



Neutral Citation Number: [2025] UKUT 153 (AAC)  
**Appeal No. UA-2024-000415-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**KL**

**Appellant**

**- v -**

**Secretary of State for Work and Pensions**

**Respondent**

**Before: Upper Tribunal Judge Gray**  
**Hearing date: 18 March 2025**  
**Mode of hearing: oral remote**

**Representation:**

**Appellant:** Mr Denis Edwards, counsel

**Respondent:** Mr Abou Kamara, Free Representation Unit (FRU)

*On appeal from*

**Tribunal:** First-tier Tribunal (Social Entitlement Chamber)

**Tribunal Case No:** SC242/22/06062

**Digital Case No.:** 1665-6559-8866-9953

**Tribunal Venue:** Reading (remote hearing)

**Decision Date:** 25 August 2024

**SUMMARY OF DECISION**

This appeal examines Activity 4 and decides that it is testing the ability of the claimant to perform the mechanical functions of washing and bathing, which are getting in and out of a bath or shower and being able to wash their body parts as set out in the descriptors. It is not a test as to the quality of washing, but the physical and mental ability to do so.

It also explains the importance of the First-tier Tribunal assessing the evidence as a whole, using evidence about one activity to inform its views as to the ability to accomplish other activities.

**KEYWORD NAME (Keyword Number)**

Personal Independence Payment-Activity 4 and Tribunal procedure and practice.

*Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.*

**DECISION**

**The decision of the Upper Tribunal is to allow the appeal and remake the decision.**

Permission to appeal having been granted by Upper Tribunal Butler on 13 May 2024 in accordance with the provisions of section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set aside the decision of the First-tier Tribunal sitting at Reading remotely, and made on 10 May 2024 under reference SC242/22/06062. I remake it as follows:

**The appellant is entitled to the daily living component of PIP at the standard rate from 11 April 2022. She scores 11 points: 2 points for descriptor 1(d), 1 point for descriptor 3(b) and 8 points for 9(d). In addition, she scores 12 points under Mobility Activity 1f. This decision revises the mobility component already in payment from an award at the standard rate to an award at the enhanced rate. The awards of both components will run in tandem until 10 April 2026.**

**REASONS FOR DECISION****Introduction**

1. This matter came before me at an oral hearing following Upper Tribunal Judge Butler's grant of permission to appeal. At that early stage the appellant represented herself. At the hearing she was represented by Mr Kamara of the Free Representation Unit; Mr Edwards, counsel, represented the Secretary of State.
2. The advocates appeared on a CVP link. The appellant was present listening in, and Mr Kamara had the opportunity to speak privately to her during a short adjournment. I am indebted to both representatives for their written and oral submissions, and their helpful responses to my questions at the hearing.

**Factual background**

4. The appellant is a woman who was aged 33 at the date of the decision of the First-tier Tribunal (hereafter the FTT or the tribunal). Since 2014, she has had the condition Trimethylaminuria. Put simply, this is an uncommon metabolic

dysfunction which prevents the body breaking down trimethylamine, a chemical with a strong fishy odour. That odour then becomes apparent through bodily secretions, including sweat. It is generally known as TMAU, which is how I will refer to it. It is sometimes called fish odour syndrome. In due course the FTT was to find as a fact that the disorder was medically recognised as being distressing, leading to anxiety, with which the appellant had been diagnosed, and low self-esteem.

5. She claimed a Personal Independence Payment (from now, PIP) on 11 April 2022. The respondent Department made their decision on 21 July 2022. It was to refuse both components of the allowance.
6. The FTT heard the appeal against that decision. It allowed her appeal in part, making an award of the mobility component at the standard rate but refusing the daily living component.
7. She appealed to the Upper Tribunal. I set out the basis of the grant of permission below, but first I will highlight the relevant parts of the PIP legislation.

### **Legal framework**

8. Personal Independence Payments were established under part 4 of the Welfare Reform Act 2012, section 77 providing for the allowance in two components, daily living and mobility.
9. Section 78 relates to the daily living component and section 79 the mobility component.
10. Section 80 deals with the ability to carry out daily living activities or mobility activities:

Section 80 provides for regulations:

“Ability to carry out daily living activities or mobility activities

11. 80. – (1) For the purposes of this Part, the following questions are to be determined in accordance with regulations – (a) whether a person’s ability to carry out daily living activities is limited by the person’s physical or mental condition; (b) whether a person’s ability to carry out daily living activities is severely limited by the person’s physical or mental condition;”
12. Regulations have been made pursuant to this, the Social Security (Personal Independence Payment) Regulations 2013. (hereafter the regulations or the PIP regulations.) The method of determining whether, and to what extent, a person’s ability to carry out daily living activities or mobility activities is limited, or severely limited by the person’s physical or mental condition is by way of assessment, or repeated assessment, and the way in which such assessments are calibrated is set out in the Schedule to those Regulations.
13. Certain regulations must be employed in assessing a person's capability in relation to the activities. Relevant here is Regulation 4(2A). It provides that:

C [claimant] 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.

