



Neutral Citation Number: [2026] UKUT 374 (AAC)
Appeal No. UA-2025-000955-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

UKE
(anonymity order in place)

Appellant

-v-

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

Before: Upper Tribunal Judge Church
Decided on consideration of the papers

Representation:

Appellant: Not represented

Respondent: Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Panel: Judge L Salkeld, Medical Member Dr M Wiltshire and
Disability Qualified Professional Member Mrs K Old

Tribunal Case No.: 1738-7607-0111-6119

Tribunal Venue: Cardiff

Decision Date: 16 April 2025

SUMMARY OF DECISION

Personal Independence Payment – daily living activities (42); Activity 7: communicating verbally (42.7); Personal Independence Payment – mobility activities (43); Mobility activity 1: planning and following journeys (43.1)

This appeal considers the proper approach to assessing the scoring of PIP daily living activity 7 in the context of a claimant with selective mutism.

The claimant claimed difficulties with communicating verbally, engaging with other people face to face and planning and following journeys (among other activities).

The First-tier Tribunal found that the claimant could communicate and speak freely with her children, her partner, her siblings, her mother and her employer, but was limited in her ability to communicate with everyone else. It awarded 4 points under daily living descriptor 9c (needs social support to be able to engage with other people) but awarded no points in relation to daily living activity 7 (communicating verbally) on the basis that her difficulties with verbal communication arose from her fear of social engagement, which had been recognised by the award of points under descriptor 9c.

The descriptors in Schedule 1 concern different activities. It is not intended that there be “double counting” by awarding points under multiple activities for the same functional limitation. However, there is no bar to awarding points in respect of difficulties with multiple activities arising from the same health condition.

The Tribunal should have made findings about whether the claimant's difficulties with speaking basic and complex sentences were such that she could not speak to the standard required by Regulation 4(2A) of the PIP Regulations on the majority of days in the required period. If she was found to be sufficiently limited in her ability to do so, the Tribunal should have awarded points accordingly, as long as it was satisfied that the difficulties arose from her health conditions, and were not simply a matter of choice. It did not matter that the difficulties with speaking were rooted in social anxiety.

The Tribunal also failed to make adequate findings to support its decision that the claimant scored no points under mobility activity 1.

The Upper Tribunal allowed the appeal, set the decision aside and remitted the appeal to the First-tier Tribunal for rehearing.

DECISION

As the decision of the First-tier Tribunal involved the making of an error of law, it is **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”) and the case is **REMITTED** to the First-tier Tribunal under section 12(2)(b)(i) for rehearing before a differently constituted panel.

DIRECTIONS FOR THE REHEARING

1. The First-tier Tribunal must (by way of an oral hearing) undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the First-tier Tribunal's discretion under Section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.
2. The First-tier Tribunal hearing the remitted appeal shall not involve the members of the panel who heard the appeal on 16 April 2025.
3. In reconsidering the issues raised by the appeal the First-tier Tribunal must not take account of circumstances which were not obtaining at the date of the original decision of the Secretary of State under appeal. Later evidence is admissible provided it relates to the time of the decision: **R(DLA) 2 & 3/01**.
4. If the claimant has any further evidence to put before the First-tier Tribunal this should be sent to the regional office of Her Majesty's Courts and Tribunals Service within one month of the date on which this decision is issued. Any such further

evidence must relate to the circumstances as they were at the date of the decision of the Secretary of State under appeal (see Direction 3 above).

5. The First-tier Tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes the new panel may reach the same or a different outcome from the previous panel.

REASONS FOR DECISION

What this appeal is about

1. This appeal is mainly about the proper approach to assessing the scoring of PIP daily living activity 7 in the context of selective mutism.

