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d. Did the First-tier Tribunal fail to address whether MP could safely use a perching stool to prepare and cook a simple main meal within a reasonable time?

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Disposal20

Abbreviations

6. The following abbreviations are used in this decision:

AI - *AI v SSWP (DLA)* [2015] UKUT 176 (AAC)

CW - *CW v DWP* [2016] AACR 44

DP - *DP v DWP* [2018] UKUT 209 (AAC)

EG - *EG v SSWP* [2015] UKUT 0275 (AAC)

GB - *GB v SSWP* [2015] UKUT 0546 (AAC)

HCP - Healthcare Practitioner

JMcG - *JMcG v Department for Communities (PIP)* [2019] NICom 77

KJ - *SSWP v KJ* [2017] UKUT 358 (AAC)

KW - *KW v Secretary of State for Work and Pensions (PIP)* [2017] UKUT 0054 (AAC)

Moyna - *Moyna v SSWP* [2003] UKHL 44, [2003] 1 WLR 1929

MP - *MP v SSWP (PIP)* [2025] UKUT 240 (AAC)

PIP - Personal Independence Payment

PIP Regulations - Social Security (Personal Independence Payment) Regulations 2013

R (DLA) – *R (DLA)* 2/95

WRA 2012 - Welfare Reform Act 2012

ZI - *ZI v SSWP (PIP)* [2016] UKUT 572 (AAC)

Background

7. The appellant suffers from a number of medical conditions, including a problem with his left leg that causes him constant pain, especially if he places weight on the foot. He has been prescribed morphine.

8. The appellant made a claim for PIP by telephone on 4 November 2022, submitting the relevant questionnaire on 25 November 2022. A telephone assessment with a Healthcare Practitioner (**HCP**) took place on 16 January 2023. The HCP recorded that the appellant was:

“...able to peel, chop and prepare food. Is able to stand for 5 minutes before needing to sit down, could continue sitting down. Is able to use oven and microwave at waist height.”

9. By decision dated 7 February 2023 the Secretary of State assessed the appellant as scoring 9 points on the daily living activities and 12 points on the mobility activities as follows:

- a. 2 points for daily living activity 1 (preparing food), descriptor 1b (needs to use an aid or appliance to be able to either prepare or cook a simple meal);

- b. 3 points for activity 4 (washing and bathing), descriptor 4e (Needs assistance to be able to get in or out of a bath or shower);
 - c. 2 points for activity 5 (managing toilet needs or incontinence), descriptor 5b (needs to use an aid or appliance to be able to manage toilet needs or incontinence);
 - d. 2 points for activity 6 (dressing and undressing), descriptor 6b (needs to use an aid or appliance to be able to dress or undress);
 - e. 12 points for mobility activity 2 (moving around), descriptor 2e (can stand and then move more than 1 metre but no more than 20 metres, either aided or unaided).
10. As 8 points are required for a standard award, and 12 points for an enhanced award, the appellant was accordingly awarded the daily living component of PIP at the standard rate, and the mobility component at the enhanced rate.
11. The appellant sought mandatory reconsideration, which confirmed the decision on 27 March 2023.
12. The appellant then appealed to the First-tier Tribunal.

The First-tier Tribunal's decision

13. The First-tier Tribunal's Statement of Reasons confirms that he attended the hearing in person in a wheelchair with two crutches. He was accompanied by his wife.
14. The First-tier Tribunal awarded him an additional point for daily living activity 3 (managing therapy or monitoring a health condition), but otherwise confirmed the decision of the Secretary of State and dismissed the appeal.
15. Regarding daily living activity 1, the First-tier Tribunal reasoned as follows:

Preparing food - Activity 1

22. Mr Wood has not had any input from an Occupational Therapist. He told the Tribunal that he did not know what a perching stool was. Mrs Wood reported that she knew what one was, but she didn't think it would help. It was explained to Mr Wood that perching stools can have backs and arms on them. Mr Wood was concerned with where he would be able to get one from. It was explained to him that the Tribunal needed to consider what would be needed in order for him to be able to carry out the activity to an acceptable standard.

23. Mr Wood was assisted by the Tribunal in understanding what the activity of descriptor 1 includes and how a perching stool might help him as an aid. It was explained how he might sit on a perching stool and then not have to use his crutches, leaving his hands unencumbered to cook. The Judge gave an example of a simple meal for one person that could be cooked on the hob to assist Mr Wood in considering whether and how

such an aid would help him with the process. The example given was peeling and chopping a potato and a carrot and cooking them alongside some sausages. It was explained that the meal needed to be made from fresh ingredients and only be enough for one person. Mr Wood was asked, if he was able to sit to carry out this task, how he would manage. It was put to Mr Wood that he was sitting and had his feet on the pedal of his wheelchair at the hearing. The question was whether he would be able to sit on a perching stool with his right foot on the floor whilst resting his left leg. Mr Wood confirmed that he has no issues with his upper body.

24. Mr Wood said that he could do that, but his difficulty was moving around the kitchen and carrying things, such as when taking items out of the microwave or carrying plates. The Tribunal needed to consider whether Mr Wood would be able to cook the food and place it on a plate. The activity did not include carrying food to where it would be eaten, such as to a dining table.

