

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Appeal to a Social Security Commissioner by the Department
on a question of law from a Tribunal's decision
dated 2 March 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is the Department's appeal from the decision of an appeal tribunal sitting at Strabane with reference ST/4642/17/02/D.
2. For the reasons I give below, I must disallow the appeal.

REASONS

Background

3. The respondent had previously been awarded Disability Living Allowance (DLA) by the Department for Communities (the Department) from 8 April 2014 to 13 June 2017, at the high rate of the mobility component and the middle rate of the care component. As his DLA award was due to terminate under the Welfare Reform (NI) Order 2015, the Department invited him to claim Personal Independence Payment (PIP). He duly claimed PIP on the basis of needs arising from a heart attack, severe depression, anxiety, arthritis in his right knee, shins and ankle, a broken heel and sleeplessness. He was awarded PIP by the Department at the standard rate of the daily living component from 14 June 2017 to 3 May 2020. He sought a reconsideration and the Department additionally awarded the standard rate of the mobility component from 14 June 2017 to 3 May 2020 following a reconsideration. The respondent appealed.
4. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal allowed the appeal, awarding the enhanced rate of

the daily living component and the enhanced rate of the mobility component from 14 June 2017 to 13 June 2022. The Department then requested a statement of reasons for the tribunal's decision and this was issued on 18 May 2018. The Department applied to the LQM for leave to appeal from the decision of the appeal tribunal. Leave to appeal was granted by a determination issued on 7 September 2018. The ground on which leave to appeal was granted was whether the tribunal had erred in its interpretation of the decision of the Upper Tribunal in *KP v Secretary of State for Work and Pensions* [2017] UKUT 0030(AAC), in awarding the respondent points for descriptor 8(e) rather than 8(a). On 13 September 2018 the Department submitted its appeal to the Social Security Commissioner.

Grounds

5. The Department, represented by Mr Williams of Decision Making Services (DMS), submitted that the tribunal has erred in law on the basis that it had wrongly awarded points for the activity of "Reading and understanding signs, symbols and words" on the basis of illiteracy due to the respondent's failure to attend school, and had insufficient evidence before it to link illiteracy to his mental health condition.
6. The respondent was invited to make observations on the Department's grounds. Ms French of Citizens Advice, who had represented him at the tribunal hearing, responded on behalf of the respondent. She indicated that the respondent did not support the appeal. Ms French subsequently indicated that she was unable to continue to represent the respondent.
7. The appeal, which had been received in the Office of the Social Security Commissioner on 13 September 2018, was first passed to a Commissioner in April 2020. It is evident that some unnecessary delay has occurred in progressing this case and I wish to convey my regret to the parties for that situation.

The tribunal's decision

8. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had sight of a submission from the Department, containing the PIP2 questionnaire completed by the respondent, a general practitioner (GP) factual report from the previous DLA claim, various medical evidence submitted by the respondent, a PA4 V3 consultation report from the HCP and two supplementary advice notes. It had an AT16 completed by the respondent's GP, his medical records and a record of tribunal proceedings on 4 December 2017. The respondent attended the hearing and gave oral evidence, accompanied by his wife and represented by Ms French of Citizens Advice. The Department was not represented.

9. It is plain that the tribunal found the respondent to be highly credible in his account of his functional disability. It accepted that his physical mobility was limited by osteoarthritis to the extent that he merited an award of 12 points for mobility activity 2(e). The tribunal accepted the evidence that his daily living was affected by five main conditions, namely depression, osteoarthritis, ischaemic heart disease, alcohol misuse and illiteracy. Whereas the decision maker had previously awarded 8 points for activity 1 (Preparing food), 4 (Washing and bathing), 5 (Managing toilet needs) and 6 (Dressing and undressing), it found that activity 2 (Managing a health condition) and 8 (Reading and understanding signs and symbols) merited consideration. It awarded 2 points for activity 2, and 8 points for activity 8. The tribunal found that the respondent's illiteracy was inextricably bound up by his mental health condition, addressing and distinguishing the decision of Upper Tribunal Judge Jacobs in *Secretary of State for Work and Pensions v IV* and observing the decision of Upper Tribunal Judge Hemingway in *KP v Secretary of State for Work and Pensions*.
10. Accordingly, the tribunal awarded PIP at the enhanced mobility and enhanced daily living component rates.

