IN THE UPPER TRIBUNAL **Case No.** CPIP/2589/2017
ADMINISTRATIVE APPEALS CHAMBER

Before: M R Hemingway: Judge of the Upper Tribunal

Decision: As the decision of the First-tier Tribunal (made on 10 March 2017 at Fox Court in London under reference SC242/16/11833) involved the making of an error of law, it is set aside and the case is remitted to the tribunal for rehearing by a differently constituted panel.

This decision is made under section 12 of the Tribunals, Courts and Enforcement Act 2007.

DIRECTIONS:

A. The 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 tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.

B. In particular, the tribunal must investigate and decide the claimant's entitlement to a personal independence payment on his claim that was made on 24 June 2015 and decided on 31 December 2015.

C. The Secretary of State is directed to provide to the First-tier Tribunal within one month of the date these directions are issued, copies of the documents referred to in the awarding letter of 12 May 2015 addressed to the claimant as "the letter from your hospital doctor" and "the letter from your psychiatrist". However, if those letters were contained in the appeal bundle before the First-tier Tribunal, the Secretary of State need only specify the relevant page numbers in that bundle. If the documents are not in the appeal bundle and the Secretary of State no longer has them or is for some other reason unable to produce copies, this must be stated to the First-tier Tribunal along with an explanation. These steps or whichever of them are appropriate must be taken within one month of the date this decision of the Upper Tribunal is issued.

D. The tribunal rehearing the appeal shall have before it a copy of the awarding letter of 12 May 2015 (which definitively confirms the claimant had been awarded the two enhanced rates of personal independence payment from 2 October 2014 to 23 June 2015) and a copy of the health professional's report of 1 May 2015, those documents currently appearing from page 291 to 294 and page 296 to 312 of the Upper Tribunal's bundle.

REASONS FOR DECISION

1. Both the claimant and the Secretary of State have expressed the view that the decision of the tribunal involved the making of an error of law. The Secretary of State has urged me to set aside the tribunal's decision and to remit for a complete rehearing before an entirely

differently constituted panel. The claimant, through his representatives, has not objected to that proposed course of action. The level of agreement that there now is between the parties makes it unnecessary for me to set out the entire history of the case or to analyse the whole of the evidence or the arguments in detail. I need only explain why it is I am setting aside the decision of the First-tier Tribunal ("the tribunal"). But nevertheless I have found it necessary to make some comments and observations as to certain imperfections in the way in which the Secretary of State presented the case to the tribunal; as to the way in which the tribunal, given those imperfections dealt with matters; and, albeit to a much lesser extent, as to the way in which the claimant's representatives presented his case to the tribunal.

2. The claimant had previously applied for and been awarded the enhanced rate of the daily living component and the enhanced rate of the mobility component of personal independence payment ("PIP"). The award ran from 2 October 2014 to 23 June 2015. He was notified of that decision by letter of 12 May 2015 and the decision itself appears to have been based largely, though not exclusively, upon the content of a health professional's report of 1 May 2015 which had been prepared in respect of that application. The award was stated to be time limited because, it was said, the claimant's "right to stay in Great Britain is limited". It appears that any difficulties with respect to immigration status were then sorted out and, on 24 June 2015 (the day after the expiry of the previous award) he made a further claim. But on 31 December 2015 the Secretary of State decided that there was entitlement to the standard rate of the daily living component from 24 June 2015 to 8 November 2018 and no entitlement to the mobility component at all. That then represented a significant reduction in the cash value of the award.

3. The claimant appealed against the decision of 31 December 2015 but the tribunal dismissed his appeal. It explained why in a statement of reasons for decision ("statement of reasons") which it sent to the parties on 6 April 2017. I have set aside the tribunal's decision because, first of all, it did not make any clear findings regarding the claimant's contention that he suffers from epileptic seizures. Nor, inevitably following on from that, did it make any findings as to the nature and frequency of any such seizures and whether any warning of the onset is received. Thus, it did not properly consider the possibility that he might require supervision to perform certain tasks or might be unable to perform certain tasks safely. Secondly, although the tribunal had been told by the claimant's representatives about the fact of the previous award of PIP it did not seem sufficiently confident on the material before it, presumably because of the absence of anything about this being said by the Secretary of State and the then absence of the letter confirming the award (see paragraph 20 of the statement of reasons) to be able to conclude with certainty that that indication was necessarily correct. Against that background it erred in failing to at the very least consider adjourning in order to clarify the terms of the award and direct the production of any documentary medical evidence which had been relied upon when the previous awarding decision had been made. Thirdly, and seemingly as a result of its lack of certainty as to the existence and terms of the previous award which it could have remedied had it seen fit, it erred through failing to explain why it was reaching a decision which differed from the terms of the previous award.

4. I do not need to deal with any other errors of law that the tribunal may have made. Any such errors that there might have been will be subsumed by the rehearing which will now follow. But I would now like to offer my previously promised observations.

