

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**PERSONAL INDEPENDENCE PAYMENT**

Application by the above-named claimant for  
leave to appeal to a Social Security Commissioner  
on a question of law from a tribunal's decision  
dated 29 September 2017

**DETERMINATION OF THE SOCIAL SECURITY COMMISSIONER**

1. The decision of the appeal tribunal dated 29 September 2017 is in error of law. The error of law identified will be explained in more detail below. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
2. For further reasons set out below, I am unable to exercise the power conferred on me by Article 15(8)(a) of the Social Security (Northern Ireland) Order 1998 to give the decision which the appeal tribunal should have given. This is because there is detailed evidence relevant to the issues arising in the appeal, including medical evidence, to which I have not had access. An appeal tribunal which has a Medically Qualified Panel Member is best placed to assess medical evidence and address medical issues arising in an appeal. Further, there may be further findings of fact which require to be made and I do not consider it expedient to make such findings, at this stage of the proceedings. Accordingly, I refer the case to a differently constituted appeal tribunal for re-determination.
3. In referring the case to a differently constituted appeal tribunal for re-determination, I direct that the appeal tribunal takes into account the guidance set out below.
4. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of his entitlement to Personal Independence Payment (PIP) remains to be determined by

another appeal tribunal. In accordance with the guidance set out below, the newly constituted appeal tribunal will be undertaking its own determination of the legal and factual issues which arise in the appeal.

## **Background**

5. On 15 March 2017 a decision maker of the Department decided that the appellant was not entitled to PIP from and including 14 October 2016. Following a request to that effect from the appellant's mother and appointee ('the appellant's mother'), and the receipt of additional information, the decision dated 15 March 2017 was reconsidered on 19 May 2017 but was not changed. An appeal against the decision dated 15 March 2017, made by the appellant's mother, was received on 14 June 2017.
6. The appeal tribunal hearing took place on 29 September 2017. The appellant was present, was accompanied by his mother and was represented by Mr Vellem of the Law Centre (Northern Ireland). There was no Departmental Presenting Officer present. The appeal tribunal disallowed the appeal and confirmed the decision dated 15 March 2017. The appeal tribunal did apply descriptors from Part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ('the 2016 Regulations') which the decision maker had not applied. The score for these descriptors was insufficient for an award of entitlement to the daily living component of PIP and the mobility component of PIP at the standard rate – see article 83 of the Welfare Reform (Northern Ireland) Order 2015 and regulation 5 of the 2016 Regulations.
7. On 21 June 2018 an application for leave to appeal to the Social Security Commissioners was received in the Appeals Service (TAS). On 20 August 2018 the application for leave to appeal was refused by the Legally Qualified panel member (LQPM).

## **Proceedings before the Social Security Commissioner**

8. On 3 October 2018 a further application for leave to appeal was received in the office of the Social Security Commissioners. On 17 October 2018 observations on the application for leave to appeal were requested from Decision making Services ('DMS'). In written observations dated 13 November 2018, Mr Williams, for DMS, supported the application for leave to appeal on two of the grounds advanced on behalf of the appellant.
9. Written observations were shared with the appellant on 15 November 2018. On 11 December 2018 correspondence was received from Mr Black of the Law Centre (Northern Ireland) which was shared with Mr Williams on 17 December 2018.
10. On 20 May 2019 I granted leave to appeal. When granting leave to appeal, I gave as a reason that it was arguable that the appeal tribunal

had failed to exercise its inquisitorial role in respect of an issue raised by the appeal. On the same date I determined that an oral hearing of the appeal would not be required.

### **Errors of law**

11. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
12. In *R(I) 2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:

- “(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
- (ii) failing to give reasons or any adequate reasons for findings on material matters;
- (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
- (iv) giving weight to immaterial matters;
- (v) making a material misdirection of law on any material matter;
- (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word ‘material’ (or ‘immaterial’). Errors of law of which it can be said that they would have made no difference to the outcome do not matter.”