There are definitions of (a) (c) and (d); these concepts are not issue in this appeal. The question has been the meaning of (b) "to an acceptable standard": uniquely, that is not defined.

14. Definitions are at paragraph 1 of the Schedule to the Act. Reference to C is to a claimant. Relevant here are:

"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.

"supervision" means the continuous presence of another person for the purpose of ensuring C's safety.

"prompting" means reminding, encouraging or explaining by another person;

"unaided" means without-

- (a) the use of an aid or appliance; or
- (b) supervision, prompting or assistance

"bathe" includes get into or out of an unadapted bath or shower.

"engage socially" means-

- (a) Interact with others in a contextually and socially appropriate manner;
- (b) understand body language; and
- (c) establish relationships

"psychological distress" means distress related to an enduring mental health condition or an intellectual or cognitive impairment;

### **Schedule 1 activities as relevant before the Upper Tribunal:**

#### **Daily Living**

- |                         |   |   |
|-------------------------|---|---|
| 4. Washing and bathing. | a. Can wash and bathe unaided.  | 0 |
|                         | b. Needs to use an aid or appliance to be able to wash or bathe.                  | 2 |
|                         | c. Needs supervision or prompting to be able to wash or bathe.                    | 2 |
|                         | d. Needs assistance to be able to wash either their hair or body below the waist. | 2 |

- e. Needs assistance to be able to get in or out of a bath or shower. 3
- f. Needs assistance to be able to wash their body between the shoulders and waist. 4
- g. Cannot wash and bathe at all and needs another person to wash their entire body. 8
9. Engaging with other people face to face.
- a. Can engage with other people unaided. 0
- b. Needs prompting to be able to engage with other people. 2
- c. Needs social support to be able to engage with other people. 4
- d. Cannot engage with other people due to such engagement causing either – 8
- (i) overwhelming psychological distress to the claimant; or
- (ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.

## Mobility

1. Planning and following journeys.
- a. Can plan and follow the route of a journey unaided. 0
- b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant. 4
- c. Cannot plan the route of a journey. 8
- d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. 10
- e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant. 10
- f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid. \_\_\_\_\_

## The appeal before the Upper Tribunal

### Permission to appeal

15. Judge Butler gave permission to appeal on the following issues:

**“Assessing whether you were able to wash and bathe to an acceptable standard, including other point-scoring descriptors within this activity:** The tribunal decided you scored descriptor 4.a (0 points) for the activity of washing and bathing. It found you showered three or four times a day due to the body odour caused by your Trimethylaminuria (“TMAU”). The tribunal accepted you used special soaps to help manage your condition. This is a reference to soaps with a specific pH between 5.5 and 6.5 that your treating doctors recommended you use to help manage the symptoms of your condition.

The tribunal decided you had no difficulties with the physical act of showering and that you did not need prompting to undertake it. The tribunal decided you could shower safely and within a reasonable time. It stated there was no medical evidence in which it had been recommended you shower frequently per day, and no evidence to suggest you showered due to obsessive compulsive disorder. It rejected the suggestion by the healthcare professional that you showered frequently as a matter of choice, and stated you were doing so because of your medical condition. However, the tribunal stated (paragraph 36) that it did not consider showering several times a day and with the frequency that you did, meant you were washing to an unacceptable standard.

Washing is not defined in the Social Security (Personal Independence Payment) Regulations 2013 (“the 2013 regulations”). The word “bathe” is defined in Schedule 1 to the regulations as including getting in and out of an unadapted bath or shower and therefore deals with the mechanical process of entering / exiting them.

It is arguable that when read together with the requirement in regulation 4(2A)(b) of the 2013 regulations of carrying out the activity to an acceptable standard, the PIP activity of washing includes removing body odour successfully.

The tribunal’s Statement of Reasons does not confirm whether showering three or four times a day would enable you to achieve this. At paragraph 24(6) of the Statement of Reasons, the tribunal found that your TMAU affects how your body smells, in a way you find unpleasant and is strong enough for other people to notice, making you anxious and sweaty, which exacerbates your symptoms.

The tribunal accepted (and therefore found as a fact) that you needed to use special soaps to help manage your condition. The appeal bundle describes these soaps in the medical letters dated 29.09.21 (page 19 of bundle), 07.04.22 (page 68 of appeal bundle) and in the Guys and St Thomas’ NHS medical information sheet about TMAU (Addition B, page 16 – soaps, and specific soaps listed at Addition B, page 22). I note the letter dated 07.04.22 on page 68 of the bundle stated the use of the soaps with a pH level of 5.5-6.5 was reported to be helpful (to you) in the reduction of body odour. I also note the medical information sheet, at Addition B, page 16, describes the mechanism of the specific pH of the soaps acting to reduce the chemical reaction that generates TMAU symptoms.

The tribunal arguably made an error of law by not making clear findings of fact about whether showering three or four times a day, including using medically recommended soap with a specific pH range, enabled you to successfully remove body odour.

