

**IN THE UPPER TRIBUNAL**

**Case No. CPIP/2346/2016**

**ADMINISTRATIVE APPEALS CHAMBER**

**DECISION**

1. **The claimant's appeal is dismissed.**

### **REASONS FOR DECISION**

#### **Background to the appeal**

2. The claimant is a 56 year old woman who suffers from osteoarthritis and depression. She received a diagnosis of a prolapsed womb some years ago but in 2015 a gynaecologist informed her that this was not so. She stated that she had urgency in having to urinate and sometimes wetted herself before she reached the toilet. She also complained that she had sciatica/nerve damage to her spine, was 75% riddled with arthritis and was in constant pain. On 9 June 2015 the claimant signed the application form ("PIP form") for the Personal Independence Payment ("PIP"). She stated that she had problems with the PIP descriptors of preparing food, managing therapy or monitoring a health condition, washing and bathing, managing her toilet needs, dressing and undressing, engaging with other people face to face, planning and following journeys and moving around.
3. The claimant was assessed by a Health Care Professional ("HCP") nurse on 28 August 2015. Following that assessment a decision maker decided on 10 September 2015 that the claimant did not qualify for an award of PIP. The decision maker awarded the claimant 2 points in respect of the preparing food descriptor, 2 points in respect of the washing and bathing descriptor and 2 points in respect of the dressing and undressing descriptor of the daily living descriptors. The total score being 6 points meant that the claimant did not qualify for the daily living component of PIP which requires a score of between 8 and 11 points. The decision maker did not award any points in relation to the PIP mobility descriptors. The claimant requested a mandatory

review of that decision. On 29 October 2015 the decision was reviewed but not revised. The claimant appealed to the First-tier Tribunal (“FTT”).

4. On 10 March 2016 the FTT confirmed the decision of 10 September 2015 and dismissed the claimant’s appeal.

#### **Appeal to the Upper Tribunal**

5. The claimant appealed against the decision of the FTT with the permission of the Upper Tribunal Judge given on 15 August 2016. Her grounds of appeal are set out in her application for permission to appeal and notice of appeal, signed by her on 29 July 2016. The grounds are set out on three typewritten pages prepared by her representative, Stockton & District Advice and Information Service. Her grounds of appeal are that the FTT erred in law as follows:

- (1) The FTT did not take into account the interaction between the underlying assessment criteria in their assessment of Mobility Activity 2 or did not adequately explain their reasoning.
- (2) The FTT’s findings regarding mental health did not appear to be based on clear findings of facts relating to the appropriate test.
- (3) The FTT used the wrong test to consider social engagement.
- (4) The FTT’s charges of contradiction and dependability of evidence are not substantiated.

6. The Secretary of State does not support this appeal. In submissions, dated 4 October 2016, it is submitted, on the Secretary of State’s behalf, that:

- (1) The claimant met the criteria set by Regulation 4(2A)(d) in relation to mobility activity 2 and the FTT adequately explained their reasoning.

- (2) The FTT made clear findings regarding the claimant's mental health.
  - (3) The FTT found that the claimant could engage with other people and gave adequate findings of fact and sufficient reasons to conclude that she did not score points in relation to the social engagement activity.
  - (4) The FTT found that the claimant's evidence was overall inconsistent and unreliable and gave adequate reasons for this.
7. On 20 October 2016 the claimant's representative submitted Observations on the claimant's behalf, in which it stated it made no further comments other than those set out in the permission to appeal. I will address the claimant's four grounds of appeal in turn.

**Ground 1: Mobility Activity 2: Moving Around**

8. The claimant's representative submitted that the FTT failed to make clear their findings in relation to the criteria set out in Regulation 4(2A)(d) of the Social Security (Personal Independence Payment) Regulations 2013 ("PIP Regs") or failed to give adequate reasons in relation to those criteria.
9. Regulation 4(2A) of the PIP Regs states:
- "Where C's [a claimant] 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."
10. The claimant's representative drew attention to Regulation 4(4) of the PIP Regs which defines "a reasonable time period" for these purposes as meaning:
- "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 claimant’s representative submits that it appears from the FTT’s comments at paragraph 70 of their statement of reasons (“SOR”) for their decision that they accepted that journeys take at least twice as long for the claimant as other people, but that it was not clear whether they concluded that she could walk the distance in exactly twice the length of time or that she must be able to reach 200 metres.