5. Firstly, the Secretary of State did not inform the tribunal, in its appeal submission to it (see pages A to E of the appeal bundle) that there had been a previous award, still less a previous award of the two enhanced rates up to the very day before the new PIP claim had been made. Nor was a copy of the health professionals report of 1 May 2015 provided. Nor were copies of other items of medical evidence which were referred to in the letter notifying the claimant of the award of the two enhanced rates provided (the letter of 12 May 2015 referred to "the letter from your hospital doctor" and "the letter from your psychologist"). It is very hard to view these various omissions as not constituting failures to provide "copies of all documents relevant to the case in the decision makers possession" as is required by rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 ("the Rules"). The requirement to provide such documents is mandatory not optional. I have to say that the quality of the appeal submission, given that it lacked any hint of the previous adjudication history, was in this case unacceptable. As indeed was the unexplained failure to provide the above documents. It seems to me that information and material of that sort, when there is an appeal relating to a decision concerning entitlement for a period which follows on from the end date of a previous award, should routinely be provided. Mistakes do occur. But the failure to properly inform tribunals obviously carries some risk of causing or contributing to injustice.

6. Secondly, the tribunal appeared to take the view that since the PIP claim before it was to be characterised as a new claim and not a supersession, any previous adjudication history that there might have been was irrelevant. At least that is how I read its observations at paragraph 20 of the statement of reasons. It said "This was a fresh claim for PIP, not a supersession of any previous decision made by the respondent. The Tribunal was aware that in the past the appellant may have been awarded the enhanced rate, but that decision was not before the Tribunal today. The issue before the Tribunal was whether as of 24 June 2015…the appellant was entitled to either component of PIP at any rate". It is true that the decision under appeal was not a supersession decision. But that did not mean what had gone before was inevitably irrelevant or that it was not worth properly finding out about it. The tribunal was disadvantaged through the Secretary of State's failure to confirm the full position. But the claimant's representatives had stated to it in the grounds of appeal and in a written submission prepared in readiness for the appeal hearing, the level and the length of the award. Even if the tribunal thought the absence of corroboration meant it could not be certain as to what had gone before, all of that clearly raised the possibility that there might be evidence of potential relevance which was not before it but which might be obtainable. The fact the decision under appeal was not a supersession decision did not impact upon that. Further, whilst most if not all published Upper Tribunal decisions concerning the need for tribunals to explain the reason for reaching an outcome different from a previous awarding decision have been concerned with appeals against decisions to supersede, that does not mean at all that this tribunal, on the facts, was relieved from its obligation to offer such an explanation nor that tribunals generally are. As, indeed will be apparent from a reading of the decision of the Upper Tribunal in *SF v SSWP (PIP)* [2016] UKUT 0481 (AAC), and I have in mind in particular paragraph 21, the requirement to provide an explanation, unless such is otherwise obvious, and which stems from the well known decision in R(M) 1/96, applies squarely and even more obviously to situations where a previous award is expiring and a new award (a renewal) is sought.

7. Thirdly, the claimant's representatives have produced, for the purposes of this appeal to the Upper Tribunal, a copy of the awarding letter of 12 May 2015 and a copy of the report of

1 May 2015. I have found the production of those documents to be helpful. But I cannot see, despite the correct assertions as to the date, length and level of the award having been correctly stated to the tribunal, that copies were produced to it. Perhaps the representatives only secured those documents after the tribunal made its decision but the fact they were able to correctly convey the terms of the award might suggest otherwise. If those documents were available at the time then they ought to have been produced to the tribunal. I appreciate the Secretary of State has specific duties concerning the production of documents to which I have referred above but the duty of the parties to an appeal to cooperate with the tribunal in furthering the overriding objective (see rule 2(4)(a) and(b) of the Rules) is surely applicable to this type of situation.

8. I appreciate it now appears that I have, to an extent at least, criticised pretty much everybody who has had anything to do with this appeal. I really do not wish to seem overly critical and I do completely understand that pressure of work inevitably leads to errors and omissions. But had matters been done differently it might not have been necessary for this appeal to be reheard.

9. At the rehearing the tribunal should follow the directions I have given. The rehearing will not be limited to the grounds on which I have set aside the tribunal's decision. The tribunal will consider all aspects of the case, both fact and law, entirely afresh. Further, it will not be limited to the evidence and submissions before the tribunal at the previous hearing. It will decide the case on the basis of all of the evidence before it including any further written or oral evidence it may receive. As to that, it may have further medical evidence before it as a result of direction C above. It will have the health professional's report of 1 May 2015 because that has been provided to the Upper Tribunal by the claimant's representatives. It will wish to bear in mind and comply with its duty to explain why, if it differs from the terms of the previous awarding decision, it is doing so. Such an explanation, though, is not normally required to be lengthy.

10. Finally, the claimant should note that the mere fact that I have set aside the tribunal's decision is not, of itself, an indication that he is ultimately likely to succeed. That remains to be seen.

Signed

M R Hemingway
Judge of the Upper Tribunal

Dated **21 December 2017**