25. The decision had awarded Mr Wood descriptor 1b reflecting that he needs to use an aid or appliance to be able to either prepare or cook a simple meal. The Tribunal agreed and found that an aid, such as a perching stool, would enable Mr Wood to carry out this activity to an acceptable standard and in accordance with Regulation 4 for the majority of the time. A higher scoring descriptor was considered by the Tribunal but was found to not be appropriate. *Descriptor 1b - 2 points.*

The scope of the appeal to the Upper Tribunal

16. By notice sent to the parties on 29 January 2025 I granted the appellant permission to appeal to the Upper Tribunal in relation to the First-tier Tribunal's conclusion on daily living activity 1. In the grant of permission, I explained that I considered the appeal to be arguable in the light in particular of two Upper Tribunal decisions of Judge Wright, *GB v SSWP* [2015] UKUT 0546 (AAC) (**GB**) and *EG v SSWP* [2015] UKUT 0275 (AAC) (**EG**). The material paragraphs of my reasons for granting permission are as follows:

18. It seems to me that the Tribunal is probably right that the cooking test does not include the activity of carrying the food to where it would be eaten. There would also be no error of law in the Tribunal's decision if the cooking test is to be considered as being an activity that can be carried out while effectively stationary seated on a perching stool for both food preparation and food cooking. That may indeed be strictly speaking what the test is (on the face of the legislation that may be all that is involved). However, I consider it to be arguable that it may include some of the other activities that the appellant has mentioned. In particular, it is arguable that the cooking test may involve the activities of moving around a kitchen in order to get ingredients from a fridge or cupboard, moving to a sink to wash vegetables, moving between a working surface where vegetables are prepared to a cooker where they are cooked, taking a pan

out of a cupboard and moving it to a cooker, and possibly other activities that cannot be carried out while perching on a stationary stool. ...

22. ... it seems to me to be arguable in the light of these authorities, that the Tribunal in this case has erred in law in failing to consider all of the activities that may be involved in the cooking test (including those I have mentioned at paragraph 18 above) and/or in failing to consider whether the appellant could, with the aid of a perching stool, prepare and cook a simple meal without assistance both safely and within a reasonable time. This therefore is what I identify as being Ground 1 and on this Ground I grant permission. This ground is arguably material to the decision because if the appellant does require assistance as well as a perching stool to prepare and cook a simple meal, he would score 4 points rather than 2 on this activity, thus increasing his total score to 12 points and entitling him to the enhanced rate of the daily living component.

17. As indicated, the appeal was then stayed pending the decision of Judge Wright in *MP*, which was published on 2 September 2025. In the light of that decision, the parties made submissions about the disposal of this appeal, as a result of which it was apparent that there was a dispute between the parties as to what *MP* had decided and whether or not the First-tier Tribunal had erred in this case.
18. This appeal was accordingly listed for a hearing. At the start of this hearing there was a dispute between the parties as to whether all the arguments being pursued by the appellant fell within the scope of the grant of permission.
19. The appellant's first argument is, in short, that *MP* determines only that the 'cooking test' element of daily living activity 1 does not involve moving around, but Ms Gabriel submits that the 'preparing food' element does involve moving around, in particular moving between 'chopping' and 'washing' workstations for the purposes of preparing food. Ms Elliott for the Secretary of State argued that I had not granted permission on this ground because paragraph 22 of my grant of permission refers to the "the cooking test" but not the "preparing test".
20. I do not accept this argument because, when my decision is read as a whole, it seems to me to be clear that by "cooking test" I meant the whole of daily living activity 1. The distinction between 'cooking' and 'preparation' was not critical at that point given the way that the argument was originally being put, but (as is clear from [18]) the appellant was at the outset of the appeal specifically making the point about moving being part of 'preparing' that Ms Gabriel now advances as the appellant's primary argument.
21. The appellant's second argument is, as identified in paragraph 22 of the grant of permission, whether the First-tier Tribunal erred in failing to consider whether the appellant could, with the aid of a perching stool, prepare and cook a simple meal without assistance both safely and within a reasonable time. At times in argument, Ms Gabriel appeared to extend this argument to a perversity challenge, but she accepted that the grant of permission did not encompass perversity. She confirmed that she did not seek to amend the grounds of appeal.

Relevant legislation

22. Part 4 of the Welfare Reform Act 2012 (**WRA 2012**) created the social security benefit PIP. By section 77(2) of the WRA 2012 a person can have an entitlement to the daily living component of PIP or the mobility component of PIP, or both. Sections 78-80 of the WRA 2012 set out the conditions of entitlement, the detailed provision for which is made in the PIP Regulations.
23. Schedule 1 to the PIP Regulations provides as follows in relation to daily living activity 1:

Activity	Descriptors	Points
1. Preparing food	a. Can prepare and cook a simple meal unaided.	0
	b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.	2
	c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave.	2
	d. Needs prompting to be able to either prepare or cook a simple meal.	4
	e. Needs supervision or assistance to either prepare or cook a simple meal.	4
	f. Cannot prepare and cook food.	8

24. By paragraph 1 of Schedule 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; ...

“cook” means heat food at or above waist height;...

