

**IN THE UPPER TRIBUNAL**  
**ADMINISTRATIVE APPEALS CHAMBER**

**Case No. CPIP/1769/2016**

**Before:** M R Hemingway: Judge of the Upper Tribunal

**Decision:** The decision of the First-tier Tribunal made at Chester on 22 April 2016 did not involve the making of an error of law and shall stand.

**REASONS FOR DECISION**

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of Upper Tribunal Judge Mitchell, from a decision of the First-tier Tribunal (hereinafter "the tribunal") of 22 April 2016 upholding a decision of the Secretary of State made on 17 November 2015 to the effect that she is not entitled to a personal independence payment ("PIP"). For the reasons explained below, the appeals fails.

2. By way of brief background, the claimant says she suffers from a range of health problems. When examined by a health professional for the purposes of possible entitlement to PIP, on 10 November 2015, it was noted that her primary condition was depression and anxiety with a secondary condition of back pain. She applied for PIP on 10 September 2015 and completed a standard form known as PIP2. In so doing she indicated, amongst other things, that she had previously attempted to "self-harm with medication" and that, in consequence, she would need support and supervision with the taking it. Her prescribed medication included zopiclone and fluoxetine. She also indicated that she is illiterate, and she attributed that to "historical problems" and to her depression which she explained had "restricted my ability to even attempt to learn this skill". She claimed some degree of difficulty with every function enquired about in the form other than managing her toilet needs.

3. The Secretary of State in his decision of 17 November 2015 which was subsequently confirmed on mandatory reconsideration, awarded her 6 points in relation to the activities and descriptors under the daily living component of PIP and no points under mobility. The 6 points awarded were under descriptors linked to the activities of "Preparing food", "Washing and bathing" and "Dressing and undressing". That was not sufficient to qualify the claimant for an award and she appealed to a tribunal.

4. The tribunal held an oral hearing which was attended by the claimant and her representative Ms J Hart of an organisation known as DIAL. Ms Hart had prepared a written submission for the tribunal in which it was contended, amongst other things, that the claimant could not read or understand basic written information because she is illiterate and because she had once been assaulted and "kicked in the head". It was stated that as a result of that assault she has been left with "mental impairment" such that "she is very forgetful and gets confused easily". It was also asserted, in quite trenchant terms, that the health professional who had examined her on 10 November 2015, had been incorrect in thinking that she had stated an ability to read books and magazines using reading glasses. The tribunal was also reminded, in the submission, as to what the claimant had said in form PIP2 about the need for support when taking her medication.

5. The tribunal dismissed the appeal, concluding that the claimant was entitled to the 6 points previously awarded but no more. It made it plain that it had not found her to be a reliable witness and it added:

“Her case was undermined by inconsistencies and contradictions and was against the weight of evidence from the health care professional (HCP), her GP and the albeit brief observations made by the members of the Tribunal.”

6. As part of its explanation for its adverse credibility finding it said this:

“5.1... (ii) E.g. Reading and Understanding Signs, Symbols and Words – it was claimed in the submission and in the ‘Customer Questionnaire’ (‘C.Q.’) that she was illiterate. This had been commented on by the HCP at page 58 and found to be contradicted by what [the claimant] had said at the assessment that she did not have any such difficulties reading and understanding books and magazines when using reading glasses. ...”

7. It then said:

“5.2 We accept the conclusions reached by the HCP as expert and objective who assessed her on 10/11/2015. Her conclusions were supported by appropriate clinical findings and reasons and relevant observations during the assessment. The GP evidence was also consistent with the findings made by the HCP. No restrictions relating to either daily living or mobility were mentioned and she had last been seen by the GP on 07/12/2015. It was also significant and we attached weight to the contemporaneous nature of the HCP report in recording comments made by [the claimant].”

8. Returning to the specific points concerning her ability to read and understand signs, symbols and words it said:

“5.11 Reading and understanding signs, symbols and words: we find for the reasons given at 5.1(ii) that descriptor 8(a) applies. She can read and understand basic and complex written information either unaided or using spectacles or contact lenses. She stated to the HCP that she does not have any difficulties reading and understanding books and magazines when using reading glasses. We were accordingly satisfied that she was able to perform this function safely, repeatedly, to an acceptable standard and within a reasonable time period in the same way as a person without a physical or mental condition.”