Related to this, you wrote in your PIP2 form (page 11 of appeal bundle) that in addition to showering at home, if you had to make trips outside for shopping or appointments, you would always use the sink in the public toilet first, and wash your armpits, below

your breasts and your back, before the shopping or appointment. You also wrote that before you returned home, you would repeat the same routine of washing your body off in a public toilet sink before getting into the taxi. This evidence was also relevant to whether you were able to wash to an acceptable standard. One interpretation of it is that you needed to carry out additional washing immediately before you came into proximity with other people, to be able to manage the effects of your medical condition.

The tribunal did not address this evidence as part of its decision about the activity of washing and bathing. This was arguably an error of law, because it was relevant to the question whether washing several times a day enabled you to carry out that activity to an acceptable standard.

While the tribunal explained why it ruled out descriptors 4.c (requiring supervision or prompting) and 4.d and 4.e (requiring assistance), given the specific effects of your TMAU on you, and the requirement to assess washing and bathing in terms of regulation 4(2A) (b), the tribunal arguably should have considered you against other point-scoring descriptors as well.

These descriptors included descriptor 4.b, which concerns whether you required an aid or appliance in order to wash. An aid or appliance is defined in regulation 2 of the as *“any device which improves, provides or replaces C’s impaired physical or mental function”*. In your circumstances, it appears the effects of your TMAU left you with an impaired physical function of being able to wash your body to remove odour successfully. There was evidence that using soap in a specific pH range would help manage removing that odour.

The Upper Tribunal in **AP v SSWP [2016] UKUT 0501 (AAC)** confirmed that to be relevant to a PIP activity, an aid or appliance must be connected in some way to the activity in question. This distinguishes persons who choose to carry out an activity in a specific manner, from those who need to do so in order to be able to overcome the consequences of their impaired function to carry it out. Given your particular circumstances, and the documentary evidence, the tribunal arguably made an error of law by failing to provide adequate reasons about whether the medically recommended soaps constituted a device connected to the activity of washing and bathing, which improved your impaired physical function of washing to remove odour.

The tribunal arguably also needed to consider whether the most applicable descriptor was 4.g, although this is expressed in not being able to wash at all and needing another person to wash the entire body. It is not immediately clear that another person washing you would enable you to wash to an acceptable standard. This raises the more general question about which descriptor in PIP Daily Living Activity 4 is appropriate for a person who is physically able to wash and bathe (including safely, repeatedly and in a reasonable timescale) and who is motivated to perform the activity but may remain unable to carry it out to an acceptable standard.

By failing to address the other descriptors within the activity of washing and bathing, the tribunal arguably failed to provide adequate reasons for its decision about this activity.

**The tribunal’s assessment of mobility activity 1 (planning and following a journey):** the tribunal stated at paragraph 42 of its Statement of Reasons that you confirmed you could go to local places not too far away, for example, the local park, the local shop to top up your gas or electricity and your GP and dentist. The tribunal recorded in paragraph 26(8) of the Statement of Reasons (findings of fact) that you were able to undertake short, familiar journeys, such as going to the park for exercise or walking to your GP, which is 15 minutes away. The Statement of Reasons does not include any specific findings about whether you carried out those journeys alone,

although the remainder of paragraph 26(8) confirms you did not undertake unfamiliar journeys on your own. It is arguable the tribunal failed to make adequate or clear findings of fact about this activity.

Further or alternatively, the tribunal arguably failed to provide adequate reasons for its decision in terms of its evaluation of the following evidence in the bundle:

- (a) The written statement from your daughter at Addition B, page 26 that she would help you weekly by getting your electric, gas, food shopping and any other bits you needed, and that she would always go with you to the local park for a walk, doctors and other places;
- (b) The written statement from your friend Simone at Addition B, page 27 that she accompanied you to most appointments, especially hospital ones and ones further away; and
- (c) The medical letter dated 27.10.22 from your counsellor Mimi Chan (Addition B, page 2) that she had worked with you for 7 counselling sessions. Ms Chan wrote you could go for weeks without leaving the flat and when these periods pass, you would try to challenge yourself to go outside with a companion with varying degrees of success.

If the Tribunal did make an error of law in one or more of the ways I have described at paragraphs 6 to 21 above, that error could be material in the sense that had it not been made, the outcome of your appeal might have been different. This satisfies the relatively low bar to be granted permission to appeal to the Upper Tribunal.

I therefore grant permission in relation to the grounds set out at paragraphs 6 to 21 above.

It is also appropriate to grant permission to appeal, to consider how the descriptors for PIP activity 4 (washing and bathing) are to be applied in the context of regulation 4(2A) of the 2013 regulations, in particular, carrying out this activity to an acceptable standard. See the observations at paragraph 18 above. This provides the good reason described in ***Smith v Cosworth*** for also granting permission to appeal.