“prepare”, in the context of food, means make food ready for cooking or eating;...

“simple meal” means a cooked one-course meal for one using fresh ingredients; ...

“stand” means stand upright with at least one biological foot on the ground;

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

- “unaided” means without –
- (a) the use of an aid or appliance; or
 - (b) supervision, prompting or assistance.

25. By regulation 2:

- “aid or appliance” –
- (a) means any device which improves, provides or replaces C's impaired physical or mental function; and
 - (b) includes a prosthesis;

26. By regulation 4:

4.— Assessment of ability to carry out activities

(1) For the purposes of section 77(2) and section 78 or 79, as the case may be, of the Act, whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C's physical or mental condition, is to be determined on the basis of an assessment.

- (2) C's ability to carry out an activity is to be assessed –
- (a) on the basis of C's ability whilst wearing or using any aid or appliance which C normally wears or uses; or
 - (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(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.

(3) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(4) In this regulation —

- (a) “safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity;
- (b) “repeatedly” means as often as the activity being assessed is reasonably required to be completed; and
- (c) “reasonable time period” 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.

The parties' submissions

The appellant's submissions

27. Ms Gabriel for the appellant submits that daily living activity 1 deals with two activities (i) preparing and (ii) cooking food, and that these activities need to be considered separately. She submits that although Judge Wright's decision in *MP* purported to decide that moving between workstations and carrying items was not any part of daily living activity 1, in fact the reasoning in the case was confined to the activity of cooking and did not deal with the activity of preparing food. She submits that the question of whether moving and carrying is part of the activity of preparing food has not been the subject of any previous determination by the Upper Tribunal. Alternatively, she submits that it is open to me to depart from Judge Wright's decision in *MP* because, if it did decide that moving and carrying were not part of the activity of preparing food, it was wrong.
28. Ms Gabriel submits that there are a number of authorities that provide support for her argument that moving and carrying are part of preparing food, including *GB*, *EB*, *JMcG v Department for Communities (PIP)* [2019] NCom 77 (**JMcG**), and *SSWP v KJ* [2017] UKUT 358 (AAC) (**KJ**). She argues that preparing food must entail moving between workstations while holding food or utensils. This is necessary to wash and peel a carrot, for example. It cannot sensibly be said that moving and carrying is merely preparatory; it is not like getting the food out of a cupboard (see *JMcG*). It is something that is necessary in all kitchens and does not therefore fall foul of the principle established in cases such as *ZI v SSWP (PIP)* [2016] UKUT 572 (AAC) (**ZI**) and *AI v SSWP (DLA)* [2015] UKUT 176 (AAC) (**AI**) that the activity does not involve consideration of ability to cook any specific cultural type of food.
29. Ms Gabriel further submits that the First-tier Tribunal failed to consider whether Mr Wood could prepare and cook a meal using a perching stool safely within a reasonable time. She submits that the First-tier Tribunal failed to make adequate findings of fact about this. The clinical evidence is that Mr Wood experiences "severe pain" the moment he puts his left foot on the ground. She asks how he could get on to a perching stool without some weight bearing on both feet. She suggests that using a perching stool still involves some weight-bearing, and moving a perching stool would certainly involve weight-bearing.
30. In conclusion, she submits that the First-tier Tribunal should have found that descriptor 1e applied, not 1b and that, accordingly, Mr Wood would have scored 12 points and thus qualified for an enhanced award of the daily living component. The First-tier Tribunal's errors were therefore material. The Upper Tribunal should allow the appeal and re-make the decision accordingly.

The respondent's submissions

31. Ms Elliott for the respondent submits that *MP* determined that moving and carrying are not any part of daily living activity 1, and that as a matter of comity I

should follow Judge Wright's decision unless I am sure it is wrong. She submits, however, that it is not wrong.

32. Ms Elliott submits that the question of what descriptor the appellant should be assessed as meeting is ultimately a question of construction of the PIP Regulations. The assessment of ability to prepare or cook food is an objective one which does not take into account subjective factors relevant to a specific individual, such as cultural dietary requirements (*ZI* and *AI*). She submits that, likewise, it does not take account of the layout of different kitchens. Activities preliminary to preparing and cooking, such as shopping and taking food out of cupboards are not included in the activity (*JMcG*). Although it was accepted in *GB* that lever taps could amount to an aid because preparing food safely involves washing food and utensils, that decision did not address the issue of moving around for this purpose. What was said in *EG* about the use of a walking stick while preparing and cooking food was *obiter*, but in any event it was addressed to the question of how it could help the claimant stand for the purposes of the activity, not move about. *DP v DWP* [2018] UKUT 209 (AAC) (*DP*) was also concerned with standing. *KW v Secretary of State for Work and Pensions (PIP)* [2017] UKUT 0054 (AAC) (*KW*) at [48c] envisaged a perching stool being sufficient to allow pans to be moved on and off a hob, but emphasised that the test was the cooking of a simple meal so did not involve moving pans full of hot liquid.
33. As to the argument that the First-tier Tribunal failed to address whether Mr Wood could safely use a perching stool to prepare and cook a meal within a reasonable time, Ms Elliott submitted that the First-tier Tribunal had properly directed itself to the law and had reached conclusions that were open to it. She emphasised that the grounds of appeal do not include a perversity challenge. If the Secretary of State is wrong on the merits, she submitted the case would need to be remitted as the First-tier Tribunal made no findings about any need for supervision or assistance.

