



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. CPIP/1653/2019**

On appeal from First-tier Tribunal (Social Entitlement Chamber)

**Between:**

**SE**

Appellant

- v -

**Secretary of State for Work and Pensions**

Respondent

**Before: Upper Tribunal Judge Ward**

Decision on papers: 22 March 2021

**Representation:**

Appellant: Mrs Catherine Morris, support worker

Respondent: Government Legal Service

**DECISION**

By an interim decision dated 5 January 2021 - *SE v SSWP (PIP)* [2021] UKUT 1 (AAC) - the decision of the First-tier Tribunal made on 11 January 2019 under number SC065/18/00189 was set aside. The decision is now remade in the following terms:

The appellant's appeal against the decision dated 28 October 2017 is allowed to the following extent:

The appellant is entitled to the enhanced rate of the daily living component from 17 August 2017 indefinitely. She scores (at least) 14 points.

She is not entitled to any rate of the mobility component on and from 17 August 2017. She scores 0 points.

**REASONS FOR DECISION**

1. The interim decision of 5 January 2021 included directions for the filing of evidence to enable the Upper Tribunal to remake the decision.

2. On 6 February a witness statement was submitted by Mrs Morris on behalf of the appellant. Mrs Morris trained and worked as a special needs teacher before working as a debt advisor and now as a support worker. She provides evidence based on

having regularly supported the appellant for more than four years and it is evident that her professional background clothes her observations with additional authority.

3. On 25 February the respondent submitted a witness statement by Dr Emily Tucker. Dr Tucker has for some 6 years held the post of Medical Policy Advisor for Personal Independence Payment in the Department for Work and Pensions.

4. I am grateful to both Mrs Morris and Dr Tucker for the considerable care and thoroughness with which their respective witness statements have been prepared.

5. The interpretation of Activity 8 (reading and understanding signs, sounds and words) and Activity 10 (Making budgeting decisions) was addressed in the interim decision, to which reference should be made as necessary. In particular, it ruled that a person would qualify for the respective highest-scoring descriptors, which are in the form "Cannot [do X] at all" if they were unable to accomplish what was involved in the next highest-scoring descriptor.

6. Dr Tucker, having conducted a review of all the available evidence, gives her clinical opinion that the difficulties described by Mrs Morris are consistent with the appellant's reported medical conditions and with the psychological assessment which was in evidence. She concludes that the appellant's ability to carry out activities 8 and 10 is likely to be significantly impaired to the extent that she cannot read or understand signs, symbols or words at all and cannot make any budgeting decisions at all.

7. The evidence before the FtT included the PIP2 Questionnaire, the PA4 report of assessment by the Health Care Professional (which, as Dr Tucker notes, did not include performing any simple tests of cognition), the psychological assessment carried out in late 2011 in connection with other matters, a submission containing evidence from Mrs Morris and oral evidence given at the hearing.

8. The Upper Tribunal now has the two witness statements referred to above. The respondent has also helpfully provided the Upper Tribunal with reports of the last three assessments of the appellant for employment and support allowance ("ESA") purposes. These were quite telling. In 2015, for example, the appellant was observed to need prompting at interview, to have very poor concentration on examination and impaired short-term memory. She was unable to complete five rounds of "serial sevens" (designed to test concentration, memory and thinking), was unable to calculate the correct change from £1 when spending 75p, could only follow one stage commands and was unable to spell "world" backwards. She was found to have limited capability for work-related activity ("LCWRA") because of the combination of learning disabilities and vulnerability alongside her anxiety. In 2018 the assessment was curtailed due the appellant's mental health state and she was again found to have LCWRA. In 2019 she was again recorded as unable to do the simple cognitive tests used as part of an examination for ESA. The assessor accepted her learning difficulties and other issues and again found her to have LCWRA. Bearing in mind that ESA (and the equivalent provisions in relation to universal credit) examine a number of activities testing mental, cognitive and intellectual function (and accordingly, simple cognitive tests generally form part of the assessment), it is entirely possible that an assessment carried out for the purposes of

the work capability assessment will yield useful evidence in the context of assessing whether people with learning disabilities can score points under activities 8 and/or 10 for PIP, even though the activities under the two benefits are different. Both claimant representatives and the Secretary of State in the exercise of her responsibilities under rule 24(4) of the FtT rules to proved “all documents relevant to the case in the decision maker’s possession” may need to bear this in mind.