### **The submissions of the parties**

13. In the application for leave to appeal, the appellant’s mother set out three grounds of appeal on the appellant’s behalf. The first two of those grounds were as follows:

‘Firstly, the tribunal has erred in law by failing to give adequate reasons for why it was satisfied that the claimant had no issues in preparing food. The claimant

noted that (with difficulty) he could peel and cut a potato. However it is also stated that all cooking and preparation of food is done for him by his parents. The tribunal has not provided any reasons or evidence why it is satisfied that the claimant is capable or safe in using any cooking appliances such as an oven, a hob or even a microwave in order to prepare food. (The appellant) can use a microwave but cannot use an oven or hob. He has been repeatedly shown and supervised in trying to use the oven and hob but his processing and sensory issues including the anxiety around the preparation of hot food means he cannot retain the information required resulting in the situation that he will not cook for himself.

At the tribunal a discussion was had about the use of cooker aids but it is not recorded in the proceedings. The tribunal has erred in law by not recording this. It was suggested by a panel member that a red sticker should be stuck in the cooker to help (the appellant) to remember which dial to use. However, the issue is not about finding the cooker knob, it is about remembering how to use the controls. He has great difficulty remembering how to use technical equipment, it might seem straightforward logic but it is very challenging to him. I consider the tribunal to have erred in law by making illogical and rational assumptions based on the hypothetical use of stickers. He does not feel safe using an oven or a hob in any kitchen. It is the claimant's assertion that he would not be capable of doing this and that this would have entitled the claimant to an additional 2–4 points under the descriptors and so an award of the daily living component of PIP.

Secondly, the tribunal has erred in law by failing to give adequate reasons for why it was satisfied that the claimant is able to make simple budgeting decisions rather than complex ones. The tribunal does not set out sufficient reasoning why they believe this to be the case or evidence to back this up. This would entitle the claimant to a further 2 points under the descriptors for the daily living component.'

14. In his written observations on the application, Mr Williams made the following submissions in response:

***'Issue 1***

***The tribunal has provided no reasons as to why (the appellant) would be capable of preparing food. (The appellant) can use a microwave but cannot use an oven or a hob. The tribunal erred by not recording a***

***discussion at the appeal hearing regarding using cooker aids. (The appellant) should have been awarded another 2-4 points thus entitling him to an award of the daily living component of Personal Independence Payment.***

In his PIP questionnaire, which was completed on his behalf by his mother and appointee, ... (he appellant) stated:

*“If I had to cook (but Mum) does all the cooking I would need help or supervision. I can’t do more than one thing at a time and also I still have difficulties understanding the time. I find it hard to retain verbal instructions. I could can physically cook but without supervision it would be burnt or undercooked or not cooked at all.”*

In her report dated 21/02/17 the Disability Assessor recorded:

*“CQ reports he needs supervision to cook due to poor understanding and difficulty retaining information. The functional history (FH) indicates he can make himself a sandwich and a hot drink. He is over cautious and has good safety awareness. He says he has trouble processing various steps so would find it difficult to complete a full meal. His Mum tends to prepare all evening meals and always has done IOs demonstrate good cognition, attention, concentration and focus. He interacted well and did not require additional support. SOH indicates he has attained national curriculum examinations, attends a third level college course with minimal support and travels to/ from college on his own using two modes of public transport. It is therefore likely he can repeatedly and safely cook and prepare a simple meal unaided in a timely manner for the majority of days.”*

In the mandatory reconsideration request dated 2/05/17, (the appellant’s mother) stated that:

*“I disagree that (the appellant) can prepare and cook a simple meal unaided. (The appellant) has difficulties processing and*

*understanding 'the time'. Due to his delayed processing ability he finds it difficult to retain verbal instructions. He needs supervision and prompting in the kitchen when preparing and cooking food. He still needs shown how to turn the cooker on and continually reminded about how to set temperatures. He still gets confused about counting out minutes and still needs support and assurance to make sure he is correct. If he was unaided in the kitchen, the food would either be burnt, undercooked or not cooked at all because of his difficulties with the concept of time. He finds it difficult to concentrate on instructions if he is distracted by noise and needs prompted, a step at a time, to follow through to the end of an activity. If he has to process too many instructions he becomes stressed. Without a lot of reassurance and repetition he cannot cope cooking a simple meal in the kitchen."*

(The appellant's mother) supplied additional evidence in support of the mandatory reconsideration request. I have noted that (the appellant) was referred for a needs assessment and support on 7<sup>th</sup> September 2016. The undated letter from the Centre for Inclusive Learning in respect of this assessment indicates that (the appellant) has some processing delays and recommends that instructions are broken down in step-by step segments.