Background

2. By way of brief background, the Appellant (whom I shall call the “**claimant**”) made a claim to a Personal Independence Payment on 28 February 2019. A decision maker for the Secretary of State disallowed that claim on 5 June 2019 but the claimant appealed that decision successfully to the First-tier Tribunal, which awarded her a PIP with both components at the standard rate from 28 February 2019 until 27 February 2024. That award was extended, first on 29 October 2024 (due to the suspension of award reviews during the Covid pandemic) and again on 10 November 2024.
3. The claimant completed an AR1 review form on 7 January 2024 in which she reported having autism spectrum disorder (“**ASD**”), suspected selective mutism, anxiety, anaemia and depression. She claimed difficulties with each of the daily living and mobility activities except for daily living descriptor 8 (which relates to the activity of reading and understanding signs, symbols and words). On 10 November 2024 the Secretary of State notified the claimant that, following a review of her claim, she remained entitled to a PIP with both components at the standard rate until 9 November 2028 but was not entitled to either component at the enhanced rate (the “**SoS Decision**”). Unhappy with this outcome, the claimant requested a mandatory reconsideration. The reconsideration decision maker confirmed the SoS Decision. The claimant, unhappy with the SoS Decision, then appealed to the First-tier Tribunal.

The decision under appeal

4. On 16 April 2025 a three-member panel of the First-tier Tribunal convened at Cardiff to consider the claimant’s appeal against the SoS Decision (the “**Tribunal**”). At the claimant’s request, the appeal was determined at a paper hearing. The Tribunal decided to uphold the SoS Decision and confirm the claimant’s award (the “**FtT Decision**”).
5. The claimant was unhappy with the FtT Decision and applied to the First-tier Tribunal for permission to appeal, but on 18 June 2025 the application was refused by Tribunal Judge McLeese. The claimant renewed her application to the Upper Tribunal.

The grounds of appeal

6. The claimant argued that the Tribunal mischaracterised medical evidence she had adduced from psychiatrists Dr Moseley and Dr Khan, which was supportive of a

diagnosis of selective mutism, and gave it insufficient weight. She criticised the Tribunal's decision to award her no points for daily living activity 7 (communicating verbally). She also said the Tribunal failed to address her evidence about the impact of her ASD and selective mutism on her ability to cope with following journeys. The claimant complained of anxiety, sensory overload and an inability to communicate even on well-known routes and argued she should have received points for mobility activity 1 (planning and following a journey).

7. Much of what the claimant said amounted in substance to a disagreement with the Tribunal's assessment of the evidence and the findings of fact it made based on that evidence. That was insufficient to establish an arguable error of law. However, I granted permission to appeal because I considered the appeal raised an issue on a point of law that warranted the attention of the Upper Tribunal, namely how the requirements of daily living activity 7 (communicating verbally) and mobility activity 1 (planning and following journeys) are to be understood and applied in the context of a claimant with selective mutism.
8. I made Case Management Directions for the parties to make submissions on the appeal and to indicate whether they wanted an oral hearing.

The positions of the parties

9. A submission writer from DMA Leeds on behalf of the Secretary of State, indicated support for the appeal on the basis that the Tribunal had erred in its fact finding and in its duty to give adequate reasons. The Secretary of State encouraged me to set the FtT Decision aside and remit the matter to be reheard by another tribunal.
10. The claimant had no further comment to make.
11. Neither party requested an oral hearing.
12. Given the degree of agreement between the parties, I decided that the interests of justice did not require an oral hearing.

The relevant statutory provisions

13. Eligibility for a Personal Independence Payment is determined in accordance with Part 4 of the Welfare Reform Act 2012 and the Social Security (Personal Independence Payment) Regulations 2013 (the "**PIP Regulations**").
14. Claimants whose ability to carry out daily living and/or mobility activities described in Schedule 1 to the PIP Regulations is limited by their physical or mental condition may score points where the "required period condition" is satisfied.
15. A claimant who scores at least 8 points (but fewer than 12 points) in relation to the daily living activities is considered to have "limited" ability to carry out daily living activities and is entitled to an award of a PIP with the daily living component at the standard rate, while a claimant who scores 12 points or more is considered to have "severely limited" ability to carry out daily living activities and entitled to the enhanced rate. Similarly, a claimant who scores at least 8 points (but fewer than 12 points) in relation to the mobility activities is entitled to an award of a PIP with the mobility component at the standard rate, while a claimant who scores 12 points or more is entitled to the enhanced rate. A claimant may qualify for either or both components.