Discussion and analysis

34. It is convenient to deal with the issues that arise in this appeal in four parts as follows:
 - a. Did *MP* decide that moving and carrying were no part of the activity of preparing food?
 - b. Are moving and carrying part of the activity of preparing food?
 - c. If *MP* decided the issue, should I follow it?
 - d. Did the First-tier Tribunal fail to address whether the appellant could safely use a perching stool to prepare and cook a simple main meal within a reasonable time?

a. Did *MP* decide that moving and carrying were no part of the activity of preparing food?

35. At [2] of *MP* Judge Wright identified the “main issue” in the appeal as being:

2. ...whether the ability (or inability) to move around or carry items (e.g., food or cooking utensils) when preparing food or cooking is relevant to daily living activity 1 in Part 2 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 ("the PIP Regs").

36. At [6] he set out the grounds of appeal, identifying the first ground as being in summary "whether the need to move within a kitchen is part of daily living activity 1". He then set out the relevant legislation and referred in detail to Commissioner Stockman's decision in *JMcG* and Judge Hemingway's decision in *CB*.

37. Judge Wright's discussion of the "main issue" in the appeal begins at [37]. At [38] he summarised the appellant's case before the First-tier Tribunal, the First-tier Tribunal's decision and his own conclusion on the appeal as follows:

38. The appellant's case before the FTT under daily living activity 1 was that he was unable to carry (in the sense of walk holding) food which had been peeled and chopped to the sink to wash it, carry (in the same sense) food from the sink to the table or cooker, and carry (again in the same sense) food from the cooker to the sink (e.g., to drain pasta). The key aspects of the FTT's rejection of this argument were its view that *JMcG* did not assist on the 'carry' point and that neither "prepare" or "cook" under daily living activity 1 included carrying food between various places within the kitchen. (In addition, the FTT found there was no need in fact for the appellant to carry a pot of boiling water from the cooker to the sink.) In essence, I agree with the FTT.

38. At [39]-[40] he explained that, although the grant of permission was focused on whether daily living activity 1 includes consideration of a person's ability to move around a kitchen, at the oral hearing before the Upper Tribunal, the argument for the appellant "changed somewhat" to three, linked arguments which Judge Wright dealt with at [42] and following.

39. The first argument was that the First-tier Tribunal had wrongly focused disjunctively on the terms "prepare" and "cook", rather than considering them as a composite activity necessary to produce a simple meal. Judge Wright rejected that argument because the legislation does not use the phrase "produce a simple meal", and the language used in daily living descriptors 1b, 1d and 1e is expressly disjunctive ("or") so that it is clear that the test is not "prepare and cook" but an assessment of the two activities of 'preparing' or 'cooking'. Judge Wright held (at [45]) that it followed as a result that daily living activity 1 does not involve moving or carrying between the preparation and cooking stages as part of the test. At [47] Judge Wright noted that in *KJ* he had said "arguably in passing, that the tasks needed to prepare a simple meal for cooking included 'lifting and carrying'", but he was not deciding this point in *KJ*, and the ratio of that decision was only that daily living activity 1 is not concerned with preparing or cooking the "right" or "dietarily appropriate" food.

40. The appellant's second argument in *MP* (see [48]) was that "mobilising or carrying is part of the 'preparing food' bit of daily living activity 1" because the definition of

'prepare food' in Schedule 1 is "make food ready for cooking or eating" and "making food ready for cooking must mean moving (by carrying the prepared food) to the cooker to heat it at or above waist height". Having considered the construction of the PIP Regulations in detail at [49]-[50], Judge Wright concluded that "Daily living activity 1 also involves consideration of whether the claimant has the functional ability to make food ready for *eating*, not just making it ready for cooking". At [51] he continued, "this must mean, or at least include, making uncooked food, or food which does not need to be cooked, ready for eating". Judge Wright held that this "further undermines the appellant's argument that moving (by carrying) the food to be cooked is a necessary part of the functional abilities which daily living activity 1 is assessing". Nor did it involve taking the food to the place where it is to be eaten ([52]).