In the appeal application (the appellant's mother) indicated that (the appellant's) condition affects him on a daily basis and that he requires support and prompting with preparing food. (The appellant's mother) stated that if (the appellant) did not have continual support then he would have difficulties with his mental health and anxiety. An undated questionnaire completed by (the appellant's) college is also included within the evidence and I have noted the following comments from this:

*"... he required clear instructions (alongside written when able) to ensure clear understanding of tasks. Reluctant to ask for help.....E... struggled with the processing of information.....Only concern was E...’s difficulty following/ understanding instructions- without clarification....E... has information processing difficulties, therefore required reasonable adjustments applied to*

*course content & expectations, i.e. content, language & instructions broken down into simplified form, and reinforced in both verbal & additional written form.”*

(The appellant’s mother) has raised several issues in respect of this activity and the tribunal’s reasoning, including indicating that there is no record of a discussion that took place in respect of cooking aids. As I was not present at the hearing I would not be in a position to comment on this.

(The appellant’s mother) has also indicated that the tribunal has not provided reasons as to why (the appellant) would be capable of preparing food.

I have noted the following extract from the tribunal’s record of proceedings:

*“Meal:*

*What do you mind by a simple meal?*

*No I don’t do that my parents have to do that for me. I can peel and chop a potato. I have to be slow in doing it for fear of cutting myself. I have a fear of sharp objects. I engaged at school and did PE at school but I would be on the other side of the pitch when the others would be at the far side. Physical is not the real problem anxiety is the real problem. Once I got shown how to do it in real life I can be OK.*

*I might have some difficulty understanding when I am on my own. I am taught I can take a long time to learn a new thing. I tried to follow what people have done and said. Sometimes it takes too long.*

*I still have to be taught which button to use for different things and how to turn things on and off.*

*If there is too many instructions it may be too difficult to process the information.”*

The tribunal concluded that 1.a. was the appropriate descriptor, i.e. “Can prepare and cook a simple meal

unaided.” I have noted the following extracts from the tribunal’s statement of reasons:

*“We were satisfied that he does have a problem in that he is placed on the Autism Spectrum Disorder and this is supported by the various educational statement means, the various educational needs. It was also supported by the evidence of the college itself. However although we accept some difficulties we could not find any way of increasing the score above 4 points.....His ability is slightly more than the average person and this is reflected in the points score as awarded.....*

*.....On 25 February 2017 Dr Smith had noted that appellant had a Processing Disorder but was not in receipt of any medication or aids to assist him in dealing with that. Progress appeared to have been acceptable in view of the Clinicians. A careful examination of the General Practitioners notes and records could not reveal any information of substance or even, intimation that would suggest that the Appellants condition was so profound that he was in need of additional treatment from a clinician or aids and appliances by way of support.....*

*.....In regard to the remaining categories in dispute we were satisfied that the appellant did not need help and assistance..... preparing food.....There were no physical restrictions for any of these activities noted by the appellant himself and his mother on their own evidence.....*

*.....Specifically in regard to food we note that he can help his mother in the kitchen and she tends to keep an eye on what he does. He does not have to cook himself and therefore this task is not always performed by him. When left on his own he can accommodate a small meal to look after himself. He goes to College and is able to feed himself while at College. He is capable of preparing food.”*



In respect of Activity 1, Preparing Food, it is useful to consider the following interpretations provided in Schedule 1 Part 1 of The Personal Independence Payment Regulations (Northern Ireland) 2016;

*“aided” means with—*

*(a) the use of an aid or appliance; or*

*(b) supervision, prompting or assistance;*

*“assistance” means physical intervention by another person and does not include speech;*

*“cook” means heat food at or above waist height;*

*“prepare”, in the context of food, means make food ready for cooking or eating;*