In relation to your argument that you needed prompting when taking nutrition, the tribunal awarded you descriptor 3.b (1 point) for requiring prompting to take your medication. To the extent that your vitamins were prescribed medication, the award of descriptor 3.b (1 point) would have included them. Taking nutrition is defined in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 to “*cut food into pieces, convey food and drink to one’s mouth and chew or swallow food and drink*”. As held by the Upper Tribunal in ***MM and BJ v SSWP (PIP)*** [2016] UKUT 490 (AAC), this wording has a limited and narrow meaning, which focuses on the act of eating and drinking, and not on the nutritious quality of what is being eaten and drunk. On this basis, it is unclear that being prompted to take vitamins to improve the nutritious quality of your diet, would be capable of counting as you reasonably requiring prompting to take nutrition.

I do not refuse you permission to appeal on the ground addressed at paragraph 25 above (Taking nutrition). However, that ground will only need to be considered if the above grounds where I have given permission to appeal are not considered determinative of your appeal to the Upper Tribunal.”

### The First-tier Tribunal’s decision

16. The Statement of Reasons (SOR) sets out the tribunal’s findings of fact. It makes clear the deleterious effects of TMAU on the appellant’s state of mind, and how it affects her behaviour. The tribunal explains that the odour is present in urine,



breath and other bodily secretions, and it has been the subject of comments from strangers. Using certain soaps with a low (acidic) pH helps reduce it, but the appellant is anxious when faced with the prospect of encountering people she does not know, and the anxiety makes her sweat more, increasing the problem. The tribunal says, at paragraph 24 (7), this has caused her to isolate herself and to suffer overwhelming anxiety, including panic attacks when she has to interact with other people.

### **Daily living**

17. Under the daily living activities, the tribunal awarded seven points: Activity 1(b), 2 points for needing prompting in preparing and cooking food; Activity 3(b), one point for the use of a dosette box to manage her medication, and Activity 9(c), 4 points for difficulties engaging with other people. This was below the eight points needed for the minimum, standard award.
18. Activity 4, washing and bathing, was considered, but the point scoring descriptors were found not apply because physically the appellant was able to wash and bathe, and did not require prompting to do so; accordingly, she satisfied the zero-point descriptor.
19. The point scoring for Activity 9, engaging with other people face to face, shows that the tribunal accepted that she had real difficulties with this, needing social support to engage with other people. Despite the tenor of the statement of reasons in relation to the effects of the TMAU on her psychological state, there was no analysis of whether this might have amounted to overwhelming psychological distress, which would have engaged the higher scoring descriptor.

### **Mobility**

20. When considering mobility activity 1, the FTT found that she could not follow the route of an unfamiliar journey, and concluded that mobility descriptor 1(d) was appropriate. This resulted in an award of ten points and entitlement to the standard rate of the mobility component of PIP. The SOR does not deal with her assertion that she needed another person to be with her when she was out due to her anxiety about mixing with strangers

### **The parties' submissions before me**

21. As there was agreement between the parties as to the mobility component and Activity 9, I set out only the arguments on the main issue, Activity 4, referencing Activity 9 only where the interaction between the two activities was considered as part of the arguments in relation to an error of law in evaluation of the evidence overall.

### **The appellant**

22. Mr Kamara adopted Judge Butler's observations regarding possible failings by the tribunal, placing reliance on the issues of the medicated soap as an aid, and the incorporation into the descriptors of the 'acceptable standard' condition in regulation 4 2(A).
23. He reminds me of the decision of Upper Tribunal Judge Clough in *DE v Secretary of State for Work and Pensions* [2021] UKUT 226 (AAC) at [63] where she described the test of an acceptable standard as being both subjective and

objective, asking “Does an independent outsider consider the activity to be done to an acceptable standard and does the Appellant consider the activity is done to an acceptable standard?”

24. As to the aid, he argues that the soap is connected to the appellant’s impairment, in that it “assists in overcoming the consequences of a function impaired in the carrying out of that activity” per Upper Tribunal Judge Markus KC in *AP v Secretary of State for Work and Pensions* 2016 [2016] UKUT 0501 (AAC) at [33].(from now, AP) He describes the impaired function as an inability to wash herself so as to remove her body odour and submits that the acidic pH soap is closely connected with the act of washing; the use of other soap is less satisfactory.
25. He points out that her using public conveniences to wash parts of her body in addition to showering at home, shows that she does not feel she is washing to an acceptable standard. It must be understood, he says, that this is not a psychological problem, but a real problem that other people notice. Whether the test is subjective or objective she cannot wash to an acceptable standard.