41. At [53] he went on as follows, in a paragraph that expressly refers to the actions of washing, peeling and chopping when preparing food:

53. The focus of the statutory test is on preparing the food, and, in the context of the cooked simple meal, that means making the food ready for cooking. The acts involved in making the food ready for cooking are separate from the acts involved in cooking the food, for the reasons I have given above. The acts involved in preparing food for cooking would not in my judgement involve moving the food to the place where it is to be heated (at or above waist height), as that is not about preparing the food. Likewise, it seems to me, making the food ready for cooking is about readying the food for the (separate) act of cooking it, which will involve acts such as peeling and chopping the food. It does not entail then carrying it to the place where it is to be cooked. The food will be 'prepared' and 'ready for cooking' once it has been washed, peeled and chopped, or unpackaged and chopped, and that will be so, in my judgement, before it may then need to be moved to the cooker to be cooked. Putting this perhaps another way, as matter of ordinary language the food will be 'prepared' and 'ready' for cooking before it may need to be moved (or carried) to the place where it is to be cooked. That food will not be able to be cooked before it is moved to the place where it is to be cooked, but as food it will have been 'prepared' and 'made ready' for cooking. Furthermore, had the obvious and discrete function relating to cooking a simple meal of carrying the prepared food to the place where it was to be cooked been intended to be included in the statutory test, such wording could and should have been used. As it is, I do not see why such a function should be shoehorned into statutory language which does not as a matter of ordinary language include such a function.

42. The appellant's third argument in *MP* was based on an unpublished decision of Judge Butler, *RM v SSWP* (UA-2024-000709-PIP and UA-2024-000710-PIP). Judge Wright at [55] decided that *RM* did not assist the appellant because in that case Judge Butler only assumed, without deciding, that daily living activity 1 might include mobilising. (It is convenient to note here that Judge Butler's assumption in *RM* was made on the basis of the examples of tasks that might come within the definition of 'prepare food' given by Commissioner Stockman at [35] in *JMcG*,

and it was an assumption made by Judge Butler in the appellant's favour as a step on the way to dismissing the appellant's argument in *RM* on other grounds.)

43. At [56]-[59] Judge Wright noted that, having dismissed the appellant's arguments, he had not had to deal with an argument of the Secretary of State to the effect that mobilising could not be part of daily living activity 1 because it is already assessed under mobility activity 2 (in other words, what is often referred to as a *lex specialis* argument). Judge Wright indicated, however, that a potential difficulty with the Secretary of State's argument might be that mobilising while carrying food items (the issue arising on the appellant's case in relation to daily living activity 1) is not dealt with by mobility activity 2, which is not concerned with carrying at all.
44. Judge Wright concluded at [60]:

60. As I hope I have made clear above, my decision that mobilising and carrying are not part of the functional abilities assessed under daily living activity 1 arises on the wording of that activity and its descriptors.

45. Having carefully considered the terms of Judge Wright's decision, it seems to me that he did determine that mobilising and carrying are not part of daily living activity 1. That was the main issue raised on the appeal, and he determined it. However, the appellant is nonetheless right in my judgment that he did so by reference to an argument and reasoning that does not of itself dispose of the argument made by the appellant in this case. The argument raised by the appellant in this case was not raised in *MP*. It was not argued in *MP* that moving and carrying could form part of the activity of preparing food, independent and separate to the activity of 'cooking'. The argument in *MP* was that moving and carrying food was necessary because the activities of preparing and cooking were conjunctive and therefore there was a need to move the food from where it was prepared to where it would be cooked. That argument was rejected by Judge Wright for the reasons he gave, in summary because the legislation is clear that the activities of preparing and cooking are disjunctive not conjunctive.
46. If Judge Wright's decision was binding on me, I would be bound by it. However, as a decision of a single judge of the same tribunal, his decision is not binding on me. I may depart from it if I consider it is manifestly wrong: see *Government of the State of Kuwait v Mohamed* [2026] EAT 20 at [75] *per* Cavanagh J. Because his reasoning does not, in my judgment, dispose of the argument raised in the present case, I need to consider the merits of that argument for myself in order to decide whether I should depart from *MP*.

b. Are mobilising, and mobilising while carrying, part of the activity of preparing food?

47. I begin with the premise that the activity of preparing food is disjunctive with the activity of cooking food, as Judge Wright held in *MP*. Neither party doubts the *MP* decision in this respect, and I am also satisfied it is correct. That is the plain effect of the legislation. I further agree with Judge Wright's analysis that preparing food

includes preparing food to eat uncooked as well as preparing food for cooking. However, does it involve mobilising or carrying in any form?