11. The FTT set out in the SOR that they were basing their decision on the claimant’s ability to carry out the mobility activities by considering what she could do safely, to an acceptable standard, repeatedly and within a reasonable time period in accordance with Regulation 4 of the PIP Regs, so they were addressing the correct criteria (see paragraphs 9 and 61 of the SOR). The FTT considered the claimant’s evidence that she was able to walk to her grandson’s school and stated at paragraph 70 of the SOR:

“When she does undertake the walk herself it takes her approximately 10 minutes, again a journey that would take another person five minutes. Even on this evidence, it is clear that the Appellant can walk in excess of 200 metres, such a finding would certainly be consistent with her medical conditions, pain relieving medication and lack of specialist intervention.”

The FTT also noted at paragraph 67 of the SOR that the claimant went to her local shop for essentials and she had stated that the “five minute walk for an average person takes her approximately ten minutes and she would just stop once for a minute”. This evidence was also supported by the claimant’s daughter’s oral evidence to the FTT that walking to school would take her 5 minutes but would take the claimant 10 minutes (see page 136 of the bundle).

12. It appears that the FTT did consider the claimant’s ability to move around according to the criteria in Regulation 4(2A) and 4(4) of the PIP Regs and regarded her walking speed to be twice as long as an average person’s walking speed. It seems to me that from the tenor of the FTT’s wording in the first sentence of paragraph 70 that they did find that when the claimant does a walk

of 10 minutes, that journey would take another person 5 minutes and, thus, it took her twice as long. Even if it were arguable that the FTT did not make their findings of fact to that effect fully clear, I agree with the Secretary of State's submission that the claimant confirmed through her own admissions in evidence that her walking speed was twice as long as an average person's walking speed, and thus, she did not take more than twice as long as the maximum period that a person without a physical or mental condition may take to walk the same distance.

13. It is also contended, on the claimant's behalf, that the FTT made no clear findings as to whether she could manage such a walk repeatedly within the meaning of Regulation 4(4) of the PIP Regs which defines "repeatedly" for these purposes as follows:

“ as often as the activity being assessed is reasonably required to be completed.”

It is submitted that the FTT failed to consider whether the claimant could repeatedly stand and then move more than 200 metres, either aided or unaided.

14. The FTT expressly stated in their SOR that they based their decision on the claimant's ability to carry out the mobility activities by considering what she could do repeatedly and within a reasonable time period in accordance with Regulation 4 of the PIP Regs. The FTT decided that the claimant did not score any points for any of the mobility activities set out in Part 3 of Schedule 1 of the PIP Regs. The FTT found that the claimant could stand and then move more than 200 metres, either aided or unaided and, thus, fell within descriptor 2(a) of the moving around activity and scored no points. The FTT did made findings of fact which supported that conclusion (see, for example, paragraphs 63, 67 and 69 of the SOR). The FTT noted that there was no specialist involvement in terms of orthopaedic, rheumatology, musculoskeletal or neurology as far as the claimant was concerned (see paragraph 65 of the SOR). The FTT had stated earlier in the SOR that no significant restrictions regarding her spine and lower limbs were identified in the HCP's examination other than "slight spinal restrictions and left lower limb flexion" and that she had "moderate pain medication" (see paragraph 21 of the SOR). There was no

medical report before the FTT other than the report by the HCP. Indeed, the only medical papers submitted by the claimant consisted of notification of a hospital appointment on 27 April 2016 for a menstrual disorders clinic.

15. Looking at the FTT's decision as a whole it is apparent that the FTT considered that the claimant did not qualify for any points on the mobility activities on the basis of evidence before them and, thus, that she was capable of standing and then moving more than 200 metres. They considered the degree of pain she complained of in relation to the moderate pain medication she was taking and also in relation to the lack of ongoing medical treatment or intervention regarding her mobility. I agree with the Secretary of State's submission that it followed from the FTT's conclusion on the moving around activity, that they did not accept that she could not meet descriptor 2 (a) repeatedly within the meaning of Regulation 4(4) of the PIP Regs.
16. I hold that the FTT gave adequate reasons for reaching their decision on moving around based on the evidence of the HCP, which they accepted, and their assessment of the claimant's evidence and other evidence.

**Ground 2: The FTT's findings regarding mental health did not appear to be based on clear findings of facts**

17. There was no psychiatric or psychological report before the FTT regarding the claimant's mental health. The only medical evidence before the FTT was the report of the HCP who made no abnormal findings regarding the claimant's mental health and reported that she had no regular mental health support. The HCP regarded the claimant as having a low dose anti depressant medication (see page 91 of the bundle).
18. I hold that the FTT made adequate findings of fact regarding the claimant's mental health. The FTT accepted that the claimant suffered from depression (see Decision Notice at page 139 of the bundle). The FTT noted in their SOR that she "describes her depression as now being under control: it is dealt with by her GP only." They made a finding that she takes a very low dose of anti-depressant medication namely Citalopram 10mg per day (see paragraph 18 of

the SOR). The FTT found it “clear” that the claimant “could on a regular basis undertake the usual activities of any other person”. In particular, they pointed out that the claimant was responsible for the full time care of her six year old grandson who had been placed with her by Social Services since birth and that Social Services had no ongoing involvement either in a monitoring or supporting capacity (see paragraph 71 of the SOR).