9. I find the following facts:

- a. the appellant’s full-scale IQ is 72. Generalised learning disability is usually accepted to be an IQ of 70 or less. However, the appellant performed particularly poorly in certain sub-tests;
- b. she also has anxiety and depression, to a significant degree;
- c. she is not lacking motivation to read;
- d. she can read only a few basic words, typically short words rather than those which impart meaningful content;
- e. she cannot read dates;
- f. she is unable to read a sign (such as an exit sign) although she may be able to recognise and know what it is from its appearance (green) or location and context (over a door);
- g. she knows the names of letters but either does not know or is unable to use the phonetic sounds and has no word building skills. Thus, she lacks the skills to work out what an unknown word may say and no amount of encouraging or explaining makes any material difference;
- h. she cannot reliably calculate the cost of goods unless there are only two items and they are uncommonly easy to add together, such as £1 and 50p. Her ability to work out how much money she has in her purse is similarly restricted;
- i. she is unable to process more than one bit of information;
- j. when shopping she may find at the checkout that she not have enough money to pay for all the items she has selected. She needs the help of a friendly shop assistant to select items from her basket to put back so she can afford the purchase;
- k. she cannot calculate change and so does not check it;
- l. she is unable to take decisions based on calculating the cost of goods and could not take such a decision even if she had been helped with the calculation and no amount of encouraging or explaining would make any material difference; and

m. there is no reliable evidence to suggest that her lack of ability to read and to do simple calculations is due to lack of education.

10. I accept Dr Tucker's clinical view, which with the findings above is enough to result in the award of 14 points for the daily living component. Mrs Morris questions whether in fact there may have been other activities for which the appellant ought to have scored points but recognises that they are not what this case concerns. Since the points scored by the appellant exceed the 12 point threshold for the enhanced rate and her condition which causes this is unlikely to improve significantly, it is unnecessary and disproportionate for me to say anything about any of the other activities.

11. Dr Tucker observes that given that the appellant's medical conditions are long-standing and unlikely to improve significantly, a longer-term award would in her view be "clinically appropriate". Under Welfare Reform Act 2012, s.88(3) an award is to be for a fixed term except where the person making the award considers that a fixed-term award would be inappropriate. Section 88(3) creates a duty when deciding whether a fixed-term award would be inappropriate to have regard to guidance issued by the Secretary of State. What purports to be the guidance under that section is contained in the "Advice for Decision Makers" beginning at paragraph P2061. Whether that is an appropriate or helpful place for statutory guidance is not a matter on which I have received any submission and so I do not dwell on it. It provides:

"Where following an assessment consultation, it is considered that the claimant has

1. a level of functional ability which is not likely to change in the long-term **or**
  2. high levels of functional impairment which are only likely to increase
- a fixed term award will be inappropriate and an on-going award with a PIP Award Review date after 10 years will be applicable."

Item 1 above was also identified in *RS v SSWP* [2016] UKUT 85 as pointing towards an indefinite award, while the ability of the Secretary of State, even if an indefinite award is made, to revisit it through the process of supersession was noted.

12. Having regard to the Guidance and existing caselaw concerning these matters I conclude in the circumstances of the appellant and the nature of her disability that a fixed term award is, indeed, inappropriate, and so I make an indefinite one.

**C.G.Ward**  
**Judge of the Upper Tribunal**  
**Signed on original 22 March 2021**