*“prompting” means reminding, encouraging or explaining by another person;*

*“simple meal” means a cooked one-course meal for one using fresh ingredients;*

*“supervision” means the continuous presence of another person for the purpose of ensuring C’s safety;*

*“unaided” means without—*

*(a) the use of an aid or appliance; or*

*(b) supervision, prompting or assistance.”*

In addition, Regulation 4(3) and (5) of The Personal Independence Payment Regulations (Northern Ireland) 2016 provides;

*“(3) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—*

*(a) safely;*

*(b) to an acceptable standard;*

*(c) repeatedly; and*

*(d) within a reasonable time period.*

*(5) In this regulation—*

*“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity;*

*“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and*

*“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.”*

Having read through the record of proceedings and statement of reasons I do have some concerns as to whether the tribunal has fulfilled its inquisitorial duty or adequately explained its rationale in respect of its descriptor choice for Activity 1. The appellant specifically referred to being able to peel and chop a potato but being slow to do so due to a fear that he has of sharp objects. I would consider that the tribunal had a duty to further investigate this with a view to how this fear affected him, the time that it takes him to carry out this activity and whether any supervision is required. In addition, in its reasoning the tribunal has referred to (the appellant) being able to accommodate a small meal to look after himself. I can find no record of this in the papers other than the Disability Assessor referring to (the appellant) making himself a sandwich and a hot drink. This is consistent with (the appellant’s mother’s) application for leave to appeal which states that all cooking and food preparation is done by his parents and when (the appellant) is on his own he would just have a sandwich. A sandwich would fall short of the definition of a simple meal above as prescribed in The Personal Independence Payment Regulations (Northern Ireland) 2016.

(The appellant’s mother) has also indicated in her application that (the appellant) can use a microwave, but not an oven or a hob which would attract the awarding of at least 2 points under descriptor 1.c., although it may possibly attract a higher score as was considered by

Judge Mesher in GB decision, *AI v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 0322 (AAC) who stated:

*“It also in my view follows from the logical progression through the descriptors that in considering the cooking parts of descriptors 1(d) to (f) ability to use a microwave to cook a meal prepared from fresh ingredients must be taken into account.”*

The record of proceedings does not indicate that the tribunal investigated (the appellant's) ability to use a conventional cooker as opposed to a microwave and the statement of reasons to me does not demonstrate that this was considered by the tribunal.

I would consider that the tribunal erred in its duty to adequately investigate what type of food (the appellant) eats when left alone; how he prepares this and what problems he experienced in respect of completing tasks in the kitchen due to his documented problems following instructions and with timings. In addition, in its reasoning the tribunal itself has referred to (the appellant's) mother keeping an eye on him when he is helping her in the kitchen which would suggest that he receives supervision.

It is apparent from the available evidence that due to his condition (the appellant) has problems following instructions and he has indicated that he is not capable of preparing his own food. The tribunal clearly considered that (the appellant) is able to prepare and cook a simple meal unaided. It is quite possible that this is the correct conclusion and the tribunal is within its rights to reach this decision. However, as (the appellant) has consistently referred to problems with this activity I would consider that the tribunal had a duty to demonstrate that it adequately considered (the appellant's) problems following instructions; difficulty with timings referred to in his mandatory reconsideration request; the impact of his fear of sharp objects; the time taken in food preparation; whether any food he prepared would be to an acceptable standard in light of his reference to burning/ undercooking items; his ability to use a microwave/ cooker unaided and what, if any, assistance and supervision may be required to enable (the appellant) to prepare food safely, to an acceptable standard, repeatedly and within a reasonable time period. I would contend that there is merit in this issue raised by (the appellant's mother).

