1. The Respondent avers (**S4(7) page J of the Response**.)

Although Mr X has identified a high level of personal restriction, he is entitled to Carer’s. To be entitled to Carer’s Allowance a person must prove at least 35 hours of care to another disabled person each week. The Tribunal may wish to explore this further.

14.1 The Respondent has been well aware of Mr X’s entitlement to Carer’s Allowance for many years and I cannot see why she is seeking to make an issue of this now given that she has obviously accepted in the past that the care Mr X provides for his partner does not detract from the fact that he has his own limitations.

* 1. Judge Wikeley held in MC v SSWP (DLA) (2012) UKUT 337(AAC) at [14-[17]

*Ground 1: the carer’s allowance issue*

14. This is the strongest ground of appeal. The appellant’s representative is right to argue, as Ms Pepper is right to concede, that an award of carer’s allowance is not of itself inconsistent with an award of DLA being made to the person who is herself providing the care. However, as Ms Pepper correctly observes, “findings need to be made to establish the type of care provided by her to her husband and the activities involved”.

15. The problem is that in this case the FTT failed to do just that. The only discussion of the carer’s allowance point in the statement of reasons is that noted at paragraph 8 above. The FTT seemed to have simply worked on the assumption that because the appellant had an award of carer’s allowance, she therefore could not qualify for DLA. As noted above, that may or may not be the case.

16. Indeed, the treatment of the carer’s allowance issue at the oral hearing was less than satisfactory. Unusually, both the appellant and the Department were represented at the FTT hearing. Both the presenting officer and the representative made opening statements to the tribunal panel at the outset of the hearing. There was no mention then of any issue relating to carer’s allowance (and the point was not apparent from the papers). However, right at the end of the hearing, as if producing a rabbit out of her hat, the presenting officer asked the appellant whether it was true that she had made a successful claim for carer’s allowance in September 2010. The appellant confirmed that was the case. There is no record of any further evidence or questions from the FTT panel relating to the issue.

17. In fact, the FTT seem to have operated on the basis of two quite erroneous assumptions. The first was the assumption that, because the appellant had an award of carer’s allowance, she therefore could not qualify for DLA. This was an erroneous assumption as to the law. The second was an assumption, without any questioning, that the appellant was providing hands-on physical assistance to her husband (who it appears was waiting for a kidney transplant). This was an erroneous assumption as to the facts. As noted when giving permission, there was evidence before the FTT that it was actually the appellant’s adult daughter who was providing most of the care. Furthermore, and in any event, the concept of “caring” is not specifically defined in the context of carer’s allowance, but is generally understood to include e.g. supervision as well as active assistance (see e.g. Commissioners’ decisions CG/006/1990 and CG/012/1991).

* 1. Mr X s previous award was made because it was held that he required prompting in order to carry out various daily living activities to an acceptable standard. I am reminded of the definition of prompting in Sch 1 of the PIP Regulations, i.e “reminding, encouraging or explaining by another person” There is no reason to suppose that Mr X’ s partner might not be reminding him or encouraging him with his own hygiene requirements when he is helping her with washing her hair for example

14.4 .I suggest that there is little need for the Tribunal to “ explore this further “ in the light of the above