Relevant legislation

11. PIP was established by article 82 of the Welfare Reform (NI) Order 2015 (the Order). It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily activities or mobility activities is limited, or severely limited, by their physical or mental condition. The disputed issue in the present case involves a daily living activity. The relevant provision is article 83 of the Order which provides:

83.—(1) A person is entitled to the daily living component at the standard rate if—

(a) the person's ability to carry out daily living activities is limited by the person's physical or mental condition; and

(b) the person meets the required period condition.

(2) A person is entitled to the daily living component at the enhanced rate if—

(a) the person's ability to carry out daily living activities is severely limited by the person's physical or mental condition; and

(b) the person meets the required period condition.

(3) In this Article, in relation to the daily living component—

(a) “the standard rate” means such weekly rate as may be prescribed;

(b) “the enhanced rate” means such weekly rate as may be prescribed.

(4) In this Part “daily living activities” means such activities as may be prescribed for the purposes of this Article.

(5) See Articles 85 and 86 for provision about determining—

(a) whether the requirements of paragraph (1)(a) or (2)(a) are met;

(b) whether a person meets “the required period condition” for the purposes of paragraph (1)(b) or (2)(b).

(6) This Article is subject to the provisions of this Part, or regulations under it, relating to entitlement to the daily living component (see in particular Articles 87 (terminal illness) and 88 (persons of pensionable age)).

12. The Personal Independence Payment Regulations (NI) 2016 (the 2016 Regulations) prescribe the detailed requirements for satisfying the above conditions. These provide for points to be awarded when a descriptor set out in Schedule 1, Part 2 (daily living activities table) or Schedule 1, Part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points will be awarded the enhanced rate of that component.

13. The activity in dispute in the present case is activity 8 in Schedule 1, Part 2. This provides:

8. Reading and understanding signs, symbols and words.

a. Can [read](#) and understand [basic](#) and [complex](#) written

information either unaided or using spectacles or contact lenses.	0
b. Needs to use an aid or appliance , other than spectacles or contact lenses, to be able to read or understand either basic or complex written information.	2
c. Needs prompting to be able to read or understand complex written information .	2
d. Needs prompting to be able to read or understand basic written information .	4
e. Cannot read or understand signs, symbols or words at all.	8

Submissions

14. The Department, initially represented by Mr Williams, advanced the following ground of appeal:

The Tribunal erred by awarding [the respondent] 8 points under Activity 8(e). I would contend that it should have considered awarding nil points and selected 8(a) as [the respondent's] ability to read is not limited by his physical or mental condition.

15. Mr Williams submitted as a preliminary matter that the tribunal appeared to have had access to additional medical evidence on the day of the hearing that was not available in the papers. This, I believe, is a reference to the tribunal having temporary access to the respondent's medical records at the hearing. While they are not available to be studied in the tribunal file, I am satisfied that the tribunal has taken a comprehensive note of the specific evidence in the medical records that it had regard to, and that it has clearly indicated the evidence that was relied upon. The Department did not send a presenting officer to the hearing, although aware of the time and place of hearing, and is not in a position to object to evidence being considered in its absence.
16. Mr Williams pointed out that, at the appeal hearing, the tribunal questioned the respondent about his ability to read. He stated that he "*cannot spell, count or read*". In addition he stated that he has to have

someone with him when he is driving and that his wife reads all the road signs and reads the signs when he is in the shop.

17. Mr Williams referred to evidence noted by the tribunal which was to the effect that:

- the respondent's depression, according to the GP notes and records, dates back to 2008.
- the respondent's anxiety and depression was described as a "*severe adjustment reaction*" to his time in prison.
- In his questionnaire in respect of reading the respondent had stated "*I would have problems with reading and writing and would need help from my wife to understand letters and appointments. I get frustrated that I can't do things like this for myself, in turn making me more depressed.*"
- The GP's records and notes state that the respondent is almost completely illiterate.
- The Disability Assessor's report noted that the respondent had stated that he had never learnt to read as he didn't attend school.
- The GP entry of 30 June 2017 makes clear the respondent's wife was to assist him to medicate for safety reasons "*because he cannot read*".
- The GP letter of 1 August 2017 states the respondent is "*unable to read and write*" and is described as "*under-confident man*".

18. Mr Williams submitted that the tribunal found that the respondent's case was distinguishable from the decision of Upper Tribunal Judge Hemingway in *KP v SSWP* [2017] UKUT 0030 (AAC), where the evidence was characterised by inconsistencies and contradictions.