19. It is submitted, on the claimant’s behalf, that the FTT failed in its inquisitorial duty in not investigating her mental health further. Having read the notes of the record of proceedings, it is apparent that the FTT questioned the claimant about her depression and panic attacks (see pages 128 to 130). I do not find that the FTT erred in this regard.

**Ground 3: The FTT used the wrong test to consider social engagement.**

20. The claimant’s third ground relates to Activity 9 “Engaging with other people face to face” and the descriptors thereunder.
21. The FTT found that the claimant satisfied descriptor 9(a) in that she could engage with other people unaided and, thus, awarded no points as zero points are scored for coming within descriptor 9(a).
22. It is submitted, on the claimant’s behalf, that the appropriate test that the FTT should have applied is similar to the test for social engagement in Employment and Support Allowance (“ESA”) and relied on the three judge panel decision in *JC v Secretary of State for Work and Pensions (ESA)* [2014] UKUT 352, (also reported as [2015] AACR6) which stated in relation to the social engagement descriptor for ESA that “social engagement involved a degree of reciprocity, give and take, initiation and response”. It is contended that there was no evidence adduced by the FTT that the claimant’s interaction included reciprocity, give and take or initiation in conversation.
23. Further, it is submitted, on the claimant’s behalf, that the appropriate test went beyond this and also encompassed:
  - (i) the milieu in which action takes place,

- (ii) interpretation of body language and
- (iii) the (longer term) ability to establish relations.

It is suggested that the FTT did not determine these factors examining only interaction of a verbal nature in a few limited contexts and did not consider the claimant's ability to make and develop friendships.

24. There is no definition of “engaging with other people face to face” in the PIP Regs. There is, however, a definition of “engage socially” in Part 1 of Schedule 1 for the purposes of Schedule 1 to the PIP Regs which includes Activity 9 in Part 2 of Schedule 1. The definition of “engage socially” is not in the same terms as the test suggested by the claimant's representative in the preceding paragraph. “Engage socially” in paragraph 1 of Part 1 of Schedule 1 is defined as meaning:

- “ (a) interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships”.

25. Although the words “engage socially” do not appear under Activity 9 or its descriptors, the definition in Part 1 of Schedule 1 of the PIP Regs may serve to identify factors that may be involved in measuring a claimant's ability to “engage” effectively within the meaning of the different descriptors under Activity 9 (see *AM v Secretary of State for Work and Pensions (PIP)*[2015] UKUT 215). It appears to me that a FTT has to assess whether the claimant meets any of the criteria set out in the different descriptors under Activity 9 and that they did not have to consider the criteria under the ESA descriptors of coping with social engagement which are differently worded to the PIP ones. The claimant's representative relies on the three judge panel's decision in *JC v Secretary of State for Work and Pensions (ESA)* (*supra*) which was based on the ESA descriptors and did not purport to comment on the PIP descriptors. In any event, there is no evidence that the FTT were making their assessment according to the ESA descriptors. The claimant's representative also suggested that the FTT should have considered the claimant's ability to make and develop friendships. It seems to me that the PIP descriptors under Activity 9



and the definition in paragraph 1 do not require it to be shown that a claimant can establish and develop friendships. It appears to me to be sufficient that a claimant is able to establish relationships of some kind with others in a contextually appropriate and socially appropriate way.

26. I hold that the FTT made adequate findings of fact and gave sufficient reasons for concluding that the claimant could engage with other people unaided within the meaning of descriptor 9(a). The FTT found that the claimant was observed to cope well and behaved normally at the medical assessment with the HCP. They found that she coped very well at the oral hearing although they noted that she became very distressed when talking about biopsy results for a lump in her bladder which were due the following week (see paragraph 50 of the SOR). The FTT commented that that reaction would seem to be entirely reasonable for any individual. The FTT pointed to other evidence which supported their choice of descriptor 9(a), for example, that the claimant could, on occasions, take her grandson to school and described a friend at school, with whom she could talk, and how she met “lots of the parents at the school over the years” (see paragraph 54 of the SOR) and that she explained to the HCP that she enjoyed spending time with her family and had a friend who popped in (see paragraph 49 of the SOR).
  