## **Issue 2**

***The tribunal erred in law by failing to give adequate reasons why it was satisfied that (the appellant) is able to make simple budgeting decisions and does not support its decision with evidence.***

In respect of Activity 10, Making Budgeting decisions, (the appellant's mother) stated in the questionnaire that she completed on 20/11/16 on behalf of (the appellant):

*“(The appellant) has always had difficulty understanding maths concepts since he was a child. He still has great difficulties with multiplication and division. He can add and subtract but needs things checked (calculators are helpful). When spending money he always checks with us (his parents). He always has to ask questions about budgeting decisions (travel, food etc.) His Mum/ me always check/ keeps track of his money situation to make sure he has enough. I usually give him what he needs or check if he has enough or he'll ask me in a shop if he has enough.”*

In the report completed on 21/02/17, the Disability Assessor indicated that (the appellant) can make complex decisions unaided stating:

*“CQ reports he needs help to handle money due to poor understanding and reduced confidence. FH indicates he understands the concept and value of money and can handle cash. He has a bank account and cash card, he can check his bank statement in the post. IOs show he interacted without significant support, displayed good cognition, insight and memory. This is consistent with his SoH which shows he can use public transport independently, attends college for a 3<sup>rd</sup> level course with minimal support and has attained multiple national curriculum examinations. It is therefore likely he can repeatedly manage budgeting decisions unaided, in a timely manner and to an acceptable standard for the majority of days.”*

In the request for a mandatory reconsideration (the appellant's mother) stated:

*“(The appellant) has always had difficulty with maths concepts. He still has great difficulties with multiplication and division. He could not manage complex budgeting decisions as he would not have the mathematical skills needed for this. I keep track of his bank account for him and explain statements to him. He will ask me if he has enough money in a shop or get me to check before he buys something that is the right price. Someone needs to be with him to purchase travel tickets, to give him confidence. E... can become anxious over the simplest money task.”*

Additional evidence from 2010 and 2011 indicates that (the appellant) had difficulties with mathematics, being in the bottom 2% of his peer group at that time. The appellant's Education Plan from 2014 indicated that mathematics was an area of concern. In addition, the questionnaire completed by (the appellant's) college also indicates that The appellant experienced numeracy difficulties.

I have noted the following extract from the tribunal's record of proceedings:

*“I have got a bank account. Mum set that up for me. I get money out on a regular basis from the bank account. I was really nervous when I first started to use it. I can manage it now. I find it hard to understand things generally. I take time to learn out to use the buttons in the right way. I am aware of the cost.*

*(The appellant's mother):*

*I go through things with him to how him how to do it. He relies on me to show him a lot of things. Some things he can't manage. Some things he can.....*

*.....I have 2 GCSEs in Level 2 in English and Maths. I had to get to Level 2 so that the school would let me in.....*

*.....And now I'm in my 2<sup>nd</sup> year and I know what bus and train to take in the journey to*

*get there and how much money to pay for the journey. I take the right money with me.”*

The tribunal concluded that 10.b. was the appropriate descriptor, (Needs prompting or assistance to be able to make complex budgeting decisions) and awarded 2 points in respect of this activity. In the statement of reasons the tribunal has recorded:

*“.... We were satisfied that he does have a problem in that he is placed on the Autism Spectrum Disorder and this is supported by the various educational statement means, the various educational needs. It was also supported by the evidence of the college itself. However although we accept some difficulties we could not find any way of increasing the score above 4 points.....His ability is slightly more than the average person and this is reflected in the points score as awarded.....*

*He can use his own bank account and an ATM. He has to be shown how to do new things with the development of his character and resilience we have no doubt that he can accommodate these things much more regularly. However at the relevant date he did have to be shown these things initially and again this was reflected in the award of 2 points under making budgeting decisions.”*

Schedule 1 Part 1 of The Personal Independence Payment Regulations (Northern Ireland) 2016 provides the following interpretations:

*“complex budgeting decisions” means decisions involving—*

*(a) calculating household and personal budgets;*

*(b) managing and paying bills; and*

*(c) planning future purchases;*

*“simple budgeting decisions” means decisions involving—*

*(a) calculating the cost of goods; and*

*(b) calculating change required after a purchase;”*

In paragraph 31 of Upper Tribunal decision CPIP/3015/2015 Judge West accepted that a simple budgeting decision is:

*“ ... Not a demanding act and requires only the ability to do a single sum or a series of single sums, an understanding of the concept of money and a basic grasp of addition or subtraction...”*

It would appear to me that (the appellant’s mother) may have raised a valid issue. Reading the statement of reasons the tribunal appears to have accepted that (the appellant) required help at the time of the decision with things such as paying for journeys. Taking into account the above interpretations then I would consider that, if the tribunal has accepted that (the appellant) had a limited ability to pay for a journey, then this would fall under the definition of a “simple budgeting decision”. However I have also noted that the tribunal has referred to (the appellant) using a bank account and has alluded to (the appellant) needing to be shown things initially and then being able to “accommodate them”. This would seem to suggest that once (the appellant) has been shown something he can then carry out this activity unaided.