19. He observed that the tribunal was satisfied that the evidence proved that the respondent's illiteracy was clearly "linked to his mental health condition which limits his ability to read or which has prevented that person from learning to read", thus taking him within the provisions of Articles 83 and 85 of the 2015 Order, and within the provisions of Regulations 3-7 of the 2016 Regulations.

20. He submitted that the tribunal found that it could not accept the HCP conclusion at Tab 6:15 that it "*...is likely he can read and understand*

basic and complex written information unaided, repeatedly, and to an acceptable standard for the majority of days.”

21. The Tribunal did not consider this to be a proper or just interpretation of the rules of entitlement to Descriptor 8 of Schedule 1: Part 2 to the 2016 Regulations.
22. Mr Williams observed that the Tribunal had quoted from *SWSP v IV* (2016) UKUT0420 (AAC)) in its reasoning, where Upper Tribunal Judge Jacobs had said:

“12.”Read” is defined by paragraph 1 of Schedule 1 as including “read signs, symbols & words”. This list is not disjunctive, but conjunctive, so it is necessary to satisfy all three in order to be able to read.

...

22. My conclusion is that the evidence did not support any finding that the claimant had a mental condition that affected his ability to read or learn to read. There is no medical evidence to support such a finding. The only reference to any condition is from the claimant, who mentioned dyslexia but admitted that it has not been diagnosed.

23. The tribunal was wrong to take the claimant’s reading difficulties into account for the mobility component. They were irrelevant to the mobility component, just as they were to the daily living component. The statutory conditions for both components require that the claimant’s ability be limited by his (physical or) mental condition. He had no relevant condition. I accept the Secretary of State’s argument that the tribunal’s reasoning is contradictory on this. The evidence did not allow it to rely on illiteracy in respect of Activity 1d.”

23. He observed that the tribunal had also quoted from *KP v SSWP*, referred to above:

“15. As was explained in IV, some people are unable to read because they have a mental condition which limits their ability to read or has prevented them learning to do so. Others cannot read because they have never learned.

16. Given what is said in section 78 of the Welfare Reform Act 2012 and to which I have just referred, it must follow that points can only be awarded to a claimant in respect of illiteracy if that illiteracy is linked to a physical or mental condition limiting that person’s ability to read or which has prevented that person from learning to read.”

...

“20. As to the more general point about the relevance of illiteracy, though, I respectfully agree with what was said in IV. In that case the Upper Tribunal was concerned with mobility activity 1 but the reasoning which I have set out above is clearly applicable to daily living activity 8. Thus, illiteracy which does not result from a physical or mental condition is not to be taken into account in assessing whether a claimant scores points under the descriptors linked to that activity.

21. In this case, as already noted, the GP had written that the claimant has “poor written language skills” and he had mentioned, when asked to name the disabling conditions, anxiety and depression. Nevertheless, there was nothing in that report or in any other medical material before the tribunal to tie the anxiety or depression to the poor written language skills or to any illiteracy. There was the claimant’s own brief assertion about there being such a link in form PIP2 but the tribunal had found her not to be a credible witness for a range of reasons. Although the claimant’s representative had asserted a connection between the assault and the inability to read, there was no supportive medical or other evidence in that regard and since the claimant’s position had been to the effect that she had never been able to read it would seem difficult to sustain an argument that the assault and the claimed illiteracy could be connected. The claimant herself had not blamed her reading difficulties upon the assault. The tribunal had effectively concluded that the anxiety and depression were not significant conditions its having noted at paragraph 5.2 of its statement of reasons that the GP had not indicated that such problems affected “her daily living significantly beyond the descriptors which were found to apply or her mobility”. It had rejected her claim to have been referred to a psychiatrist, noting an absence of any corroborative evidence as to that and a lack of reference to it anywhere other than before it during oral evidence.

22. Had the tribunal concluded that the claimant is illiterate then on its findings and on the material before it it would, in my judgment, have inevitably concluded that such illiteracy had not been shown to be a result of any health condition. The evidence simply did not support such a conclusion. So, even if it had erred in deciding

that the claimant is not illiterate, that error could not have been a material one.