27. The FTT concluded that, other than the external factors (which related to difficulties, such as police involvement with her son), which would cause difficulties for anybody, the claimant “does not have difficulties mixing with people that could result in an award of points under this activity”. The FTT accepted the HCP’s evidence that she could engage with other people unaided and there was no other expert medical, psychiatric or psychological evidence indicating otherwise. In these circumstances I do not consider that the FTT erred in law in relation to their consideration of Activity 9 and their finding that she scored no points in relation to the relevant descriptor.

**Ground 4: The FTT's charges of contradiction and dependability of evidence are not substantiated**

28. It is submitted, on the claimant's behalf, that if the FTT found the claimant's evidence untrustworthy, they should have substantiated this by way of reasons with more particularity.
29. The FTT reached a clear conclusion in paragraph 71 of the SOR that the claimant's evidence was "overall, inconsistent and unreliable." I hold that they did give adequate reasons for reaching this conclusion. I will refer to some examples of the FTT pointing out inconsistencies and lack of reliability in the subparagraphs below:
- (1) The FTT reached the above conclusion after pointing out the contradiction in the claimant's evidence of her never having a good day and, on the other hand, being able to undertake usual activities. The FTT stated:
- "Essentially on the Appellant's evidence, it is said that she will never have a good day and there is no fluctuation in her condition, but when this was explored further with the Appellant, it is clear that the Appellant can, on a regular basis, undertake the usual activities of any other person, in particular she has the full time care and responsibility of her six year old grandson." (see paragraph 71 of the SOR).
- (2) The FTT pointed out that the claimant claimed that she needed help from another person to take medication and explained that her granddaughter helped her with medication, so she did not forget to take tablets as she was taking too many (see the PIP form at page 36 of the bundle and the HCP report at page 75). However, the HCP identified no cognitive restrictions on the claimant's part and that she was able to recall the frequency with which she took her medication and the dosages. The FTT pointed out that at the oral hearing the claimant "was not able to give a consistent account of who was responsible for

her medication when he [sic] granddaughter was not there (see paragraph 26 of the SOR).

- (3) The FTT recorded what the claimant stated about her difficulties with washing herself. In particular, she maintained that she could only wash her upper half and that she could hardly bend over. The FTT found that “the extent of disability was not borne out by the medical condition or in particular the lack of specialist involvement. It was noted that she was prescribed a standard dose of paracetamol and no anti-inflammatory medication”. The FTT found that, with the use of an aid, she would be able to undertake this activity and considered an award of only 2 points for the washing and bathing descriptor was appropriate (see paragraph 34 of the SOR).
  - (4) The FTT considered the claimant’s evidence in support of her toilet needs and incontinence and made no award in relation to any of the descriptors relating to that. The FTT asked the claimant about incontinence pads. She said that she would buy pads from her local chemist but they were costly and caused her to be sore. The FTT recorded at paragraph 39 of the SOR that “When asked whether she had spoken to her GP about this, she tried to divert the question on the basis that she was not getting any help from him. She went on to say that she was getting more help from hospital but then had to concede that they had not seen fit to prescribe incontinence pads either.”
30. When considering the reliability of the claimant’s evidence the FTT were entitled to take into account the fact that the claimant had not provided any medical reports and that she did not have any aids or adaptations to her home. The FTT stated that there was no specialist involvement in terms of orthopaedic, rheumatology, musculoskeletal or neurology (see paragraph 16 and 65 of the SOR). They accepted the HCP’s evidence that no significant restrictions were identified in the clinical examination of the claimant other than slight spinal restrictions and left lower limb flexion (see paragraph 21 of the SOR) and her only being able to reach both arms to her lower back (see

paragraph 33 of the SOR). They also accepted the HCP's report of the claimant having no cognitive restrictions and no current mental health intervention other than a low dose of anti-depressant (see paragraph 25 of the SOR). The FTT were entitled to prefer the HCP's evidence to that of the claimant for the reasons that they gave in the SOR.

31. I hold that it has not been shown that the FTT erred in law in regard to their assessment of the claimant's credibility. They had the opportunity to see and hear from the claimant in person and have weighed up the evidence before them. The issue of credibility is a matter for the Tribunal as explained in paragraph 52 of the decision in CIS/4022/2007. I hold that the FTT reached a decision that they were entitled to reach on the evidence and have given adequate reasons for it.

(signed on the original)

**A. A. GREEN**

**Judge of the Upper Tribunal**

**Dated 2 December 2016**