48. Ms Elliott reminds me that the question of what descriptor any claimant should be assessed as meeting is ultimately a question of statutory construction of the language used in the PIP Regulations: see *AS v DWP* [2017] UKUT 104 (AAC) at [8]. However, I have to say I derive little assistance from the text of the regulations on this point. The Secretary of State in this case has not pursued the *lex specialis* argument that was advanced before Judge Wright and, in any event, I share Judge Wright's reservations about the merits of that argument (see above paragraph 43). Accordingly, I am left with having to decide whether moving and carrying food are included in the definition of "prepare" in the PIP Regulations, in other words whether moving and carrying are part of the activity of 'making food ready for cooking or eating'. There is nothing else in the legislation itself to assist, and if I had to answer this question in a vacuum, without reference to prior authority, I might have been inclined to hold that "prepare" does include moving and carrying since (as I noted when granting permission), in the ordinary course, normal food preparation activities, in even the smallest kitchen, involve moving from fridge to worktop to sink to cooker or microwave while carrying food or pans or utensils. However, although the specific argument raised by the appellant in these proceedings has not previously been decided in any case, I do not have to decide it in a vacuum. There are in fact a number of previous authorities that cast light on the issue.
49. The appellant's argument in this case is very similar to that raised by the appellant in *RM*, where it met with a degree of approbation. In that case, Judge Butler summarised the argument as follows at [33]-[34]:
33. In *JMcG*, Commissioner Stockman explained that the definition of 'cook' in Schedule 1 to the 2013 Regulations confirmed it relates to heating food at or above waist height. Commissioner Stockman also decided that the wording "*to make food ready for cooking*", used to define "*prepare*" in Schedule 1, has a narrow meaning, which is a range of tasks immediately preliminary to the process of heating food at or above waist height. He described examples of these at paragraph 35 of his decision.
34. Mr Martinez argues that it would be impossible for someone to have their sink, kitchen equipment and cooker all within reach while seated at a perching stool. He therefore argues that there is inconsistency between the Tribunal accepting that *RM* should score mobility descriptor 2e and the Tribunal deciding that she could carry out all those preliminary steps."
50. Judge Butler at [35] considered that the appellant's argument in *RM* "might have had more force" if the Tribunal had awarded her mobility descriptor 2f rather than 2e, but as it had not, she considered that the Tribunal's assessment of *RM*'s mobility for purposes of mobility activity 2 was inconsistent with her having difficulties with mobility that would be relevant to daily living activity 1. I understand Judge Butler to mean that, because the Tribunal had concluded that *RM* could move at least 1 metre, it followed that she could mobilise enough to

cook. Mr Wood's mobility in this case has of course also been assessed as meeting mobility descriptor 2e, so on Judge Butler's analysis his claim could fail for the same reason. I note, however, that the claimant in *RM* had also already been awarded daily living activity descriptor 1e (for assistance required with preparing/cooking) so the issue about need for assistance with mobilising and carrying was academic for that reason too (which is not so in Mr Wood's case).

51. An important plank in the appellant's argument is that it has been accepted in a number of Upper Tribunal decisions that the activity of preparing food includes both washing (vegetables and utensils) and cutting. Thus, Judge Wright's decision in *GB* held that lever taps could be an aid for preparing food because "the act of preparing a simple meal" may include "tasks such as the washing and cleaning of food as well as plates, chopping boards and other such utensils" (at [5]). He added, "The ability to carry out the activity of preparing food for eating or cooking is to be assessed, *inter alia*, on whether it can be done safely and to an acceptable standard (per regulation 4(2A) of the PIP Regs) and not washing food or utensils before using them very arguably would meet neither of these conditions". *GB* thus decides that washing food and utensils is part of the activity of preparing food, but says nothing about moving and carrying. See also *JMcG* at [35], where Commissioner Stockman included in his list of activities involved in food preparation "washing ... fresh vegetables" and "adding boiled water to pans".
52. Apart from *MP*, there are only two decisions to which I have been referred in this case in which moving or carrying or 'transferring food' is expressly mentioned or dealt with. In *KJ*, where the issue was whether daily living activity 1 was concerned with preparing and cooking in a way that served particular dietary requirements or not, Judge Wright at [47] set out a list of tasks he could "readily see" would be encompassed in the activity as follows: "opening packaging, **lifting and carrying**, washing food, and peeling, chopping and cutting up the (fresh) foodstuffs". However, the list was merely examples mentioned by Judge Wright 'in passing' (as he put it in *MP*). It is apparent from the decision that they were not the subject of any discussion and formed no part of the ratio of the case.
53. The second case is Judge Wright's decision in *KW*. In *KW*, Judge Wright upheld the First-tier Tribunal's decision that daily living activity 1 included 'transferring food'. It might be thought that 'transferring food' meant mobilising while carrying food. However, it appears that this was not in fact what the First-tier Tribunal had in mind in that case. The First-tier Tribunal in *KW* held that the claimant "could cook herself a main meal but that an aid or appliance such as a tray or perching stool would allow her to transfer any hot food and also support her due to her arthritis". As the tray and the perching stool were interchangeable in the First-tier Tribunal's analysis, that suggests that the First-tier Tribunal was thinking of 'transferring' as involving moving the food from one place to another within arm's reach, but not actually 'mobilising' with it. Judge Wright held that the First-tier Tribunal had not erred in law and specifically upheld the First-tier Tribunal's finding that the claimant "would be able to transfer the small amounts of food required to make a one course meal for one person using a tray" (48(d)). At [48(c)], when dealing with what the First-tier Tribunal said about the perching stool, Judge Wright explained that, "A perching stool would be high enough to

allow the claimant to move pans on to and off a waist-high hob”, that “the ‘simple meal’ contemplated by the test ... will not involve moving pans full of hot liquid” and “Food can be served directly from the pans on the hob to the plate, while perching on the stool”. That sub-paragraph thus assumes that cooking does not involve moving. (For completeness, I note that Judge Wright’s reference to ‘serving’ food in *KW* is *obiter*. His reasoned conclusion at [52] of *MP* that daily living activity 1 does not include moving food to where it will be eaten is the more persuasive authority on that point.)