16. The relevant Schedule 1 activities and accompanying definitions for the purposes of this appeal are:

Daily Living Activities

...

Activity 7. Communicating verbally

- (a) Can express and understand verbal information unaided - 0 points
- (b) Needs to use an aid or appliance to be able to speak or hear - 2 points
- (c) Needs communication support to be able to express or understand complex verbal information - 4 points
- (d) Needs communication support to be able to express or understand basic verbal information - 8 points
- (e) Cannot express or understand verbal information at all even with communication support - 12 points

Relevant Interpretation

"basic verbal information" means information in C's native language conveyed verbally in a simple sentence

"complex verbal information" means information in C's native language conveyed verbally in either more than one sentence or one complicated sentence

"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

...

Activity 9. Engaging with other people face-to-face

- (a) Can engage with other people unaided - 0 points
- (b) Needs prompting to be able to engage with other people - 2 points
- (c) Needs social support to be able to engage with other people - 4 points
- (d) 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 - 8 points

Relevant Interpretation

"unaided" means without

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

“aid or appliance”

(a) means any device which improves, provides or replaces C’s impaired physical or mental function; and

(b) includes a prosthesis

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

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

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

“engage socially” means-

(a) interact with others in a contextually and socially appropriate manner;

(b) understand body language; and

(c) establish relationships

“social support” means support from a person trained or experienced in assisting people to engage in social situations

“psychological distress” means distress related to an enduring mental health condition or an intellectual or cognitive impairment

Mobility Activities

Activity 1. Planning and following a journey

(a) Can plan and follow the route of a journey unaided – 0 points

(b) Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant – 4 points

(c) Cannot plan the route of a journey – 8 points

(d) Cannot plan the route of an unfamiliar journey without another person, assistance dog or orientation aid – 10 points

(e) Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant – 10 points

(f) Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid – 12 points

17. Regulation 4 of the PIP Regulations sets out the standard to be applied in assessing a claimant’s ability to carry out activities:

Assessment of ability to carry out activities

Regulation 4

...

4.(2A) where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying descriptor only if he can do so-

- (a) safely
- (b) to an acceptable standard;
- (c) repeatedly; and
- (d) within a reasonable time period;
- (3) omitted
- (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 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 First-tier Tribunal's Decision

18. Under the heading 'Findings of fact at the date of the decision' the Tribunal found that the claimant had a significant history of childhood trauma and had experienced mental health problems including anxiety and depression since childhood. It found she had been diagnosed with ASD in December 2023 and "selective mutism on a background of a person with ASD" in February 2024. The Tribunal acknowledged that while these diagnoses were recent, the difficulties with social communication on which they were based were longstanding (see paragraph 22 of the Tribunal's written reasons).
19. The Tribunal made a series of findings about the claimant's circumstances at the date of the SoS Decision and how she coped with communicating verbally and engaging with other people face to face:
 - "24. At the date of the decision, the subject of this appeal, the Appellant was working part-time in the Citizen's Advice Bureau providing advice to clients with benefit problems. Employment commenced in 2017. Whilst the Appellant is able to communicate with her employer and clients, her voice can be quiet. She struggles to engage with her colleagues and prefers to do so by way of written communication. When the Appellant made her initial application for PIP, she was providing telephone advice. Subsequently, reasonable adjustments were made to her role, including the provision of a flexible work-from-home arrangement, enabling her to complete admin work and webchat typing in order that she does not have to look at a person or communicate verbally; and enabling her to listen to online meetings, rather than participate by video. Her employer also arranged for the Appellant to attend a voice coach.
 25. Notwithstanding the difference of views as to whether the Appellant would fulfil the criteria for selective mutism, the Appellant has difficulties with social communication.
 26. The Appellant can communicate and speak freely with her children, her partner, her siblings, her mother and her employer as stated in paragraph 24 above. She struggles, however, to communicate with everyone else, including work colleagues. This is due to her difficulties with social engagement (for which

it is accepted she requires social support), and not the activity of communicating. She can communicate within the meaning of activity 7 and can express complex information unaided.