Having examined the tribunal’s statement of reasons I would consider that the tribunal has failed in its inquisitorial duty in respect of investigating this issue further. In addition, I would contend that the tribunal has erred by failing to adequately explain its rationale in respect of what prompting or assistance (the appellant) requires and the type of budgeting decisions he needs this help with. I would support (the appellant’s mother’s) contention that the tribunal has failed to adequately demonstrate that 10.b. is the appropriate descriptor and has therefore erred in law.’

## **Analysis**

15. Activity 1 in Part 2 of Schedule 1 to the personal Independence Payment Regulations (Northern Ireland) 2016, (‘the 2016 Regulations’) is headed ‘Preparing food’. There are six descriptors within the activity as follows:
  - a. Can prepare and cook a simple meal unaided

- b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal
  - c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave
  - d. Needs prompting to be able to either prepare or cook a simple meal
  - e. Needs supervision or assistance to either prepare or cook a simple meal
  - f. Cannot prepare and cook food
16. 'Simple meal' is defined in the Part 1 of Schedule 1 to the 2016 Regulations as 'a cooked one-course meal for one using fresh ingredients'.
17. In the instant case, the potential application of the activity 1 descriptors was an issue which was raised by the appeal. Further, and as was noted above, the appeal tribunal determined that descriptor a. was applicable.
18. Despite the degree of rigour that has been applied by the appeal tribunal to the analysis of the evidence which was before it, I agree that the appeal tribunal was under a duty to explore the evidence basis for the potential application of the activity 1 descriptors in greater depth.
19. The evidence relating to the preparation of food which was available before the appeal tribunal hearing consists of:
- (i) A short statement on page 11 of the 'PIP 2' questionnaire, completed by the appellant's mother on 20 November 2016. A copy of the 'PIP 2' questionnaire was attached to the appeal tribunal submission as Tab No 4. In summary, it was asserted that the appellant's mother does the cooking for the appellant, that he would need help or supervision to cook, that he could not do more than one thing at a time, that he had difficulty understanding the time, that he found it hard to retain verbal instructions and that while he could 'physically' cook without supervision the food would be burnt, undercooked or not cooked at all.
  - (ii) A statement on page 3 of the PIP 'Consultation report form – PA4 V3.' This is a report of what is now known as a 'face to face consultation' with a healthcare professional. In the instant case, the 'face to face' consultation took place on 21 February 2017 and a copy of the relevant report was attached to the original appeal submission as Tab No. 6. The short statement from the healthcare professional on 'preparing food' was that 'He says that he can make himself a sandwich and a hot drink. He is over cautious and has good safety awareness. He says he has trouble processing various



steps so would find it difficult to complete a full meal. His Mum tends to prepare all evening meals and always has done.'

- (iii) The appellant's oral evidence to the appeal tribunal. As recorded in the record of proceedings for the appeal tribunal hearing, that evidence was as follows:

'Meal:

What do you mind by a simple meal?

No I don't do that my parents have to do that for me. I can peel and chop a potato. I have to be slow in doing it for fear of cutting myself. I have a fear of sharp objects. I engaged at school and did PE at school but I would be on the other side of the pitch when the others would be at the far side. Physical is not the real problem anxiety is the real problem. Once I got shown how to do it in real life I can be OK.

I might have some difficulty understanding when I am on my own. I am taught I can take a long time to learn a new thing. I tried to follow what people have done and said. Sometimes it takes too long.

I still have to be taught which button to use for different things and how to turn things on and off.

If there is too many instructions it may be too difficult to process the information.'

20. From all of the evidence which was before it, in connection with the preparation of food, the appeal tribunal provided the following reasons for its decision that the appropriate descriptor was 1a:

'In regard to the remaining categories in dispute we were satisfied that the appellant did not need help and assistance ... preparing food ... There were no physical restrictions for any of these activities noted by the appellant himself and his mother on their own evidence ...