9. As to any difficulties with the taking of medication, the tribunal said:

“5.8 Managing therapy or monitoring a health condition: on the evidence of the HCP we find that descriptor 3(a) applies. She can manage medication or therapy or monitor a health condition unaided. ‘Manage medication or therapy’ means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in (her) health. ‘Prompting’ means reminding or encouraging or explaining by another person. At page 45 she related the oral medication and spray which she took and inferred that she ‘might not take it’ unless managed by her daughter. She accepted that the medication she took was beneficial. There were no side effects and her insight was such that she was aware of the effects of not taking it. We reject claims that she would not take it if her daughter did not manage her medication for her given she had no reason not to. We were satisfied that this was a function she was able to do safely, repeatedly, to an acceptable standard, and within a reasonable time period in the same way as a person without a physical or mental condition. Taking the

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medication would involve remembering to do so and she had good memory and actually administering the medication would take only a few minutes on each occasion she needed to do so.”

10. Permission to appeal was sought. The grounds advanced by the claimant’s representative were to the effect that the tribunal had erred in failing to adequately consider the claimant’s ability to read and understand signs and in failing to specifically consider whether she was able to “safely” take medication (see regulation 4(2A) and (4) of the Social Security (Personal Independence Payment) Regulations 2013) in view of any risk of self-harm/suicide.

11. In granting permission Upper Tribunal Judge Mitchell said this:

“ 2. The first ground of appeal challenges the tribunal’s findings concerning [the appellant’s] reading ability. In her notice of appeal to the First-tier Tribunal, [the appellant] argued her literacy problems had not been addressed. Her PIP claim form stated that she was illiterate and a report from her GP said ‘note poor written language skills’. The health care professional (HCP) report stated that [the claimant] stated that she was both illiterate yet able to read and understand books and magazines if she wore reading glasses. [The claimant’s] representative’s written submission to the First-tier Tribunal vigorously disputed that [the claimant] told the HCP she could read.

3. The tribunal accepted what was said in the HCP report about [the claimant] being able to read books and magazines if she wore reading glasses.

4. I am not entirely convinced that illiteracy would justify the award of any PIP points. Descriptors 8(b) to (d) refer to a person who needs various types of help to be able to read or understand written information. If a person is illiterate, how could any help enable them to understand written information? However, we also have descriptor 8(e) which refers to a person who cannot ‘read or understand signs, symbols and words at all’. Does this apply to a person who is unable to read or understand any of those three things? Or would an ability to understand signs and symbols exclude descriptor 8(e)? Furthermore, is illiteracy a health condition at all? PIP is a benefit for persons whose abilities are limited by their physical or mental condition. It may be that illiteracy is simply irrelevant.

5. However, the application of the activity 8 descriptors to a person who is illiterate is a point that justifies granting permission to appeal. I grant permission to appeal so that the Upper Tribunal may consider the application of activity 8 descriptors to a person who is illiterate.

6. More generally, if [the claimant] was right that she did not inform the HCP she could read, this might have called into question the reliability of other parts of the HCP report. In accepting the HCP’s report, the tribunal found it to be consistent with the GP report. It does not mention her GP’s comment that she has poor written language skills. Arguably, it should have taken this into account in deciding whether to accept the contents of the HCP report. I also grant permission to appeal on this ground.

7. I also grant permission to appeal on the ground that, arguably, the tribunal failed to deal with an issue raised by the appeal. That issue was whether [the claimant] could safely manage her medication herself.”

12. Mr R J Whitaker, now acting on behalf of the Secretary of State, has produced a written response to the appeal in which he indicates that it is not supported. He addresses all

of the bases upon which permission has been granted but importantly, as to the illiteracy issue, he submits that since illiteracy of itself is not a health condition and since (he says) no such health condition relevant to it has been claimed, the illiteracy is irrelevant. He cites, in support, the decision of Upper Tribunal Judge Jacobs in *Secretary of State for Work and Pensions v IV (PIP)* [2016] UKUT 420 (AAC). The representative for the claimant has provided a “no comment” reply.

