

THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
DECISION OF THE UPPER TRIBUNAL

The appeal against the decision of the First-tier Tribunal given at Greenock on 25 July 2018 is refused. It is dismissed.

REASONS FOR DECISION

1. The claimant appealed against the decision of the tribunal of 25 January 2018 in respect of its decision that he did not qualify for an award of the mobility component from 23 August 2017.
2. The grounds of appeal are within short compass. They are as follows:

“The Tribunal erred in law by failing to apply the *MH v SSWP (PIP)* [2016] UKUT 531 (AAC) in respect of mobility activity 1. At Doc.19 the Tribunal is contradictory: “There is no medical evidence of epilepsy, although the appellant is prescribed lamotragine, an epilepsy medication”. Surely the prescription of an epilepsy medication is strong evidence of epilepsy or a similar condition”.

“The Tribunal has evidence of epilepsy from the appellant but this was also confirmed by the medication prescribed by his GP. If the Tribunal was not prepared to accept the appellant’s evidence it should have adjourned to obtain evidence from the GP, given that his prescription of an anti-convulsant would appear, *prima facie*, to confirm the appellant’s evidence.”

3. The Secretary of State has supported the appeal but on different grounds to those advanced by the claimant. In his submission the Secretary of State said:

“4.2 The claimant previously received the higher rate mobility component and the middle rate mobility components of DLA before this transfer claim to PIP. When disallowing the claimant’s PIP claim at no point do the tribunal consider the previous award of DLA. This is an error of law, as the R(M) 1/96 principle (that a reduction of a previous award of benefit must be explained) also applies to

transfer cases between DLA and PIP, as stated by Judge Ward in YM V SSWP (PIP) UKUT 16 (AAC)".

"4.3 The Secretary of State has lodged an appeal against the judgment of YM V SSWP (PIP) [2018] UKUT 16 (AAC). The issue is also to be considered in an oral hearing of the UT in CPIP/2307/2017 and CPIP/2386/2017 (to be heard on 19 June). As such the Secretary of State is unable, at this stage, to provide any guidance to the First Tier Tribunal hearing the appeal on how to apply YM. However, the Secretary of State acknowledges that YM stands as operative case law for the time being and that the First-tier Tribunal re-hearing the case (if remitted) should have regard to it".

"4.4 The Secretary of State will endeavour to have the DLA evidence filed with the First-tier Tribunal for the benefit of the next hearing, if the Judge is minded to remit as per this submission."

4. Subsequent to this submission the Secretary of State forwarded papers relating to the claimant's claim and award of Disability Living Allowance including the higher rate of the mobility component.

5. I do not consider that there is any merit in the claimant's Grounds of Appeal. The tribunal did find as set out in the Grounds of Appeal that there is no medical evidence of epilepsy although he was prescribed with an epilepsy medication. However, the basis upon which the tribunal refused to award points under mobility component 1(f) was not related to whether or not the claimant had a diagnosis of epilepsy. It was as the tribunal put it:

"27. In our view there was a lack of reliable evidence that the appellant was at real risk of epileptic seizure causing harm when outside".

"28. We were not satisfied, taking into account RJ and others that the appellant could not safely go out unaccompanied. We were not satisfied that he could not follow the route of a familiar journey without another person. Mobility descriptor 1(f) does not apply".

6. In other words the claimant failed to establish a real risk of seizures causing harm when outside. The basis upon which this conclusion was reached can be found in paragraphs 21 – 26 of the tribunal's reasons. It seems to me in these circumstances that the tribunal made a reasonable judgment that that the claimant did not satisfy descriptor 1(f), which was the descriptor which was

put in issue before the tribunal by the claimant's representative. That descriptor is in the following terms:

"For reasons other than psychological distress, cannot follow the route of a familiar journey without another person, assistance dog or an orientation aid."

There are thus no grounds for the Upper Tribunal to interfere.

7. The Secretary of State's submission as to the error in law he says was made by the tribunal is contained in paragraph 4.2 of his submission quoted above. In the case of YM quoted by the Secretary of State Upper Tribunal Judge Ward said in paragraph 21 of his decision:

"21. I am not intending to set down a rule of law beyond that where the conditions on which a previous award of a different benefit was made reasonably capable of being material to whether the conditions for the award of a subsequent benefit are met, where there is an apparently divergent decision on the subsequent benefit, R(M) 1/96 should be applied".

8. The rule in R(M) 1/96 quoted in YM is set out in paragraph 10 of the Upper Tribunal Judge's decision at page 170.

9. In this case the tribunal found in paragraph 3 of its Statement of Reasons for the decision:

"3. The appellant had previously been in receipt of Disability Living Allowance. His award had been at the higher rate of the mobility component and the middle rate of the care component".

10. As the claimant had obtained an award of the higher rate of mobility component of Disability Living Allowance it must have been accepted that he was unable or virtually unable to walk in conformity with the statutory test set out in Section 73(1a) of the Social Security Contributions and Benefits Act 1992. However, it is to be noted that the claimant's representative only contended that descriptor 1(f) applied in respect of the mobility component. There was no argument advanced in relation to activity 2 for the mobility component which is related to moving around.

11. In paragraph 21 of his decision Judge Ward says that for R(M)1/96 to apply to cases relating to the mobility component of Personal Independence Payment the previous award of a different

benefit, namely Disability Living Allowance, must be reasonably capable of being material as to whether the condition for the award of the subsequent benefit namely Personal Independence Payment are met. In this case what is contended for an award of the mobility component of Personal Independence Payment from the basis upon which Disability Living Allowance was awarded is totally different in respect that it relates to the ability to follow the route of a familiar journey without another person not the ability to move around or walk. Thus even if the Upper Tribunal Judge was correct about the application of R(M) 1/96 in respect of a different benefit (upon which I express no opinion) that authority could have no application in this case. The appeal is dismissed.

(Signed)

D J May QC

Judge of the Upper Tribunal

Date: 20 August 2018