... Specifically in regard to food we note that he can help his mother in the kitchen and she tends to keep an eye on what he does. He does not have to cook himself and therefore this task is not always performed by him. When left on his own he can accommodate a small meal to look after himself. He goes to College and is able to feed himself while at College. He is capable of preparing food.'

21. With respect to the appeal tribunal I do not understand where the evidence that the appellant ‘... can help his mother in the kitchen’ and that ‘when left on his own he can accommodate a small meal’ has come from.’ The appellant’s own evidence, as contained in the ‘PIP 2’ questionnaire was that while he could attend to the physical aspects of cooking the resultant food would be inedible due to being burnt, undercooked or not cooked at all. His evidence to the healthcare profession was that he could make a sandwich and a hot drink. His evidence to the appeal tribunal, as recorded in the statement of reasons for its decision, was that he could peel and chop a potato. In my view, it could not, on its own, be extrapolated from that evidence that, for the purposes of the legislative provisions, the appellant was able to prepare and cook a simple meal meaning a cooked one-course meal for one using fresh ingredients. Further, there is no reason offered as to why the appeal tribunal did not accept the appellant’s own, and somewhat consistent evidence, that his efforts at the preparation of food fell somewhat short of what would be required to prepare a cooked one-course meal for one using fresh ingredients.
22. It may be the case that there was more said and discussed about the preparation of food than what is contained in the record of proceedings. It is axiomatic that there is no obligation for the record of proceedings to be a verbatim record of all that was said and all that occurred at the oral hearing of the appeal - see the decisions in *C48/99-00(DLA)* and *R(DLA) 3/08*. I have noted that in the application for leave to appeal, it is asserted that during the course of the appeal tribunal hearing there was a discussion about the use of ‘cooker aids’ and that this discussion was not recorded in the record of proceedings.
23. If there was further discussion about the preparation of food – whether the appellant helped his mother or whether aids for cooking were mooted – and if the appeal tribunal did rely on any such evidence in a manner which was adverse to the appellant, then there was an obligation on the appeal tribunal to make reference to that evidence and its analysis in the statement of reasons for its decision. That is because an appeal tribunal must provide a statement of reasons for its decision which, when read as a whole, provides a detailed explanation of the basis on which the appeal tribunal arrived at its conclusions on the issues before it. As it stands, the reasoning of the appeal tribunal failed to explain to the appellant why it considered descriptor 1a was the appropriate descriptor and certain of the other activity 1 descriptors were not apposite.
24. There is great deal to be commended about the appeal tribunal’s decision and I am setting it aside with a degree of reluctance. The error which I have identified is, however, one which is material.
25. I add, as an afterthought, that, as was noted by Mr Williams, the parallel activity 1 in Part 1 of Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 in Great Britain was

considered by Upper Tribunal Judge Mesher in *AI v Secretary of State for Work and Pensions (PIP)* ([2016] UKUT 0322 (AAC)). The extensive analysis of the descriptors within activity 1 should be noted by decision-making authorities including appeal tribunals.

### **Disposal**

26. The decision of the appeal tribunal dated 29 September 2017 is in error of law. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
27. I direct that the parties to the proceedings and the newly constituted appeal tribunal take into account the following:
  - (i) the decision under appeal is a decision of the Department dated 15 March 2017 in which a decision maker of the Department decided that the appellant was not entitled to PIP from and including 14 October 2016;
  - (ii) the Department is directed to provide details of any subsequent claims to PIP and the outcome of any such claims to the appeal tribunal to which the appeal is being referred. The appeal tribunal is directed to take any evidence of subsequent claims to PIP into account in line with the principles set out in *C20/04-05(DLA)*;
  - (iii) it will be for both parties to the proceedings to make submissions, and adduce evidence in support of those submissions, on all of the issues relevant to the appeal; and
  - (iv) it will be for the appeal tribunal to consider the submissions made by the parties to the proceedings on these issues, and any evidence adduced in support of them, and then to make its determination, in light of all that is before it.

(signed): K Mullan

Chief Commissioner

7 October 2019