23. Given that the tribunal reached a sustainable finding that the claimant is not illiterate, the issue raised in the grant of permission concerning the construction of daily living descriptor 8(e) no longer has relevance because it can no longer impact upon the outcome.“

24. Mr Williams submitted that the tribunal clearly considered the respondent to be a very credible witness, as far as establishing his illiteracy was concerned. He observed that it further found that the respondent presented with particularly fact-specific evidence, well corroborated by the suite of clinical evidence before the Tribunal, that his illiteracy was an inextricably linked dynamic of this incurable, chronic, severe depression and post-traumatic adjustment reaction, which has been a factor of his life for a number of years predating 11 May 2017.”
25. He noted that it further found that the respondent’s ability to carry out day-to-day activities such as reading was limited by his illiteracy, which in turn, was bound up with a dynamic of his chronic depression and post-traumatic adjustment reaction” and observed that “the medical evidence is of his docility, his lack of volition, and his incurable, severe, chronic depression with post-traumatic adjustment disorder, of which the illiteracy was considered by the Tribunal to be an inherent dynamic factor.”
26. Mr Williams submitted that the tribunal was clearly of the opinion that the respondent’s illiteracy and mental health problems were inter-linked, thus entitling him to 8 points in respect of Daily Living, on the basis that 8(e) applies.
27. He accepted that there was a link between the respondent’s illiteracy and his mental health problems, but submitted that his mental health problems were exacerbated by, rather than the cause of, his illiteracy. He submitted that the earliest date of the respondent having any diagnosis of mental health problems was 2007, and that the GP notes indicated that the respondent was diagnosed in 2008 with recurrent depressive disorder. He submitted that this indicated that the respondent was illiterate and in his mid-40s when he began to suffer from mental health problems. Consequently, the mental health problems could not be considered to be the cause of his illiteracy.
28. He relied particularly on Article 83(1)(a) of The Welfare Reform (Northern Ireland) 2015 which provides;

83 (1) A person is entitled to the daily living component at the standard rate if-

(a) The person's ability to carry out daily living activities is limited by the person's physical or mental condition;

29. He submitted that the respondent should only be entitled to the awarding of any points in respect of Activity 8, as laid down in Part 2, Schedule 1 to The Personal Independence Payment Regulations (Northern Ireland) 2016, due to his illiteracy if this illiteracy was caused by his mental health problems, not by his failure to learn due to his non-attendance at school.
30. The Tribunal appears to me to have concluded that 8(e) applies as [the respondent]' limited ability to read is linked to his mental health problems, and in its decision has placed emphasis on the words "linked to" in Paragraph 16 of KP as quoted above. He contended that "this paragraph of *KP* still concurs with the legislation and Judge Jacobs' decision in *IV*, and that for [the respondent] to be entitled to 8(e) then his health condition must be the cause of his inability to read". By finding that the respondent was unable to read and understand written information, as this inability stems from his failure to attend school, rather than any physical or mental health condition that he suffers from, Mr Williams submitted that the tribunal had erred in law in deciding that 8(e) was the appropriate descriptor.
31. As indicated above, the respondent was represented at the tribunal hearing by Citizens Advice. However, his representative indicated that she was unable to continue to represent him before the Commissioner and made no relevant submissions on his behalf.

Hearing

32. I directed an oral hearing of the appeal. Due to Covid-19 restrictions, the appeal was held by way of a Sightlink online hearing. The respondent indicated that he did not intend to participate and that he was content for the hearing to proceed in his absence. The Department was represented by Ms Patterson of DMS. I am grateful to Ms Patterson for her assistance.
33. I asked whether it was common case that the applicant was in fact illiterate. Ms Patterson submitted that the tribunal had not done enough to establish this. In particular, while she acknowledged that the respondent and his doctor had both given evidence about his illiteracy, she submitted that his ability to drive suggested that he had passed a driving test, and that this might be incompatible with illiteracy. She submitted that the respondent was required to be able to read road signs to be able to drive and that the tribunal had failed in its inquisitorial duty to investigate this. When asked if the Department had raised this issue in its submission to the tribunal, or through a representative at the tribunal hearing, she acknowledged that it had not.

34. Ms Patterson otherwise continued to rely upon the submissions of Mr Williams. She referred me to the PIP assessment guide published online by the Department for Work and Pensions (DWP) in Great Britain. At the section dealing with activity 8 this indicated:

“This activity considers the claimant’s ability to read and understand written or printed information in the person’s native language. To be considered able to read, claimants must be able to see the information – accessing information via Braille is not considered as reading for this activity.

If the claimant cannot read, this must be as a direct result of their health condition or impairment e.g. visual impairment, cognitive impairment, learning disability. Illiteracy or lack of familiarity with written English are not health conditions and should not be considered, except where they arise as a consequence of a sensory or cognitive impairment”.