13. I have decided not to hold an oral hearing of the appeal. In so deciding, I have taken into account the content of rules 2 and 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Neither party has sought a hearing nor does it seem to me that such would advance matters given that the relevant arguments have been clearly canvassed in writing.

14. Section 78 of the Welfare Reform Act 2012 provides that a person is entitled to the mobility component of PIP if their ability to carry out daily living activities is limited or severely limited “by the person’s physical or mental condition” (see section 78(1)(a) and (2)(a)). There are equivalent provisions in section 79 concerning the mobility activities.

15. As was explained in *IV*, some people are unable to read because they have a mental condition which limits their ability to read or has prevented them learning to do so. Others cannot read because they have never learned.

16. Given what is said in section 78 of the Welfare Reform Act 2012 and to which I have just referred, it must follow that points can only be awarded to a claimant in respect of illiteracy if that illiteracy is linked to a physical or mental condition limiting that person’s ability to read or which has prevented that person from learning to read.

17. The tribunal, in fact, did not get on to asking itself whether the claimant might be illiterate because of any medical condition. That is because it did not accept that she is illiterate at all given the content of the report prepared by the HP. The HP had written:

“CQ: due to depression and anxiety causes problems with learning and she is illiterate. Functional history: She reports that she does not have any difficulties reading and understanding books and magazines when using reading glasses. Mental state indicates no problems with intellect, memory or cognition therefore it is likely that she should be able to read effectively majority of the time.”

18. There are some grammatical errors in that passage which I have not corrected but the meaning is clear. No doubt “CQ” is an abbreviation for the term “customer questionnaire” which is, in turn, an alternative term for what I have referred to as standard form PIP2. So, what the health professional is stating there is that it is the claimant’s assertion, within that form, that she has problems with literacy due to anxiety and depression. It does not represent an acceptance on the part of the HCP that that is the case. Nor is it a record of the claimant having told the HP that she is illiterate. The HP is clearly stating, however, that the claimant said to her that she is able to read books and magazines when using reading glasses. The tribunal found the claimant not to be a reliable witness and offered a number of reasons for that conclusion. The tribunal explained why it felt able to attach significant weight to the HP’s report at paragraph 5.2 of its statement of reasons which I have reproduced above. It noted, in this context, the “contemporaneous nature of the HP report in recording comments made by [the claimant]”. It is clear from what it said at paragraph 5.11 of its statement of reasons,

again reproduced above, that it believed the HP had correctly recorded an indication from the claimant that she could read books and magazines. It was also the case that the HP had not detected any cognitive difficulties on the part of the claimant.

19. I appreciate that the claimant's attempted refutation of what the HP says she said has been strongly put. However, in my judgment the tribunal's findings as to what had been indicated to the HP at the examination were open to it on the material before it and were adequately explained. It is true that her GP had stated she has "poor written language skills" but that does not seem to go so far as to assert illiteracy. Given its acceptance of what the HP had to say I would conclude, irrespective of the point regarding the relevance or otherwise of illiteracy, that the tribunal did not err in its consideration of the descriptors linked to daily living activity 8 because it reached a sustainable conclusion that the claimant is not, in fact, illiterate.

20. As to the more general point about the relevance of illiteracy, though, I respectfully agree with what was said in *IV*. In that case the Upper Tribunal was concerned with mobility activity 1 but the reasoning which I have set out above is clearly applicable to daily living activity 8. Thus, illiteracy which does not result from a physical or mental condition is not to be taken into account in assessing whether a claimant scores points under the descriptors linked to that activity.

