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| 1. The Appellant attended a PIP Tribunal at Durham Justice Centre on XX December XXXX. He scored 6 points for Daily Living, and did not therefore meet the threshold for an award of this component of Personal Independence Payment. 2. It was submitted on the Appellant’s behalf that, in addition to the six points already scored,  he was entitled to 2 points for descriptor 2b (i), as he required ‘to use an aid or appliance to be able to take nutrition.’, and 2 points for Activity 5b as he required to use an aid or appliance to be able to manage toilet needs or incontinence 3. For the purposes of the PIP regulations, “Take nutrition” means - (a) cut food into pieces, convey food and drink to one's mouth and **chew** and swallow food and drink; or (b) take nutrition by using a therapeutic source; (My emphasis) 4. An aid or appliance is defined as, (a) means any device which improves, provides or replaces [the claimant's] impaired physical or mental function; and (b) **includes a prosthesis**; (My emphasis) 5. It was not in dispute that the Appellant required to wear a full set of dentures, and had done for some years. A letter was included in the appeal bundle from Chief Brody’s consultant dentist. It appeared that Chief Brody had been referred to a consultant dentist as he had  ‘o*ne of the most compromised denture bearing structures that I* [the Consultant dentist] *had seen.’* (Page 197) 6. The Cambridge Dictionary defines a prosthesis as an artificial body part, such as an arm, foot, or tooth, that replaces a missing body part. The dentures worn by the Appellant therefore clearly met the definition of a prothesis for the purposes of the PIP regulations. 7. Judge Jacobs in [2015] UKUT 0615 (AAC)  supported the proposition that dentures were an aid or an appliance:   At paragraph 14: *The argument has assumed that the false teeth are an aid or an appliance for the purpose of regulation 34(3)(b). If that is right, I prefer to see them as an aid rather than an appliance, but they are one or the other and it does not matter which.*   1. The first reason given by the Tribunal for the refusal to award points under descriptor 2b was that the loss of Chief Brody’s teeth was not caused by a recognised medical condition.  I refer to Page F of the Secretary of States response to the appeal. This states that, *“The assessment considers impact, not diagnosis. Benefit isn’t paid on the basis of having a particular health condition or impairment but on the impact of the health condition or impairment on the claimant’s everyday life.”*  I agree that this is an accurate statement of the law, and the correct principle to be applied in this case. It is therefore entirely irrelevant how a person lost a missing body part if they need a prosthetic device to replace it. It makes no difference in law if the claimant lost his teeth through the injudicious application of too many Fizzy Fish, or whether he had gum disease, tumours or ulcers (which itself could be due to poor dental hygiene)? The effect is the same. 2. The statement of reasons mentions, at paragraph 17, that the Appellant’s representative stated that Chief Brody had a gum condition. This is borne out by the medical evidence at page 197. The Appellant’s representative did not state at any point that a gum condition had caused Chief Brody to lose his teeth. The Appellant’s representative was indicating to the Tribunal that the condition of the Appellant’s gums following the tooth loss had necessitated a consultation with a highly qualified NHS dentist. The Tribunal’s finding of fact that the Appellant sought this consultation on cost basis is entirely misguided, and has no basis in fact. The Appellant was in fact advised by his own private dentist to consult an NHS dentist due to the condition of his gums.  In any case, for the reasons set out in paragraph 9 above, the Appellant’s reasons for consulting an NHS dentist regarding his dentures are entirely irrelevant.  What is relevant is that he went to see a consultant dentist due to his missing teeth and the difficulty in fitting dentures. It cannot be disputed that the Appellant’s missing teeth caused an impairment, and dentures were necessary to replace the resulting impaired physical function. 3. At paragraph 19, the Tribunal states, *‘The tribunal found that dentures were a common addition in many people’s mouths and it could not have been Parliament’s intention to make dentures an aid to taking nutrition – especially when there was no identifiable condition which had caused a loss of teeth. We felt that the teeth rotting was likely to have been caused by a lack of care/dental hygiene. […] The tribunal found that dentures are akin to wearing glasses’* 4. How did the Tribunal come to the conclusion that *‘many’* people wear dentures? It should be noted that PIP is a benefit available only to new claimant’s aged 65 and under. It is submitted that with the vast improvement in dental care over the past decades, the number of adults under 65 who require a full set of dentures is no longer as significant as it may once have been. In addition, any appellant would have to also score 6 points for other health conditions to qualify for the Standard Rate of Daily Living. It is submitted that the number of claimants with dentures who would also score six points for other descriptors and who are also under 65 is not statistically significant. 5. How did the Tribunal come to the conclusion that “*it could not have been Parliament’s intention to make dentures an aid to taking nutrition? “* This assertion is entirely unsupported by reference to any external authority, and appears to be the Tribunal’s own opinion. It is respectfully submitted that it is not the role of the Tribunal to fill gaps in the legislation where they exist, or to substitute their opinion for legislation or case law. If, as the Tribunal appears to believe, dentures are as common as spectacles, and to be treated in the same way, then why did Parliament not legislate to specifically exclude their use as an aid or appliance for Activity 2, as it did for spectacles under Activity 8? 6. It is further submitted that the Tribunal gave insufficient reasons for comparing dentures to spectacles, which would be excluded for an award of points under Activity 8, and not giving reasons why it did not consider dentures akin to hearing aids, which would have been permitted for Activity 7. 7. With respect to Activity 5, there are no grounds to challenge the Tribunal’s findings of fact on the day, and any appeal to the Upper Tribunal is only concerned with the failure to award points under Activity 2. As the Appellant scored 6 points, the two points claimed under Activity 2 were critical to his appeal, and leave to appeal the decision of the First Tier Tribunal is therefore requested. |
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