35. While acknowledging that this had no binding authority, but was an interpretation of the legislation by the DWP, she submitted that the guidance demonstrated that the term “is limited by” in Article 83(1)(a) was effectively intended to mean that illiteracy had to be caused by a physical or mental condition, and that having a poor educational history was insufficient.

Assessment

36. Leave to appeal was granted with particular reference to the interpretation placed on Activity 8 in *KP v SSWP*. The issue arising is whether the tribunal was entitled, as a matter of fact and law, to find that the respondent’s ability to read and understand signs, symbols and words was limited by his physical or mental condition. Article 83(1)(a) of the Order provides that a person is entitled to the daily living component at the standard rate only if the person’s ability to carry out daily living activities is limited by the person’s physical or mental condition.
37. The particular descriptor that is in issue is 8(e), which applies where the claimant “cannot read signs, symbols or words at all”. In *KP v SSWP* the Secretary of State submitted that this descriptor was satisfied where a claimant could read symbols, but is not able to read the written word. Ms Patterson adopted the same approach. It also appears to me that the expression “cannot read or understand signs, symbols or words” in the descriptor is disjunctive. Therefore it is enough to establish that a claimant cannot read or understand words in order to award points for 8(e), whether or not he can read or understand signs or symbols.

38. The tribunal found that the respondent was illiterate, and that due to his illiteracy he satisfied descriptor 8(e). The tribunal's finding of fact regarding the respondent's illiteracy is not disputed directly with evidence. At hearing before me, however, Ms Patterson submitted that the respondent's ability to drive – or more specifically his ability to pass a driving test - should have led the tribunal to investigate his claims of illiteracy more deeply. However, she accepted that the Department had not raised this in any submission to the tribunal.
39. Ms Patterson accepted that the respondent had most likely sat his driving test before the introduction of the written test element. However, she submitted that he would have had to have acquired some knowledge of the Highway Code, to read a vehicle number plate and understand the meaning of various signs. I do not accept that ability to memorise the small subset of constant words that appear on road signs, such as “stop”, “slow”, “no entry” or “give way” can be equated to an ability to read, say, a small number of variable words appearing in a newspaper headline. It is more akin to an inability to read signs or symbols than to an inability to read words. Further, while it was open to the Department to make this submission on the evidence to the tribunal at the relevant time, it did not do so. In the absence of a submission along these lines, I do not accept that the tribunal's inquisitorial duty stretched as far as the Department has submitted.
40. I also observe that the tribunal had heard evidence from the respondent that his wife helped him to understand road signs when driving. By implication, Ms Patterson would seek to go behind this finding on the slightly different basis that the respondent would have needed to understand road signs to pass a driving test, whether or not they included written words. As it has been accepted that 8(e) is disjunctive I do not need to address this point, however.
41. No relevant physical condition is relied upon in the context of activity 8. It seems to me that the key issue in the appeal is whether the tribunal's finding that the respondent's inability to read and understand words was limited by a mental condition was in accordance with the law and rational.
42. The contention of the Department is that the respondent's inability to read is due to his inadequate education, rather than to any physical or mental condition. This issue has not arisen before the NI Social Security Commissioner previously. However, it has been addressed in previous decisions of the Great Britain Upper Tribunal. These decisions were before the tribunal and are carefully addressed in the tribunal's statement of reasons.
43. In *SSWP v IV*, Upper Tribunal Judge Jacobs heard the Secretary of State's appeal from a tribunal that had awarded points for mobility activity 1 (Planning and following a journey). The tribunal had accepted that the claimant could not follow the route of an unfamiliar journey without

another person on the basis of illiteracy, awarding points for descriptor 1(d). While acknowledging that some people cannot read because they have a mental condition that limits their ability to read or has prevented them learning to do so, whereas others cannot read because they never learned, Judge Jacobs held that only the former is relevant to PIP. He found that in the particular case the evidence did not support a finding that the claimant had a mental disability that affected his ability to read or learn to read. He said, *obiter*, that the claimant's reading difficulties were irrelevant to the daily living component just as they were for the mobility component.