27. Whilst the Appellant may struggle with understanding social cues and norms, which are relevant to activity 9, she has no difficulties understanding complex information.”

20. Later in its written reasons the Tribunal provided its analysis of the claimant’s ability to perform daily living activity 7 and (despite not being referenced in the heading) daily living activity 9:

“Activity 7 – Communicating verbally

45. This activity considers the Appellant’s ability to express or understand basic or complex verbal information. The difference between basic and complex verbal information is the difference between one simple sentence, for example: “Can help you?”, “I would like tea please”, “I came home today”, “The time is 3 o’clock” (basic information), and more than one sentence or just one complicated sentence, for example: “I would like tea please, just a splash of milk and no sugar, as I always have sweeteners with me for when I go out” (complex information). The definition of “complex information” does not set a “high bar of verbal ability” (**SSWP v GJ** [2016] UKUT 8 (AAC)).

46. The Tribunal accept that the Appellant has difficulties communicating with people other than her immediate family and employer, however this is due to her fear of social engagement. She can communicate with her family and her employer. There is a difference between communication and engagement and difficulties with engagement are considered separately under Activity 9.

47. Whilst the Appellant’s communication difficulties appear to have worsened since the date of her initial claim in 2019, in both her request for mandatory reconsideration dated 20 June 2019 and notice of appeal dated 1 August 2019, she attributed her difficulties with communicating to her social anxiety.

48. In her request for mandatory reconsideration, she stated that she is unable to establish relationships even with familiar people as people find being with her “uncomfortable” as she can “sit for hours without making conversation”. She describes an extreme fear of people watching and judging her and described a situation in which she felt she could not ask a familiar person for a laptop charger because of her anxiety, and so her partner had to do so. The fear of being judged by others is also noted by Dr Khan Consultant Psychiatrist when examining her in January 2024 prior to her diagnosis of selective mutism.

49. In her notice of appeal, the Appellant stated that “I find it difficult to communicate, and my voice level is low and often leads to people not understanding my sentence. I struggle to ask questions or maintain a conversation and often leads to one-word answers to avoid the distress. I need social support to be able to engage with other people, I find engaging with people extremely distressing. I avoid social interaction as much as possible due to my struggles.

50. Supportive letters from the Appellant’s partner, sister and the team around the family, as part of her appeal against the original decision, all highlight her difficulties in engaging. Her employer, in its letter dated 22 April 2020, states that the activity of engaging with others causes the Appellant severe distress and for that reason she is permitted to participate in online team

meetings by listening on the phone rather than video. This means that she does not have to speak. They also describe her eating her lunch on her own separately where she does not have to face other people.

51. In her notice of appeal dated 5 February 2025, the Appellant accepts that she can speak normally in some environments but experiences an inability to speak in others. She refers to difficulties making phone calls, attending appointments or engaging in social situations which require verbal communication.

52. In the ASD assessment report, it notes that in her referral it was recorded that “social communication has always been a massive barrier for you”. It is also noted that the Appellant isolates herself at home to avoid social interaction both face to face and over the phone and that she struggles to communicate outside of her immediate family rather than at all. As referred to at paragraph 23 above, it was felt that her communication style was more indicative of autism than selective mutism. The Appellant’s autism passport notes that she can sometimes be overwhelmed by the demands to communicate with others.

53. To summarise, the Tribunal considers that the cause of the Appellant’s difficulties when speaking to persons outside her immediate family and employer is her anxiety around engaging with others, for which she has already received points under activity 9. Whilst she has difficulties with social cues and norms, which are again relevant for the purposes of activity 9, she can understand complex information unaided. The Tribunal agrees with the Respondent that no points should be awarded in respect of this activity.”