### **The respondent**

26. Mr Edwards sets out certain findings of fact from the SOR: the FTT accepted that, due to the Appellant’s condition of TMAU, Activity 9 “was one of the most significant problems”. It led to isolation; social engagement only occurred when accompanied by her daughter or a friend who understood the condition; the reaction of others could lead to “anxiety and panic attacks”.
27. He argues that the FTT erred in relation to their approach to engaging with others, and mobility. Had the Tribunal made inferences from the evidence about her mobility problems, they would have found the key to the difficulties caused by TMAU: she avoids situations where she will meet other people; if she cannot do that, she suffers overwhelming anxiety.
28. The FTT erred in failing to draw the only reasonable conclusion from this evidence, that the Appellant had such severe difficulties with this activity that the appropriate descriptor was 9(d), “Cannot engage with other people due to such engagement causing overwhelming psychological distress to the claimant”. That scores eight points, enough for an award at the standard rate.
29. He asked me to note that what the Appellant said about her difficulties engaging with others is consistent with what was being said in connection with mobility activity 1, but the FTT failed to consider the evidence in these respects as a whole, or draw any or any adequate inferences from the evidence as a whole.
30. Given that the support from the Respondent leads to an award of the mobility component of PIP at the enhanced rate and the daily living component at the standard rate, Mr Edwards submits that this is sufficient to dispose of the appeal in favour of the Appellant.
31. As to daily living activity 4 the Respondent’s position is that it is not a relevant activity for this appellant. The factual findings were that she has no difficulties with washing or bathing.
32. Whilst her need to shower three to four times per day was a manifestation of her condition, the evidence is consistent with this being motivated by her anxiety and distress arising from others’ reaction to her condition rather than anything associated with washing or bathing in itself.

33. The Appellant is able to wash and bathe “repeatedly”, as that term is defined in regulation 4(2A)(c): she can wash “as often as the activity being assessed is reasonably required to be completed”.
34. The Respondent does not accept that a low pH soap is an aid for washing or bathing for the purposes of activity 4: low pH soaps are readily available and may be used by people without any health condition.

### Analysis

35. The FTT found that the appellant had no difficulties washing and bathing; her problems were in other areas. In considering whether that is correct given Mr Kamara’s arguments, I have considered the terms of the Activity, but I have also stepped back and looked at it as but one element in the wider PIP scheme.
36. The activities upon which PIP is formulated are the tasks of daily life. The package of descriptors provides a framework within which to explore the various practical difficulties claimants may have, and thus calibrate their overall level of disability; its purpose is geared towards that global goal, and an apparently aberrant result in respect of one activity should not affect that.

### What is Activity 4 assessing?

37. In paragraph 1 of the Schedule to the PIP regulations “bathe includes get into or out of an unadapted bath or shower”. The word “includes” indicates that the ordinary meaning of “bathe”, immersion in water, is being extended, and it is accepted law that this aspect of the activity is looking at the mechanical process of accomplishing that: *SP v Secretary of State for Work and Pensions* [2016] UKUT 190 (AAC); [2016] AACR 43. Washing is not defined.
38. “Assistance” means “physical intervention by another person and does not include speech”; “prompting” means reminding or encouraging or explaining by another person; “supervision” means the continuous presence of another person for the purpose of ensuring the claimant’s safety.

### Applying this within the descriptors

39. Descriptor (a) is, as with all the activities, the non-scoring descriptor: the baseline ability to accomplish the activity unaided.
40. Under descriptor (b) the use of an aid or appliance is needed “to be able to wash or bathe.” I will return to that.
41. Under (c) there must be a need for supervision or prompting.
42. The following three descriptors, (d) (e) and (f), refer to the need for assistance either in washing hair or different body areas, or in getting in or out of a bath or shower.
43. The use of the word “assistance” is, in my judgment, important in the interpretation of Activity 4. It refers to physical intervention from another person with the functional aspects of washing, or getting in or out of a bath or shower.
44. The final descriptor, (g), deals with the position where a claimant “Cannot wash and bathe at all and needs another person to wash their entire body.”
45. I pause here to observe that *Secretary of State v GP* [2016] UKUT 444 (AAC) (from now, GP), upon which Mr Kamara relies, is not an authority as to the meaning of Activity 4 (g). The Secretary of State’s grounds of appeal, upon which permission had been granted, were not as to the proper application of the

descriptor, but that the FTT had been inconsistent in its approach by awarding the maximum points for Activity 4 while retaining the departmental decision of two points in other Activities where the same argument, an underscoring of the effects of obsessional compulsive disorder, had been put forward for the appellant. The *ratio* of the Upper Tribunal decision was that there was no inconsistency, because where the maximum points for an enhanced award were met the tribunal need not look for further points (although pragmatically, it ought to explain why it had stopped counting). That case cannot assist on a point of construction, but I consider that aspect now: I did not in GP.

46. The specificity of the words in the final descriptor, “Cannot wash and bathe at all and needs another person to wash their entire body” is unusual in the context of the other activities in the Schedule, and that need for physical assistance from another person with washing or entering/exiting a bath or shower is adumbrated in the previous three descriptors. Together they plainly set out a concept that was meant to be there, and reinforce that this is a test of functional ability, and not outcome.

