THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

DECISION OF THE UPPER TRIBUNAL JUDGE

The appeal against the decision of the First-tier Tribunal given at Edinburgh on 27 February 2015 is refused. It is dismissed.

REASONS FOR DECISION

1. The claimant has appealed against the decision of the tribunal set out at page 94. In that decision the tribunal awarded 6 points relating to activities 1 and 8. It did not make any award of points in relation to the descriptor c in activities 6 and f in mobility activity 1.

2. The grounds of appeal are at pages 112 to 114. The Secretary of State does not support the appeal for reasons set out at pages 130 to 133. The claimant was given the opportunity of responding to the Secretary of State's submission but has not done so.

3. In respect of mobility descriptor 1f the tribunal found in fact:

> "6.12 In relation to mobility descriptor 1f, [the claimant] admits that she (with some difficulty) follows a familiar journey to her work. She does so without another person or a dog. She does so whilst wearing hi-vis arm bands and using what her representative (who can be presumed to have knowledge of such matters, being with the RNIB) terms a "symbol cane".

In giving reasons for its decision the tribunal went on to say:

> "7.5 Mobility descriptors 1d and 1f do not apply because the facts as found in paragraphs 6.1, 6.2, 6.10, 6.11 and 6.12 do not support either of them. A "symbol cane" is not an orientation aid. It does not assist the holder to find their way. It identifies the holder to others as being visually impaired. An orientation aid is something which aids orientation, such as a form of radar or a stick with a wheel or ball at the end which is used to enable the holder to "feel" obstacles and kerbs. A symbol cane by is very name proclaims itself not to be an orientation aid. [The claimant] does not have an assistance dog so the descriptors could only apply if for either familiar or unfamiliar journeys [the claimant] needed to be accompanied, when the facts as found did not support that need, which if it was ever present at all arose because of the fear of blackouts, which is not a matter relevant to the either this decision or the DWP one."

4. The argument advanced by the claimant's representative that the tribunal erred in law is expressed as follows:

> "We respectfully submit that the tribunal erred in law in not fully considering whether the symbol cane can satisfy the legal definition referred to above. Instead, in paragraph 7.5, the tribunal finds that *"A 'symbol cane' is not an orientation aid. It does not assist the holder to find their way".* We submit that the correct tests are –
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> - Is a symbol cane is a specialist aid designed to assist disabled people? We submit that it is.
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> - Does a symbol cane assist disabled people to follow a route safely? We submit that it does – because it makes the general public aware of the person's sight loss and so helps the person with sight loss to avoid collisions, which allows them to follow a route safely. In addition it prompts the general public to offer assistance, which again allows the person with sight loss to follow a route safely.
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> - We also submit that the legal test is to *"follow a route safely"* and this is a different test to *"find their way".* The later is a much more active test which sets a higher threshold and does not take safety into consideration."

5. The Secretary of State in response having referred to CPIP/622/2015 submitted:

> "6. The 'orientation aid' therefore must be directly helping the Claimant with their ability to navigate, not just the ability to walk outdoors more generally. I submit the Tribunal correctly identified the 'symbol cane' as not actually helping with the faculty of navigation at all. As explained by the Tribunal and the Claimant's representative the symbol cane's effectiveness relies in the ability of other people to respond to that visual cue and act accordingly, whether that be other pedestrians, people acting as 'good samaritans', or road users. It does not in itself make navigation any easier for the Claimant. If the Claimant were walking in an empty street with no other people around, the symbol cane would provide no assistance for the Claimant whatsoever to navigate that empty street.
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> 7. The symbol cane attracts assistance and the consideration of others. If the Claimant were reliant on the assistance of other people to 'follow the route', i.e. navigate, then they could satisfy either descriptor 1d or 1f on the basis of *that*, rather than on the basis of using an "orientation aid". Someone who cannot follow a route without another person's help in navigating will satisfy the descriptor. However, the Tribunal made findings that this was not the case:
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> *"Mrs Roberts has a visual impairment which causes her significant difficulties but nevertheless she can see sufficiently (for example the green man but not clearly) to enable her to navigate outside exercising caution but without requiring assistance (a person, dog or aid)." (paragraph 6.11, p100-101).*

On this basis the Claimant's eyesight is not so impaired that she cannot visually navigate along a route. We learn that she does go shopping daily on her own, can travel to work on her own and can attend appointments on her own (paragraphs 6.10 to 6.10.3). She may receive assistance from others, prompted by the visual cue of the symbol cane, but it is not reasonably required. She embarks on journeys on her own, she does not have to wait for someone to assist her. If the street were empty, if the entire route that she had to follow were devoid of people all along it, she would still be able to proceed satisfactorily. If the Claimant were to set forth on a journey forgetting to bring her "symbol cane", she would still be able to navigate that journey satisfactorily.