Why I allow this appeal

21. When deciding a claimant’s scoring in respect of any activity in Schedule 1 to the PIP Regulations the decision maker’s task is to assess which of the descriptors relating to that activity is most apt to describe their ability to carry out that activity (taking into account all the factors in Regulation 4(2A)). To the extent that a claimant is found to be limited in their ability to carry out an activity, the decision maker must decide whether that limitation arises as a result of any health condition.
22. Daily living activity 7 concerns a claimant’s ability to communicate verbally. It assesses the ability to speak and hear. It demands a transactional assessment of the claimant’s ability to communicate verbally: can they both express and understand complex verbal information, and if not, can they express and understand basic verbal information? Do they require an aid or appliance, or communication support to do so? This activity does not concern the ability to engage socially (which encompasses interacting in a contextually and socially appropriate manner, understanding body language and establishing relationships), which is the territory of daily living activity 9 (engaging with other people face to face).
23. The Tribunal found that “[w]hilst [the claimant] is able to communicate with her employer and clients, her voice can be quiet. She struggles to engage with her colleagues and prefers to do so by way of written communication” (paragraph 24 of the written reasons).

24. Having found that the claimant was limited in her ability to express herself verbally, the Tribunal decided that the claimant was not entitled to any points under daily living activity 7 because it found that her difficulties with expressing herself arose from her fear of social engagement. In doing so the Tribunal erred in law.
25. The Tribunal was right to emphasise that daily living activity 7 is distinct from daily living activity 9, but it fell into error when it decided not to award points in relation to daily living activity 7 on the basis that the claimant's difficulty with speaking to people other than those to whom she is very close was caused by "her anxiety around engaging with others, for which she has already received points under activity 9" (see paragraph 53 of the Tribunal's written reasons). That was the wrong approach: if the claimant's functional limitation in communicating verbally arose from a health condition (whether mental or physical) it was relevant and should have been taken into account in assessing which daily living activity 7 descriptor applied.
26. The descriptors in Schedule 1 concern different activities. It is not intended that there be "double counting" by awarding points under multiple activities for the same functional limitation. However, there is no bar to awarding points in respect of difficulties with multiple activities arising from the same health condition. It is not uncommon for a claimant with a musculoskeletal problem who reasonably requires an aid to prepare food also to require aids for other distinct activities that are covered by the Schedule 1 descriptors, such as washing and bathing, toileting and dressing and undressing.
27. In this case the claimant's combination of mental health and neurological conditions (anxiety, depression, ASD and selective mutism) affected both her ability to speak in some situations and her ability to engage with other people face to face.
28. The Tribunal found that "her voice can be quiet" and she "struggles to engage with her colleagues and prefers to do so by way of written communication", and her employer made reasonable adjustments to her working conditions so she could engage with clients by webchat instead of telephone. That was insufficient. The Tribunal should have made findings about whether these difficulties were such that she could not speak basic and complex sentences to the standard required by Regulation 4(2A) of the PIP Regulations on the majority of days in the required period.
29. If the Tribunal found the claimant to be sufficiently limited in her ability to do so to engage the point scoring descriptors the Tribunal should have awarded points if it was satisfied that the difficulties arose from her health conditions and were not simply a matter of choice. It appears that it did accept that the limitations arose from the claimant's conditions of selective mutism, ASD and anxiety, but its reasons would have been improved by a clear statement to that effect.
30. Turning to mobility activity 1 (planning and following journeys), the Tribunal explained its decision making in relation to the first mobility activity in paragraphs 54-59 of its written reasons. First, it explained what the activity assesses:

"This activity considers a claimant's ability to plan and follow the route of a journey, without another person, assistance dog or orientation aid or without suffering overwhelming psychological distress. When considering psychological distress, distress is defined as that related to an enduring mental

health condition or an intellectual or cognitive impairment. The activity considers the ability to do so in relation to both familiar and unfamiliar routes.”

