

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. CPIP/777/2016

Before Judge S M Lane

This decision is made under section 12(1) and (2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007.

The decision of the tribunal heard on 16 November 2015 under reference SC950/15/00759 is **SET ASIDE** because its making involved an error on a points of law.

The appeal is **REMITTED** to a fully reconstituted tribunal for rehearing.

Further directions may be given by the F-tT.

REASONS FOR DECISION

1 This appeal raises issues regarding mobility activity 1 (planning and following journeys) and daily living activity 8 (reading and understanding signs, symbols and words) under Schedule 1 of the Social Security (Personal Independence Payment) Regulations 2013 ('the Regulations').

2 As regards mobility **activity 1**, the Secretary of State accepts that the respondent's problems with anxiety are such that she satisfies descriptor 1f (cannot follow the route of a familiar journey without another person, an assistance dog or orientation aid). Although the F-tT does not use the words 'overwhelming emotional distress' in its decision, the Secretary of State appears to be satisfied that she suffers from this when going out, even on familiar routes, unless accompanied. He accepts that she meets the requirements for descriptor 1f as decided by a Three Judge Panel in *MH v Secretary of State for Work and Pensions* (PIP) [2016] UKUT 531 (AAC). The respondent's representative thinks that this is correct. It is, of course, up to the F-tT whether it considers it necessary to look at this descriptor again on rehearing.

3 The Secretary of State maintains his view that the F-tT erred in relation to **activity 8** by awarding 4 points for being unable to read or understand basic written information. The respondent's representative submits that the F-tT's decision to award 4 points in respect of daily living activity 8d (needs prompting to read or understand basic written information) was correct in light of the respondent's evidence that her daughter has to read 'everything' for her.

4 I have come to the conclusion that the F-tT's approach to this descriptor was fundamentally flawed and cannot stand. There are three aspects that need to be put right.

5 The first is that it must apply the definition of 'basic written information' in paragraph 1 of Schedule 1 of the Regulations. The F-tT simply failed to do this. It became fixated on the respondent's anxiety when reading *letters*, indeed official letters which even brave souls may find unnerving. Yet 'basic information' merely means signs, symbols and dates written or printed in standard size text in the claimant's native language. As Upper Tribunal Judge Hemingway pointed out in *Secretary of State for Work and Pensions v GJ* [2016] UKUT 0008, basic information for the purpose of PIP is very basic indeed, and complex written information is hardly more so. The latter is defined as more than one sentence of written or

printed standard size text in the claimant's own language. This envisages a very modest level of literacy.

6 The second is that the F-tT must consider *all* relevant evidence and not just the oral evidence at the hearing. This cannot be stressed enough.

7 There was a substantial amount of relevant written evidence on this issue. At page 23, for example, the respondent says that she *can* read, but *when anxious*, she cannot read properly. Her anxiety may, of course, interfere with her comprehension, but most people who can read, read more widely than the official letters that may come through the door.

8 Looking at further examples, the respondent wrote in one of her lengthy letters in the bundle (p27) that she can pay her bills. This may suggest that she is able to read *and* understanding numbers, symbols and dates on the bills without becoming anxious, or unduly so. (It should be noted that this is a separate problem from her inability to go out alone in order to pay the bills). The lengthy letters she wrote may also be of some relevance since she was writing about matters concerning her appeal, which was stressful but was able to write lucidly, and indeed come back to one of the letters as she remembered further details (p44). At page 109, she writes about having to make lists to remind herself. At page 45 she writes about using the telephone to phone up about a mistake by the DWP in paying her ESA into her account, leaving her with only 67 pence. These are all instances of reading and understanding both basic and complex information that could not be ignored.

9 Third, the F-tT must exercise its inquisitorial powers. This F-tT became so focussed on '*reading letters*' that it failed to do so. It did not ask even elementary questions about the respondent's usual reading. This needed to be explored to get a rounded picture of her abilities and problems, and the situations in which anxiety did, or did not, affect her. So, the type of material that she reads on a day-to-day basis could have been explored. For example, the respondent says she goes to the supermarket to shop nearly every day (though her daughter is said to accompany her to reassure her). She may check labels and prices, as shoppers generally do. She may read a newspaper or magazine at home, and look at the television listings to see what is on. One can think of a multitude of common activities requiring reading and/or understanding that a claimant might regularly undertake.

10 Fourth, the F-tT had to go on to consider the situations and frequency in which the respondent became so anxious that she could not read or understand what she read.

11 It would not be appropriate for me to substitute a decision because too many facts need to be found and I do not have the benefit of a medical and disability qualified member to assist me to do so. The appeal must be remitted to the First-tier Tribunal for further fact finding and a fresh decision.

12 The appellant will probably already be aware that her success before the Upper Tribunal is no guarantee that she will succeed when the First-tier Tribunal rehears her appeal. She should also keep it in mind that the First-tier Tribunal must look at her condition as it was on the date of the Secretary of State's decision.

[Signed on original]

[Date]

**S M Lane
Judge of the Upper Tribunal
18 July 2017**