

THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

DECISION OF THE UPPER TRIBUNAL JUDGE

The appeal against the decision of the First-tier Tribunal given at Kilmarnock on 10 April 2015 is refused. It is dismissed.

REASONS FOR DECISION

1. The claimant has appealed against the decision of the tribunal recorded at page 89. That decision found that the claimant was entitled to the mobility component the standard rate from 1 May 2014 to 30 April 2016 upon the basis that she scored 10 points from satisfying descriptor 2(d). The tribunal found that she was not entitled to the daily living component over the same period. The grounds of appeal are wholly related to the mobility component and are in the following terms:

“In the Statement of Reasons, the judge comments at docs 100 that [the claimant] “can plan and follow routes. She is capable of following directions”, yet provides no evidence for this and does not elaborate on how this decision has been reached.

Moreover, the judge also goes on to note that she “uses a sat nav”. It is my submission that this constitutes an “aid” under the terms of regulation 2(a) of the Personal Independence Payment Regulations 2013 where it is stated that “aid means any device which improves, provides or replaces “C’s impaired physical or mental function”. As [the claimant] has impaired short-term memory (as referred to by the judge in para 8 of the decision) then I submit that the use of a sat nav is an aid which improves [the claimant’s] ability to get around so therefore she should have scored for this activity.

Furthermore, the judge has also noted that [the claimant] “was able to drive most days”. Due to her accepted difficulties with mobilising and the fact that she is unable to walk “no more than 50 metres” I further submit that [the claimant] used her car as an aid to assist her in getting around as she would be unable to follow the route of an unfamiliar journey without her car due to fatigue, pain and the mental distress this would cause. There is no guidance to state that a car cannot be considered as an aid for the purposes of regulation 2 and I submit that the tribunal judge has misdirected herself in not considering this.

Therefore, taking the information above into account, I submit that the tribunal’s decision is erroneous in law.

The Secretary of State does not support the appeal as can be seen from a submission at pages 121 to 126. The claimant responded to that submission at page 128 and then made a further submission following upon a direction by the Upper Tribunal Judge on 7 January 2016. In that response he said:

“Having considered the analysis provided by Judge Ward in UK/313/2015, I respectfully ask the Upper Tribunal to consider the following in relation to this appeal.

In **Document 55** of the papers, the Health Care Professional who assessed [the claimant] commented that during the course of the assessment she was **“unable to remember three objects after a few minutes and unable to spell world**

backwards". This was not commented on by the Tribunal despite being an indicative factor in her difficulties with navigating a route. Indeed, the Tribunal Judge at **Docs 115** writes that "**she is capable of following directions**" and that she "**could look at a map or street plan and plan her route**".

In light of this, I submit that the Tribunal has not properly investigated [the claimant's] ability to navigate a route as discussed by Judge Ward in his decision. From Judge Ward's analysis, I submit, it can be seen that the ability to navigate a route is central to the award of points for Mobility Activity 1. [The claimant] has a cognitive disorder insofar as she has memory problems and is unable to navigate a route without assistance from another person or an aid in the form of a sat-nav. This has not been considered by the Tribunal and, therefore, they have erred in law."

2. It is important when considering the tribunal's decision to have regard to its conclusion in respect of the limitation to carry out the mobility activities by virtue of her physical or mental condition. In respect of Activity 1 the descriptors in issue before it were 1(d) and 1(f) and relate to her ability to follow the route of both a familiar and unfamiliar journey without an orientation aid.

3. The findings in fact in relation to the claimant's disability is set out principally in paragraph 4 where it is found:

"4. The appellant has multiple sclerosis of a progressive nature. She is also likely to be diagnosed with chronic pulmonary obstructive disorder. Her peak flow at assessment was significantly lower than would be expected. Her main problems are stiffness, pain and general fatigue. She has reduced muscle power in her legs, her arms and shoulders are sore after use, she has muscle spasms in her lower back, and her balance is adversely affected by the condition."

It can be seen that these findings are relating to physical disability. However it is apparent that her disability affects her mentally to the extent set out by the tribunal when making its findings in respect of a descriptor 3a where it is noted:

"Although the consultant noted very mild abnormalities with her short term memory and concentration, no incidents of forgetfulness or poor concentration were reported which would suggest that the appellant is unable to remember to take medication at the correct time and at the correct dose. 3a is appropriate."

4. In respect of descriptors 1(d) and 1(f) the tribunal found:

"16. The appellant is concerned about going out on routes which are unfamiliar to her due to tiredness. She can plan and following routes. She is capable of following directions. She is capable of writing down directions and following them. She uses a sat nav but could look at a map or street plan and plan her route. Although she may feel a little anxious she does not require the assistance of another person. At the date of decision the appellant was able to drive most days."