54. The foregoing cases are those that in my judgment provide the greatest assistance to the appellant in this case, although as I have noted, that assistance is, on analysis, fairly limited. Other cases, it seems to me, more clearly favour the respondent’s argument.
55. I begin with *JMcG*. In that case, Commissioner Stockman considered whether a ‘litter picker’ could constitute an aid for the purposes of preparing food as the claimant claimed to use it for getting food out of low cupboards. At [34]-[36], Commissioner Stockman rejected that submission, holding that getting food out of cupboards was merely one of many activities that were preliminary to daily living activity 1, along with shopping, unloading items from bags, storing items, clearing and cleaning work surfaces and ‘putting in place’ “items such as chopping boards, knives, pans and stirring spoons” (see [34]). The assumption here is thus that moving and carrying utensils for use when preparing and cooking food is not included in the test.
56. In this respect, I note that Commissioner Stockman’s approach is in line with the decision of the Commissioner in *R (DLA) 2/95 (R (DLA))*. *R (DLA)* was not specifically drawn to my attention by the parties in this case, but it is cited at [46] of Judge Mitchell’s decision in *AI* on which the parties relied. In *R (DLA)*, having set out that the cooking test “includes all activities auxiliary to the cooking such as reaching for a saucepan, putting water in it and lifting it on and off the cooker”, the Commissioner added “All cooking utensils must of course be placed in a reasonable position”. That suggests that she too envisaged moving and carrying not to be part of daily living activity 1 because she considered it necessary to assume that utensils should already be in reach.
57. Further, in Commissioner Stockman’s list of activities that he considered are included in preparing food at [35], it is notable that he does not mention moving or carrying:

To make food ready for cooking implies to me that only a range of tasks immediately preliminary to the process of heating food at or above waist height can be considered. This might include washing, peeling and chopping fresh vegetables; preparing meat or fish, including cutting it into smaller pieces; opening packets of pasta, rice or noodles; opening tins and packets containing other foodstuffs, including frozen items; pouring or emptying foodstuff items from packets or tins; using common kitchen equipment such as graters, grinders and food processors; putting food into pots or pans, and adding boiled water to pots. I do not intend to be

prescriptive but to give a broad range of examples to which other relevant tasks may be analogous.

58. The point that moving and carrying are not included is also made by omission in *EG*, where Judge Wright accepted in principle that a walking stick, like a perching stool, could be an aid for the purposes of daily living activity 1 because it could assist with standing (see [3]-[6]). There is no suggestion in this decision that the walking stick was necessary in order to *move* for the purposes of daily living activity 1. I note in passing also that it is implicit in that case that standing to wash up is not part of the test: see [4].
59. Further, an important thread in the case law that needs to be borne in mind is that the daily living activities must always be assessed objectively, by reference to a generic, notional or hypothetical version of the activity, and not by reference to any particular individual or cultural preferences, requirements or peculiarities. Thus:
- a. The Supreme Court in *Moyna v SSWP* [2003] UKHL 44, [2003] 1 WLR 1929 (***Moyna***) held at [17] (per Lord Hoffmann, with whom all the other members of the Appellate Committee agreed) that: ‘the cooking test’ “is a notional test, a thought-experiment, to calibrate the severity of the disability”.
 - b. Upper Tribunal Judge Mitchell in *AI* rejected the argument that the nature of the cooked main meal to be considered for the purpose of daily living activity 1 was to be judged by reference to “what is reasonable for a member of the community to which the claimant belongs, eg a vegetarian meal as opposed to one which is not”. At [3] he held: “The nature of the cooked main meal must, in material respects, be the same for all claimants. Otherwise, different claimants would face different disability thresholds. That cannot have been Parliament’s intention.”
 - c. Judge Levenson’s decision in *ZI* is to the same effect as Judge Mitchell’s in *AI*.
 - d. Judge Wright’s decision in *KW* extends that reasoning to cases where a claimant has specific dietary requirements that make cooking in practice more complicated. Judge Wright held at [33]-[49] that specific dietary requirements were not relevant to the test.
 - e. Upper Tribunal Judge Sir Crispin Agnew of Lochhaw held in *RH v DWP* (CSPIP) [2015] UKUT 0281 (AAC), at [3] that assessment of a claimant’s ability to cook did not require consideration of their ability to bend down, even though a ‘conventional cooker’ would normally have an oven below waist height, because the definition of ‘cook’ means “heat food at or above waist height”.
 - f. Upper Tribunal Judge Jacobs in *CW v DWP* [2016] AACR 44 (***CW***) held that a need to sit while dressing was a normal mode of performing daily

living activity 5 and did not therefore indicate a requirement for an ‘aid’. At [31]-[33] he drew the distinction between a claimant who is “only limited in carrying out the activity in a particular manner” and other ‘usual’ or ‘normal’ ways of carrying out the activity. The import of the decision is that, if a claimant can carry out an activity in one of the ‘usual’ or ‘normal’ ways of doing it, they should not score points for needing an aid if they choose to carry out the activity in one particular manner.

