

SECRETARY OF STATE FOR WORK AND PENSIONS V DS
[2019] UKUT 238 (AAC)
UPPER TRIBUNAL CASE NO: CPIP/0742/2018

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007:

The decision of the First-tier Tribunal under reference SC068/17/01380, made on 1 December 2017 at Liverpool, did not involve the making of an error on a point of law.

REASONS FOR DECISION

1. The claimant is British and was receiving a personal independence payment consisting of the daily living component and the mobility component when he transferred his habitual residence to Spain on 3 April 2016. The Secretary of State decided that he was not entitled to a payment from that date, because the United Kingdom was no longer the competent State. On appeal, the First-tier Tribunal decided that the claimant remained entitled to the daily living component, but not to the mobility component. I gave the Secretary of State permission to appeal to the Upper Tribunal. Following my decision in *KR v Secretary of State for Work and Pensions* [2019] UKUT 85 (AAC), the Secretary of State has accepted that the First-tier Tribunal's decision was correct. That leaves the issue of the mobility component.
2. The Secretary of State has argued that the claimant cannot retain entitlement to the mobility component because it is a special non-contributory cash benefit for the purposes of Regulation (EC) 883/2004. Those benefits are governed by Article 70 of, and Annex X to, the Regulation.
3. Article 70 provides:

Article 70

General provision

1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.
2. For the purposes of this Chapter, 'special non-contributory cash benefits' means those which:
 - (a) are intended to provide either:
 - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article

SECRETARY OF STATE FOR WORK AND PENSIONS V DS
[2019] UKUT 238 (AAC)
UPPER TRIBUNAL CASE NO: CPIP/0742/2018

3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

- (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

and

- (b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

- (c) are listed in Annex X.

3. Article 7 and the other Chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.

4. The mobility component of personal independence payment satisfies all those requirements, except for Article 70(2)(c). It is not listed in Annex X. On the face of it, that is fatal to the mobility component being a special non-contributory cash benefit. However, the Secretary of State has argued that it is not.

5. This is the Secretary of State's argument. The United Kingdom applied for the mobility component of personal independence payment under the Welfare Reform Act 2012 and the equivalent legislation for Northern Ireland to be included in Annex X. This was approved by the Administrative Commission, which asked the European Commission to include those proposals for amendment of the Regulation. They have been presented to the European Parliament as part of the package of reforms to the Regulation. That package has not yet been approved as some of the proposed reforms are controversial, although the inclusion of the mobility component in Annex X is not. I also note that the mobility component of disability living allowance was accepted as a special non-contributory cash benefit for the purposes of Regulation (EEC) 1408/71: *Bartlett, Ramos and Taylor v Secretary of State for Work and Pensions* (Case C-537/09; EU:C:2011:278).

6. I accept the Secretary of State's arguments for the following reasons. First, there is no material difference between the mobility components of disability

SECRETARY OF STATE FOR WORK AND PENSIONS V DS
[2019] UKUT 238 (AAC)
UPPER TRIBUNAL CASE NO: CPIP/0742/2018

living allowance and personal independence payment. Second, the addition to Annex X is not controversial and has only been delayed on account of being caught up in a wider package of more controversial reforms. Third, all the other requirements of Article 70 are satisfied.

7. Accordingly, I confirm the First-tier Tribunal's decision. Unless this has already been done, the Secretary of State will now restore payment of the daily living component and pay all arrears owing to the claimant.

**Signed on original
on 24 July 2019**

**Edward Jacobs
Upper Tribunal Judge**