44. In *KP v SSWP*, Upper Tribunal Judge Hemingway addressed a claimant's appeal from a tribunal that had not awarded points for activity 8, where she had claimed illiteracy. In that case, the tribunal did not accept the factual submission that the claimant was illiterate, as she was reported as saying to the HCP at examination that she did not have difficulties reading and understanding books and magazines while wearing glasses. While the dispute was one of fact, the Secretary of State had submitted that, in any case, illiteracy was irrelevant, relying on *SSWP v IV*.
45. Judge Hemingway noted that the equivalent Great Britain provision to Article 83(1)(a) required a person's ability to carry out activities to be limited "by the person's physical or mental condition". He reasoned that points can only be awarded in respect of illiteracy if it is linked to a physical or mental condition limiting that person's ability to read or which has prevented that person from learning to read. He accepted that what was said in *SSWP v IV* about mobility activity 1 was clearly applicable to daily living activity 8. Illiteracy that does not result from a physical or mental condition is not to be taken into account in assessing whether a claimant scores points under descriptors linked to that activity.
46. In the present case the tribunal found the respondent's evidence "credible, probative and compelling throughout the hearing". It accepted that the respondent not only needed help to understand letters, but that he was unable to read any words or numbers (such as on his mobile phone) or symbols or signs such as road signs. It accepted that he had suffered severe depression and a severe adjustment reaction after being imprisoned for a crime he did not commit. It found that the respondent's illiteracy had further effects on his mental health, accepting that needing help from his wife to understand letters and appointments led to frustration and exacerbated his depression.
47. The tribunal also observed that the respondent had never learned to read as he had not attended school and noted that whereas in the Upper Tribunal Judge in the case of *IV* found that the evidence did not support a finding that the claimant had a mental condition that affected his ability to read or learn to read, that was not the case in the present appeal. It noted medical evidence of docility, lack of volition and incurable severe

chronic depression with post-traumatic adjustment disorder, “of which the illiteracy was considered by the Tribunal to be an inherent dynamic factor”.

48. The crux of the tribunal’s reasoning appears in one paragraph of the statement of reasons. The tribunal explains:

“The Tribunal found that the Appellant’s illiteracy is inextricably bound up with the Appellant’s mental health condition. Applying the *fons et origo* of the 2016 Regulations, the 2015 Act, the Tribunal must apply the primary legislative provisions of Article 83 and 85 of the 2015. Accordingly the Tribunal found the Appellant’s illiteracy limits him in his daily activities (such as medicating and driving, and – obviously – correspondence). Put another way, the Tribunal finds that the Appellant’s illiteracy is demonstrably limited by¹⁵, related to¹⁶, affected by¹⁷, linked to¹⁸, or tied to¹⁹ his mental health condition of severe depressive disorder and post-traumatic adjustment disorder. The medical and other evidence satisfied the Tribunal the Appellant is unable to read and write, and this inability is clearly connected to his mental health condition...

15. Pursuant to Article 83(1)(a) and 85(1)(b) of the 2015 Order

16. Applying the criterion of Judge Jacobs in *Secretary of State for Work and Pensions v IV*, at paragraph 21

17. *Ibid.*, paragraph 22

18. Applying the criterion of Judge Hemingway in *KP v Secretary of State for Work and Pensions*, at paragraph 16

19. *Ibid.*, paragraph 21”

49. The tribunal did not find that the respondent’s illiteracy was caused by a mental condition. It noted that he did not learn to read as a child because he failed to attend school regularly. However, it is plain that the tribunal connected the respondent’s inability to read with the mental problems he experienced as an adult. The ability to learn to read does not normally stop after school age. The tribunal was able to look at the respondent in person and to assess the scale of his mental problems on the basis of observation as well as evidence. It clearly formed the judgment that the respondent was unable to read and was lacking in the ability or motivation to learn. It clearly also found that there was a certain

circularity in play, in that the illiteracy itself contributed to the respondent's low mood.

50. Ms Patterson submitted, in line with the Great Britain guidance, that inability to read must be as a direct result of a claimant's health condition or impairment. She submitted that the tribunal had erred because the respondent's inability to read was not caused by a mental or physical condition. However, that is not what the legislation requires. Article 83(1)(a) requires the ability to read to be "limited by" the claimant's physical or mental condition. That is precisely what the tribunal in the present case found. It has explained why this is not a case such as *IV*, where Judge Jacobs had said at paragraph 20, that "entitlement may take account of illiteracy for a person who has limited ability to read or who could not learn to read, but not for a person who has simply not learned". The tribunal has clearly addressed the legislation and relevant case law from Great Britain and it has made that finding in an informed and careful way.
51. I cannot hold that the tribunal's findings were irrational or that it has misdirected itself on the law. I can see no other basis on which to argue that the tribunal has erred in law. Therefore, I must disallow the appeal.

(signed): O Stockman

Commissioner

21 October 2020