#### **My conclusions as to Activity 4**

47. The appellant has no physical or mental problems that prevent her from bathing, showering or otherwise washing. She needs neither prompting nor assistance from another person, and if she had that it would not improve the odour.
48. The difficulties in attempting to construe Activity 4 to include this appellant's circumstances point to the solution: Activity 4 is testing not the quality of the result of washing and bathing, but the physical or mental ability of a person to do so.
49. I am fortified in that conclusion by the decision of Upper Tribunal Judge Wright in *MM & BJ (PIP)* [2016] UKUT 512 (AAC). There, the issue was as to Activity 2, taking nutrition, but the principles Judge Wright established in that case are applicable here. He said, at [25]

“The plain focus of the activity “taking nutrition” in my view is therefore on, and is only on, the act of eating and drinking, and thus the enquiry under the PIP scheme has on be on whether, per sections 78(1) and 80(1)(a) of the Welfare Reform Act 2012, a person's ability to carry out the activity of cutting food into pieces, conveying food and drink to their mouth and chewing and swallowing food or drink, is limited by their physical or mental condition. Once it is understood that, putting matters colloquially, it is the activity of eating and drinking and the physical and mental actions needed to carry out that activity which is in issue under the activity “taking nutrition”, then the word “nutrition” ceases to have any special quality beyond its being a term to cover both eating and drinking, and therefore the nutritious quality of what is being eaten or drunk can be recognised as being irrelevant under the PIP statutory scheme....

And further at [27]

Once the above is understood it seems to me that the flaw in the arguments of the claimants relying on the “acceptable standard” provision in regulation 4(2A) of the PIP Regs is revealed. As regulation 4(2A) makes clear, it applies where a claimant's ability to carry out an activity is assessed, and the claimant is to be assessed as satisfying a descriptor only if they can do so “to an acceptable standard”. What has to be assessed, therefore is the ability to carry out an activity to an acceptable standard. The activity under activity 2 “taking nutrition” is, as set out above, the ability to cut food into pieces,

convey food and drink to one's mouth and chew and swallow food or drink. It is those acts, which make up the activity, e.g. the act of cutting food into pieces, which have to be done to an acceptable standard: see to similar effect paragraphs 22 to 24 of PE – v- SSWP [2015] UKUT 309 (AAC); [2016] AACR 10. The (nutritious) quality of what is eaten or drunk is not part of those acts, and so the contents of what is being eaten or drunk does not need to be to “an acceptable standard”

### To an “acceptable standard”

50. The application of Judge Wright's approach to Activity 2 extends to Activity 4. It focuses on the act of washing and bathing, and the “acceptable standard” relates to the accomplishment of that functional activity, and not the result. The question is whether a person can get in and out of a bath or shower and wash themselves, or whether their ability to do so is limited either for mechanical physical reasons, or by a need for prompting for mental health reasons, or a combination of both.
51. Given the way in which the descriptors are constructed, to the extent that the outcome of washing and bathing is tested at all, it would only be done within consideration of the functional capacity to bathe and wash.
52. As it was argued before me, I turn to the issues under Activity 4, whether medicated soap can be an aid.

### Soap as an aid?

53. The question is whether the low pH soap recommended by the appellant's treating clinicians, which lessens, but does not remove the troubling odour, can be an aid or appliance. As I have said above, under Activity 4(b) a claimant “needs to use an aid or appliance to be able to wash or bathe.” That wording itself points towards the meaning of the Activity as a whole being about the functional aspects of washing and bathing.
  54. The relevant part of the definition in the PIP regulations is that an aid or appliance is “any device which improves, provides or replaces C's impaired physical or mental function”. Physical is anything connected with a claimant's bodily function; mental, includes any mental health condition or intellectual or cognitive impairment: *MR v Secretary of State for Work and Pensions (PIP)* [2017] UKUT 86 (AAC).
  55. The body of case law is clear that there must be a connection between the use of an aid and the impaired function. AP, the decision of Judge Markus cited by Mr Kamara was to that effect. It built on a decision of Upper Tribunal Judge Jacobs, *CW v Secretary of State for Work and Pensions* [2016] UKUT 197 (AAC); [2016] AACR 44. Upper Tribunal Judge Brunner builds further on that in *DA v Secretary of State for Work and Pensions* [2019] UKUT 320 (AAC) (from now, DA).
  56. She considered whether a bottle of sterilised water and wipes used to clean the area after passing urine on the recommendation of Bladder Health UK, was an aid for someone with recurrent urinary tract infections. After asking the question, “What is the impaired function?” she said at [21-32]
21. In this case, there is no dispute that the bottle with sterilised water was capable of being an aid, whether it was an everyday object or not. The issue was whether it meets the definition of ‘any device which improves, provides or replaces C's impaired physical or mental function’. The argument identified by Judge Jacobs as the ‘connection argument’ is at the heart of that question.

22. In this case both the claimant and the Secretary of State submit that the 'impaired function' is an impaired bodily function. The various suggestions made in submissions are that the impaired function could be the impaired urinary tract or bladder which is prone to infection, or the impaired immune system, or even the infection itself.

23. That is an incorrect approach. The function for the purposes of Regulation 2 is the claimant's impaired physical or mental function which affects her ability to carry out a particular activity. It is not an impaired bodily function considered in the abstract. In some cases, that may not create a difference on the facts, but it is an important distinction which in this and many other cases will be the crux to determining whether an object really is an aid for a particular claimant and a particular activity.

[24] omitted.

25. The relevant activity in this case is managing toilet needs, and specifically managing cleaning oneself after using the toilet, under Activity 5. An impaired function in being unable to reach one's bottom to clean would be relevant. An impaired function in dexterity which made it impossible to handle toilet paper would be relevant. All of those are impairments to a function of a claimant which affects her ability to carry out the particular activity.