60. Having thus reviewed the case law, it seems to me that the answer to the question that arises in this case is actually clear. Although there are stray references in the authorities to mobilising, or mobilising while carrying food, as part of preparing it, there is no case in which mobilising, or mobilising while carrying food, has been determined (as part of the *ratio* of the case) to be part of daily living activity 1, and there are as many cases that suggest, either expressly or by omission, that mobilising and carrying are not part of daily living activity 1. The one case (*KW*) that held that ‘transferring food’ is part of the activity, in fact proceeds on the basis that the ‘transferring’ happens within arm’s reach while essentially stationary. I therefore agree with Ms Elliott’s submission that there is a consistent line of authority, even prior to *MP*, to the effect that mobilising and carrying are not part of daily living activity 1.
61. Further, it seems to me that this line of authority is properly rooted in the terms of the legislation itself, particularly once one takes account of the case law thread, beginning with *Moyna*, that emphasises the generic, notional, hypothetical nature of the test. The definition of “prepare” in the PIP Regulations is “make food ready for cooking or eating”. If one accepts that this is not a real-world test, and focuses on the literal words of the definition, then it follows that only the acts that it is necessary to do to food to make it ready for cooking or eating are included in the activity. The list given by Commissioner Stockman at [35] of *JMcG* and reproduced above at paragraph 57 seems to me to provide a helpful list of examples of such activities where someone has to do something to the food to change its state in some way and thus make it ready for eating. The test does not, however, in my judgment extend to other things that one has in practice to do with food in order to get from the stage of buying it in the shop (or, if we are lucky, growing it in the garden) to eating it. Carrying the food around, at any stage of the process, is not part of the test because it is not actually a step in which something is done to the food in order to make it ready for eating. It is a preparatory or intermediate step.
62. Moreover, the need for moving food around a kitchen while preparing or cooking it will depend to a large extent on the individual characteristics of the kitchen and the preferences of the individual, but it is clear from *Moyna*, *AI*, *EI*, *KW* and *CW* that it is not appropriate to take such individual differences into account when assessing daily living activity 1. In this respect, I do not accept the submission of Ms Gabriel that it is in every kitchen necessary to move between a sink and a worktop and the cooker. It is possible to envisage a set-up where these three workstations are close enough together that taps, sink, worktop and cooker are all within arm’s reach while seated on a perching stool (i.e. the stationary act of ‘transferring food’ considered in the *KW* case). In any event, since the activities

of 'preparing' and 'cooking' are disjunctive, and there is no doubt that *MP* is right that moving food between the 'preparing' and 'cooking' stages is not part of the test, it follows that movement between three workstations should never need to be considered, since 'preparing' should only require the two workstations of sink and worktop, and cooking only the two workstations of sink and cooker.

63. I therefore conclude that mobilising, and mobilising while carrying food, are not part of preparing food for the purposes of daily living activity 1.

c. If *MP* decided the issue, should I follow it?

64. As I have concluded that (a) *MP* did decide the issue and (b) I would have reached the same conclusion in any event, I follow *MP* in holding that mobilising, and mobilising while carrying food, are not part of daily living activity 1.

d. Did the First-tier Tribunal fail to address whether the appellant could safely use a perching stool to prepare and cook a simple main meal within a reasonable time?

65. In my judgment, the First-tier Tribunal did not fail to address this question. The First-tier Tribunal at [8] of the Statement of Reasons specifically directed itself to regulation 4(2A). I should therefore be slow to find that it did not apply that regulation correctly: see *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57]-[58].
66. The First-tier Tribunal then at [23]-[24] (set out above at paragraph 15) describes how it explained to Mr Wood what would be involved in using a perching stool, and asked him "whether he would be able to sit on a perching stool with his right foot on the floor whilst resting his left leg". The First-tier Tribunal records that Mr Wood confirmed in response that "he has no issues with his upper body" and that "he could do that, but his difficulty was moving around the kitchen and carrying things, such as when taking items out of the microwave or carrying plates". In other words, Mr Wood accepted he could use a stool in the way described by the First-tier Tribunal but raised an objection to doing so that is, as I have now held, irrelevant in law.
67. In my judgment, the First-tier Tribunal has therefore properly directed itself in law, made adequate findings of fact and given sufficient reasons for its conclusion that Mr Wood could use a perching stool could use a perching stool safely, to an acceptable standard, repeatedly and within a reasonable time, as required by regulation 4(2A).
68. Ms Gabriel at this hearing did seek to provide further evidence (by way of submissions) about perching stools and their use, but Ms Elliott objected to my taking this into account. In any event, what Ms Gabriel said was not sufficient to persuade me that there was any error of law in the way that the First-tier Tribunal approached this issue. The First-tier Tribunal was entitled to use its expertise in deciding the case, provided it gave Mr Wood a fair opportunity to comment on their understanding of how a perching stool might work for him, which in my judgment they did. Nothing Ms Gabriel said about the nature of a perching stool

and how it might be used persuaded me that the First-tier Tribunal was wrong to think that it could be used by Mr Wood to take the weight off his bad leg for the relatively short period of time that it takes to carry out daily living activity 1.

Disposal

69. It follows that there was no material error of law in the decision of the First-tier Tribunal and the appeal must be dismissed.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 20 July 2026