IN THE UPPER TRIBUNAL **Case No** CPIP/3872/2016
ADMINISTRATIVE APPEALS CHAMBER

Before UPPER TRIBUNAL JUDGE WARD

Decision: The appeal is allowed. The decision of the First-tier Tribunal sitting at Enfield on 18 August 2016 under reference SC312/16/01194 involved the making of an error on a point of law and is set aside.

Acting under section 12(2)(b) of the Tribunals, Courts and Enforcement Act 2007 I remake the decision in the following terms:

> The appellant's appeal against the DWP's decision of 10 May 2016 is allowed to the following extent. She meets descriptors 1b, 4b, 5b and 6b, achieving 8 points in total. She is entitled to an award at the standard rate of the daily living component of Personal Independence Payment from 10 May 2016 to 9 May 2019 (both dates included). She is not entitled to an award of the mobility component.

REASONS FOR DECISION

1. The representative of the Secretary of State has expressed the view that the decision of the tribunal involved the making of an error on a point of law. The claimant by making the appeal has done the same. That makes it unnecessary to set out the history of the case or to analyse the whole of the evidence or arguments in detail. I need only deal with the reason why I am setting aside the tribunal's decision and why, with the support of the Secretary of State, I am remaking the decision in her favour..

2. The claimant had previously been in receipt of the daily living component of PIP following a decision dated 14 March 2014. The points awarded had included 2 points for activity 5 "Managing toilet needs or incontinence".

3. The evidence on which that had been based had included (p22) that an occupational therapy assessment had been carried out, following which the landlord had fixed "the shower and grab rails in the bathroom". Where those rails were was not specified. However, the history given to the healthcare professional (p51) records "adaptations in bathroom, uses handles to have a shower and toilet independently". The HCP recommended the 2 points for needing to use an aid or appliance to be able to manage toilet needs (see also p 60 and 65). Given what the HCP had been told and that the claimant has back pain and sciatica, that was unsurprising.

4. When a planned review was carried out, a decision maker on 10 May 2016 awarded 6 points, not including 2 for activity 5. The claimant's appeal to the First-tier Tribunal was unsuccessful. The FtT needed to explain why its

decision was different from the previous one (see R(M)1/96) and did so. In so doing it said:

> "The Tribunal were satisfied that the earlier award was erroneous… The award of 2 points under the descriptor relating to the management of toilet needs was mistaken. The appellant has never claimed that she was or is unable to use the toilet without an aid or appliance. The occupational therapy assessment undertaken did not apparently recommend the installation of a raised toilet set or other special arrangements to enable the appellant to use the toilet without assistance."

5. I gave permission to appeal, pointing out that the sort of examples of aids and appliances given as illustrations at Q7a of the PIP claim form (to which the claimant had answered "No") are "things like commodes, raised toilet seats, bottom wipers, bidets, incontinence pads or collective ["collecting" may have been intended] devices such as bottles, buckets or catheters". I suggested that these provided no great encouragement to the reader to consider that grab rails were covered, although they undoubtedly would constitute an aid or appliance, and drew attention to what the claimant had apparently told the HCP at p51, quoted above. On the basis of the latter it could not be said that the claimant had never claimed to use an aid or appliance.

6. The Secretary of State accepts the view taken by the tribunal was in error of law. His representative initially submitted that the case should be remitted for further findings of fact. The reason for this was stated as being that "the Tribunal has found the claimant to be consistent with her need and use of grab rails in the bathroom." I suspect that "inconsistent" must have been intended, for otherwise it is hard to make sense of what is being said.

7. It appeared to me at that point that remitting the case might prove to be unnecessary if the sole issue was whether the claimant did indeed need and use grab rails to help her with the toilet at the material time. She replied in a short letter explaining that it was the landlord who had put the bath grab rails in, but her son had helped her put in rails for the toilet in 2014 because of her arthritis. In the light of this evidence, the Secretary of State's representative was content to accept that the decision should be remade as set out above.

(signed)

C.G.Ward
Judge of the Upper Tribunal
14 September 2017