26. In this case, there was no relevant impaired function. The claimant had no mental or physical limitation with the act of cleaning herself. She could have cleaned herself without difficulty. A propensity to infection does not affect the claimant's ability to manage cleaning herself. The matters which the parties in this case contend were 'impaired functions' have no connection to the relevant activity, and are therefore not capable of amounting to a relevant 'impaired function' for the purposes of the definition of 'aid'. The application of the definition of 'aid' in these circumstances falls at the first hurdle.

Is the 'impaired function' required in order to carry out the activity?

27. There is a further aspect to the definition of 'aid'. Judge Jacobs held in *CW v SSWP* [2016] UKUT 0197 [para 33] that there must be an impairment to a function which is required for carrying out the activity, and not required just for one manner of carrying out the activity. Thus in *CW v SSWP* [2016] UKUT 0197 it was held that the bed was not an aid because the claimant's ability to sit while dressing was not impaired. The bed assisted with the impaired function of standing to dress, but that was not a function required to carry out the activity of dressing.

28. The point did not arise in this case. If, as I have found, there is no relevant impaired function, then the question of whether that impaired function is required for carrying out the activity was not reached.

29. However, I address one aspect of the Secretary of State's submissions which touch on this issue. The Secretary of State submits that using water to clean oneself is one of the normal manners of cleaning oneself after going to the toilet. The use of water generally is not to the point. The claimant in this case used a bottle with sterilised water to clean herself, including after urinating. That is not one of the 'usual and

normal' ways to carry out the activity. A bottle, and sterilised water, is not usually used by someone without a limitation in those circumstances. That, however, cannot make it an aid where, as here, the first stage of the test is failed because there is no relevant impaired function.

Does the object improve, provide or replace the impaired function?

30. The next step is to consider whether the object in question 'improves, provides, or replaces' a relevant impaired function.

31. As an example in this context of Activity 5, there are long-handled devices which can assist those who do not have the dexterity or strength to clean themselves using toilet paper in the usual way. Such an object plainly 'improves' the impaired function: it directly compensates for the reduced ability and make it easier or possible for the person to carry out the activity of cleaning themselves.

32. In this case, this step is in one sense not reached, because there is no relevant 'impaired function' which any aid could improve. However, it is a useful test to check that the 'impaired function' has been identified accurately. The bottle was not used to compensate for a difficulty with performing the act of cleaning. It was used to improve personal hygiene, in order to reduce the incidents of urinary tract infection. The use of the bottle was, in effect, a preventative therapy. It was linked to the management of the claimant's health condition, not to the management of toilet needs.

**How the analysis in DA applies here**

57. I agree with Judge Brunner that the concept of an impaired function is not an abstract, but requires an impairment that affects the ability to execute the actions the activity is assessing.
58. In terms of the need for an aid, the distinction between the management of the health condition and the management of the activity under consideration is apposite here: the medicated soap is not being used to compensate for an inability to perform the mechanical functions of washing and bathing. Its purpose is to ameliorate the consequences of the appellant's impaired metabolic function that prevents her body from neutralising the chemical which causes the odour that washing does not overcome. I adopt Judge Brunner's phrase in saying that its use is linked to the management of the appellant's health condition rather than to the management of washing and bathing. The connection between the use of the medicated soap and the functional tasks of Activity 4 is not there.
59. Just as activity 5 is testing the functional abilities in respect of managing toilet needs or incontinence, including cleaning oneself after using the lavatory, Activity 4 is testing the functional capacity to bathe - the mechanical actions of getting in and out of an unadapted bath or shower, and the ability to wash certain parts of the body.
60. Accordingly, as in the situation before Judge Brunner, the issue of whether something is an aid, or if an aid is required, does not need to be considered. This is because the initial question as to the connection between the impaired function and the asserted aid is not made out; however, her 'sense check' also assists here, and it confirms that interpretation: does the object improve, provide or replace the impaired function? Where the medicated soap is substituted in Judge Brunner's question, the answer is as for the bottle of water in her case; the

purpose of the medicated soap is not to aid the functional process of washing and bathing, but to lessen the effects of the appellant's underlying medical condition.

61. I reiterate the importance of identifying the functional limitation or impairment within the terms of the activity. Per DA, the aid issue becomes redundant because Activity 4 is calibrating the functional capacity to wash and bathe.

### **Why the appellant's arguments as to Activity 4 fail**

62. The arguments Mr Kamara made before me have been to the effect that the appellant's inability to eliminate the malodour produced by her bodily secretions means that she cannot wash to an acceptable standard; submissions about treating a medicated soap as an aid, likewise embody that concept.
63. In BB & MB the nutritional value of the food prepared and consumed was not being assessed; in DA, the cleaning after using the lavatory was to achieve a normal, and not bespoke, level of cleanliness, without taking into account issues relating to an underlying health condition that may be improved by performing the activity in a particular way.
64. That latter point is relevant here; if the acceptable standard test is to a bespoke standard for the effects of TMAU, and whether it is subjective or objective, the continued performance of the actions of washing and bathing cannot effect a result that will satisfy either the appellant, or people she may encounter, by whom she has, regrettably, been the subject of adverse comment. Her condition produces the odour which is not removable by washing; only a cure or recommended ways of ameliorating the effects can do that. If looked at through that lens it becomes more understandable that her disability within the overall PIP framework is not in fact washing and bathing, but the known mental health problems that frequently result from the syndrome which are calibrated under different activities.