21. In this case, as already noted, the GP had written that the claimant has "poor written language skills" and he had mentioned, when asked to name the disabling conditions, anxiety and depression. Nevertheless, there was nothing in that report or in any other medical material before the tribunal to tie the anxiety or depression to the poor written language skills or to any illiteracy. There was the claimant's own brief assertion about there being such a link in form PIP2 but the tribunal had found her not to be a credible witness for a range of reasons. Although the claimant's representative had asserted a connection between the assault and the inability to read, there was no supportive medical or other evidence in that regard and since the claimant's position had been to the effect that she had never been able to read it would seem difficult to sustain an argument that the assault and the claimed illiteracy could be connected. The claimant herself had not blamed her reading difficulties upon the assault. The tribunal had effectively concluded that the anxiety and depression were not significant conditions its having noted at paragraph 5.2 of its statement of reasons that the GP had not indicated that such problems affected "her daily living significantly beyond the descriptors which were found to apply or her mobility". It had rejected her claim to have been referred to a psychiatrist, noting an absence of any corroborative evidence as to that and a lack of reference to it anywhere other than before it during oral evidence.

22. Had the tribunal concluded that the claimant is illiterate then on its findings and on the material before it it would, in my judgment, have inevitably concluded that such illiteracy had not been shown to be a result of any health condition. The evidence simply did not support such a conclusion. So, even if it had erred in deciding that the claimant is not illiterate, that error could not have been a material one.

23. Given that the tribunal reached a sustainable finding that the claimant is not illiterate, the issue raised in the grant of permission concerning the construction of daily living descriptor 8(e) no longer has relevance because it can no longer impact upon the outcome.

That was the view of Mr Whitaker and I accept it. However, he went on to address the matter. Descriptor 8(e) reads as follows:

“Cannot read or understand signs, symbols or words at all.”

24. It is Mr Whitaker’s view on behalf of the Secretary of State that the second use of the word “or” suggests that a claimant who, for example, has no difficulty with signs and has no difficulty with symbols but is not able to read the written word would score the 8 points allotted to that particular descriptor. I do not have to formally decide the point in a way which is binding, given what I have already decided above, but that does certainly seem to me to be a logical and probably the only sensible way of interpreting the wording of that descriptor.

25. Turning to some of the other points raised in the grant of permission, the tribunal did indicate that it thought the GP’s evidence was consistent with the findings made by the HP (see paragraph 5.2 of its statement of reasons). It is right to say that the GP had indicated the claimant had “poor written language skills” and that the HP had not, though the wording used by the GP does not seem, on the face of it, to go so far as to suggest actual illiteracy. The point the tribunal was seeking to make though was that broadly speaking there was agreement between the HP’s findings and the GP’s evidence and that that was based upon the GP not having indicated that any of the conditions suffered by the claimant impacted upon her ability regarding daily living or mobility. Looked at in that light it was open to it to take the view that there was consistency and to attach weight to the report of the HP and it had sufficiently explained why it was doing so notwithstanding its lack of a specific reference to the indication as to the poor written language skills.

26. The final point relates to the claimant’s ability to safely manage her medication by herself. It is right, as the claimant’s representative points out in her grounds, that the tribunal did not specifically deal with the safety element in the context of a claimed risk that the claimant may seek to harm herself by, for example, deliberately taking too much of her medication. However, the tribunal had, as noted above, made findings regarding the level of the claimant’s mental health difficulties. It did not accept that those difficulties were significant. It did say, at paragraph 5.8 of its statement of reasons that it thought she was able to take her medication “safely” so it had the regulation 4(2A) criteria in mind. Given its view as to the lack of severity of the mental health difficulties it was not obliged to say any more than it did about any risk of an overdose. So it did not err in law.

27. In any event, it does not seem to me that it would have been possible, even if it had accepted that some form of supervision, prompting or assistance from another was needed in order that the claimant could safely manage her medication, for it to have awarded more than a mere 1 point under the relevant activity (daily living activity 3) on the basis that descriptor 3(b)(ii) was met. As Mr Whitaker points out that would not, of itself, enable the claimant to reach the necessary 8 points in order to establish entitlement to the standard rate of the daily living component in any event.

28. In conclusion, therefore, I have decided to dismiss the claimant's appeal because I have concluded that the tribunal did not make an error of law. Accordingly, its decision shall stand.

**(Signed on the original)**

M R Hemingway  
**Judge of the Upper Tribunal**

**Dated:**

**19 January 2017**