5. In reaching the conclusion it did the tribunal noted the evidence of the consultant neurologist where it is noted that he said:

"More recently when last reviewed in December of 2013 [the claimant] was complaining of fatigue and stiffness. At that time there were some very mild cognitive

abnormalities with her short term memory and concentration. However, she remains independent in her daily activities.”

He then went on to say:

“Over time she may also have increasing problems with her memory and concentration.”

The tribunal also had regard to the Health Care Professional’s report where in respect of planning and following journeys the claimant is recorded as having said:

“She advised she is able to plan and follow a familiar route, but gets anxious when going somewhere unfamiliar, however she depends on her satellite navigation system in her car to go to unfamiliar places.”

6. Whilst as is pointed out in the grounds of appeal the Health Care Professional noticed:

“Unable to remember three objects after a few minutes.
Unable to spell ‘world’ backwards”.

the opinion of the Health Care Professional was that the claimant did not satisfy any of the points scoring descriptors for mobility activity 1 and said in respect of the opinion that the claimant can plan and follow the route of a journey unaided said:

“The claimant did not report significant functional problems with this activity in their questionnaire or at consultation, and there was no evidence to suggest otherwise.

She indicated difficulties, however she advised in her functional history she is able to plan and follow a journey and uses her sat nav when going to an unfamiliar place, and is supported by her social history where she indicated that she drives most days.”

In these circumstances notwithstanding the claimant’s evidence that she uses a satellite navigation system when going to an unfamiliar place the whole circumstances support the tribunal’s conclusion in paragraph 16 of its statement and accordingly I consider that the tribunal have set out a supportable basis for its decision.

7. I am also satisfied that the grounds of appeal are misconceived. Reference is made in them to regulation 2(a) of the Social Security (Personal Independence Payment) Regulations 2013. Regulation 2 interprets the use of the words “aid or appliance” in the regulations as:

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

(b) includes a prosthesis

8. However in this case the mobility descriptors 1(d) and 1 (b) issue refer an “orientation aid” not an “aid or appliance”.

9. I am satisfied that the words “aid or appliance” as interpreted in regulation 2 are not the same as the words “an orientation aid” referred to mobility descriptors 1(d) and 1(f). As is pointed out by the Secretary of State in his submission the words “orientation aid” are

separately defined in schedule 1 part 1 to the Social Security (Personal Independence Payment) Regulations 2013 as follows:

“Orientation aid” means a specialist aid designed to assist disabled people to follow a route safely”

In paragraph 4.10 of the Secretary of State’s submission it is said:

“4.10 What appears to be the case is the navigation system used by the claimant is a generically available satellite navigation system that can be used by anyone driving her car whether or not they have a health condition or impairment. There is no evidence to suggest that any modifications have been made to the satellite navigation system and it is more than likely that the claimant prefers to use the satellite navigation system in her car rather than using say a map to work out the route of an unfamiliar journey”.

The Secretary of State in his submission submits that there is no evidence within the appeal bundle that the tribunal were asked to consider the point that a satellite navigation system was an orientation aid as defined and there is no evidence within the papers that it is so in the sense of a specialist aid used in the manner set out in the regulations.

10. I am satisfied for the reasons set out by the Secretary of State that the satellite navigation system used by the claimant was not an orientation aid as defined in the regulation referred to. In reaching that conclusion I note that the health care professional noted her as saying that she only used the system on unfamiliar routes and thus had the capacity to orientate.

11. The second ground of appeal suggests that a car is an aid for the purposes of regulation 2. As I have already pointed out regulation 2 is simply an interpretation provision and in the context the descriptors in issue it is wrong to suggest that a car in itself is an “orientation aid” as defined in the regulations. A car may enable her to travel distances more than she is capable of doing physically but the use of a car in itself has nothing whatsoever to do with orientation which appears to have been accepted by the claimant’s representative himself in the last paragraph of his response to the Secretary of State’s submission as being essential for the satisfaction of mobility descriptors 1(d) and (f). Accordingly the ground of appeal is misconceived.

12. I am not persuaded by the submission at page 146 in respect of the assertion that the claimant did not properly deal with the evidence before it. The opinion of both the Health Care Professional and the conclusion of the tribunal was made in the context of the record that the claimant was unable to remember three objects after a few minutes and unable to spell “world” backwards. The matter was one for assessment of the evidence by the tribunal and when its statement is read as a whole I can find no error in law in the manner in which it approached that task.

(Signed)
D J MAY QC
Judge of the Upper Tribunal
Date: 18 March 2016