### **Where the FTT was correct**

65. The effect of the appellant's condition TMAU is not that it prevents her from washing or bathing, but that it causes her to be reluctant to engage with people to the extent that she leads a rather isolated life. The effects of this considerable limitation do not arise under Activity 4, but Activity 9.

### **The error of law**

66. It is now agreed between the parties that in its approach to Activity 9 and Mobility Activity 1 the tribunal did fall into error.
67. I remind myself of the considerable case law as to the extent of the need to explain; reasons do not need to be perfect but adequate, and broadly, this was a good SOR. On these two activities, however, the tribunal did not clarify its assessment of evidence that might well have pointed to a higher score than that awarded. On each of these activities any further points would have led to a different outcome, thus proper explanation was critical.
68. I confirm that in this respect the tribunal fell into error. It failed to give adequate reasons for material findings per *R(Iran) v Secretary of State for the Home Department* [2005] EWCA Civ. 982.



**Analysing the evidence: a holistic approach**

69. Further, the consideration of the various strands of the evidence was not, in my judgment, sufficiently rounded to do justice. There was a mismatch between evidence that it accepted in the mobility sphere, but appears to have rejected, or perhaps failed to consider, in respect of a similar test under Activity 9 (d) (i). I agree with Mr Edwards that the appellant's account of her difficulties with engaging with others was consistent with what she said in connection with mobility activity 1, but the FTT failed to look at the evidence in these respects as a composite whole: it isolated the evidence for the Activity 9 assessment to that pertaining directly to it, rather than draw inferences that might bear upon the mobility assessment. There was a clear connexion between the appellant's problems with these two different activities, and either inferences should have been drawn, or the failure to do so explained.

**Rounding up****Mobility**

70. Mobility activity 1 relates to planning and following a journey. The FTT's decision was to award only the ten point descriptor, 1(d), and not the twelve point descriptor, 1(f) that is now accepted as appropriate by the Secretary of State.
71. I have made some general observations about the way in which the evidence should be considered across the piece, but as this activity was not in dispute and has not been argued before me, I say no more about it.

**Taking nutrition**

72. I turn to deal with the grounds which Judge Butler said would only need to be considered if the other matters were not determinative of the appeal. Activity 2, taking nutrition, was placed into dispute in the original grounds of appeal when the appellant acted in person. She had been awarded no points, and argued that she needed prompting to take the vitamin supplements that her medical advisers had recommended. As Judge Butler pointed out, the tribunal awarded descriptor 3 (b) (1 point) for requiring prompting to take medication, and to the extent that her vitamins were prescribed medication, the award of descriptor 3 (b) would have included them. She did not rule out her arguing this at an appeal if the matter was still relevant after the matters upon which she had granted permissions were decided.
73. The Secretary of State does not support the appeal in relation to daily living activity 2. Mr Edwards relies on the decision of the Upper Tribunal in *MM & BJ*, explaining the narrow meaning of the term "take nutrition".
74. Mr Kamara has not put forward argument on the point.

**Why I am looking at this ground**

75. I have considered the point because, after the Secretary of State's concession on Activity 9, the appellant has eleven points in the daily living category and is thus close to the threshold for an enhanced award of that. However, my considerations are against her. Despite her articulate submissions I will neither increase the daily living points score beyond the eleven points awarded, nor remit the case for a tribunal to consider the issue.
76. As discussed above in the context of Activity 4, *MM & BJ* is settled law on the meaning of Activity 2: Judge Wright decided that the quality of what was being

consumed was not being tested under that activity, but just the acts of cutting up, chewing and swallowing food. That being so, I agree with Judge Butler's cautious warning in her grant of permission: given Judge Wright's authoritative decision there is no possibility of an award of points founded upon a problem taking, or remembering to take, vitamin supplements, which arguably may not be food or drink in any event.

**Concluding remarks**

77. In making the decision that the Secretary of State suggests, I make no comment about the basis of the Secretary of State's concessions. Mr Kamara accepts them.
78. The award is the standard rate of the daily living component and the enhanced rate of the mobility component. The daily living component has never been in payment. It will be backdated to the date of claim, as will the uplift in the mobility component, which has been paid thus far at the standard rate.
79. I have been materially assisted by both advocates; however, I extend my particular thanks to Mr Kamara who acts pro bono before me. The law in this area is complex and it is of assistance in providing both equality of arms between the parties and in streamlining proceedings where the parties are each represented.

**Paula Gray**  
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 19 May 2025

**Anonymity: The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.**