31. This account of the test to be applied involves no misdirection in law.
32. The Tribunal accepted that the claimant was unable to follow the route of an unfamiliar journey without another person without suffering overwhelming psychological distress and awarded her 10 points under descriptor 11d.
33. However, it decided that no higher scoring descriptor applied, explaining its decision making as follows:
 - “56. In both her mandatory reconsideration request dated 25 November 2024, and her notice of appeal dated 5 February 2025, the Appellant states that she requires someone to accompany her on all journeys because of her communication difficulties. In her AR1 form, she states that she “would find any route difficult to find and often get lost” and that she “wouldn’t be able to ask for support”.
 57. There is no suggestion that she is unable to plan the route of a journey.
 58. In the case of **MH v SSWP** [2020] UKUT 185, the Upper Tribunal held that a person’s inability to engage with others to find their way is not relevant as to whether the claimant can follow a route.
 59. The Tribunal considered that the reason the Appellant requires someone with her on familiar journeys is because of her difficulties engaging with [other people] and not anxiety about following the journey itself. As such it agreed with the Respondent not to award her any further points in respect of this activity”.
34. The case cited is not authority for the proposition stated. However, I think the judge must have had in mind a different case with an appellant who is referred to with the same initials: **MH v SSWP** [2016] UKUT 531 (AAC); [2018] AACR 12). In that case a three-judge panel of the Upper Tribunal considered the relationship between daily living descriptor 9 and mobility activity 1. The Upper Tribunal said it did not follow from the fact that two terms found in the descriptors linked to mobility activity 1 (“prompting” and “overwhelming psychological distress”) appear also in the daily living activity 9 descriptors, that an award of points under one of them would necessarily indicate an award of points under the other (see paragraphs 53-4). The Upper Tribunal rejected a submission to the effect that mobility descriptors 1d and 1f deal only with navigation and contemplated that overwhelming anxiety about encountering others may need to be taken into account when considering a claimant’s ability to follow journeys. However, it agreed with what Judge Jacobs said in **DA v SSWP** [2015] UKUT 344 (AAC) about whether difficulties asking people for directions if lost could attract points. Judge Jacobs found that asking for directions did not form part of the activity of following the route of a journey, because once a claimant is lost, they are no longer following the route. The three-judge panel in **MH v SSWP** concluded (at 54) that “a difficulty with engaging with other people face to face is not material to the consideration of [mobility activity 1 descriptors d and f]. It may be that in practice there are many claimants who would score points under both daily living activity 9 and also under mobility activity 1, but that will not necessarily be so. Everything will turn on the individual circumstances of the case.”

35. I am satisfied that the Tribunal took the approach described in the preceding paragraph, which I agree was the correct approach. However, having accepted that the claimant was unable to follow the route of an unfamiliar journey without another person without suffering overwhelming psychological distress, and having accepted that the claimant is accompanied even on familiar journeys, it was incumbent on the Tribunal to make more detailed findings about the claimant's ability to follow a familiar journey without another person than it did. That was also in error of law.
36. Since I have decided to set the FtT Decision aside and remit it for redetermination, the new panel will make its own findings on these things.
37. Having found that the Tribunal erred in law in a way that was material, I consider that the interests of justice require me to exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the "**2007 Act**") to set the FtT Decision aside.

Disposal

38. Having decided to set aside the FtT Decision under section 12(2)(a) of the 2007 Act I have a discretion whether to remit the matter to the First-tier Tribunal for redetermination, or to remake the decision for myself. Because further facts need to be found, and because the First-tier Tribunal with its expert members is the most appropriate forum for finding such facts, I exercise my discretion to remit the matter to the First-tier Tribunal to redetermine the appeal.
39. To the extent that the FtT Decision involves any other errors of law, those will be subsumed by the rehearing.

Thomas Church
Judge of the Upper Tribunal

Authorised for issue on: 29 September 2026