8. The Claimant's representative notes that the definition of 'orientation aid' includes the phrase *"safely"* at the end, and therefore this is a *"different test to "find their way"* p(113), as the Tribunal termed it. I submit that this is not the case. All descriptors must be considered in terms of whether the Claimant can achieve them *"safely"*, as per Regulation 4 (2A)(a) of the Social Security (PIP) Regulations 2013. By finding that the Claimant can see *"sufficiently … to enable her to navigate"* there is the implication that this navigation can be done safely.

9. For the reasons given above I submit that the Tribunal did not err its consideration of mobility activity 1 and the definition of "orientation aid" and ask that the appeal be dismissed."

6. The claimant was given the opportunity of responding to that submission but has not done so.

7. In my view the ground of appeal is misconceived. In the case quoted by the Secretary of State the Upper Tribunal Judge (*Jacobs*) said in paragraph 13:

"*13. The natural meaning of 'follow the route of an unfamiliar journey' is that it is concerned with navigation rather than coping with obstacles of whatever sort that may be encountered on the route."*

8. With that proposition I agree. The description of "the symbol cane" outlined by the claimant's representative is not concerned with navigation but according to the grounds of appeal is relating to giving other road users an awareness of the claimant's sight loss and as a prompt to them to offer assistance. It is quite clear from paragraph 7.5 of the tribunal's statement that the tribunal were attuned to the difference between something which aided orientation or navigation and a symbol of sight loss. The Secretary of State is also correct to point out in his submission that the tribunal made specific findings in relation to the nature and extent of the claimant's sight loss and the effects upon her of that disability. They refer in their statement to the findings made at 6.1, 6.2, 6.10, 6.11 and 6.12 and these findings support the conclusion that she does not satisfy mobility descriptor 1f. I consider that the tribunal reached a conclusion it was entitled to on the facts found and as a matter of law did not err in reaching the conclusion that "a symbol cane" is not an orientation aid. I find myself in agreement with paragraph 8 of the Secretary of State's submission.

9. The Secretary of State made no submission on the second ground of appeal. That ground of appeal is in the following terms:

> "At para 6.7 the panel accepted it as a fact that [the claimant] "no longer feels confident to wash or iron clothes and relies on her husband … so she still looks presentable". They did not accept however at para 6.6 that having assistance to identify between clean and dirty clothes would make it possible to meet descriptor 6c.
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> We would argue that the assistance [the claimant] needs to select appropriate clothing would fall within the scope of 6c(ii) whereby she requires assistance to check that the items of clothes she either selects or is wearing could indeed have stains on that she is unable to see for herself.
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> We therefore respectfully submit that the tribunal erred in law in not applying the correct legal test and that the decision should therefore be set aside."

10. I do not consider that there is any merit in this ground of appeal.

11. In giving reasons for the decision the tribunal say in paragraph 7.4:

> "7.4 Descriptor 6c – assistance in dressing – did not apply because the facts found at paragraphs 6.6, 6.7 and 6.8 do not support any need for prompting or assistance to select appropriate clothing. Distinguishing between one item of clean clothing and another is a matter of feel for the fabric and some visual check on colour and other "appropriateness". Minor stains (even if present) are not relevant to a test of appropriateness and major stains would be visible to someone with 6/18 vision. Also the appellant would be aware at the time when major staining accidents occurred. The appellant is in no different position from anyone else once the clean clothes are in one place and the dirty in another. The washing and ironing of clothes are not relevant to the test, so even if they had to be done by others that would not assist the appellant."

In setting out these reasons the tribunal had regard to their finding in paragraph 6.6 where they said:

> "6.6 In relation to descriptor 6c, the submission asserted that the "appellant is not able to identify marks or stains on her clothes and will rely on others to point these out to her". The Tribunal found as a fact that the exercise of choice between clean and dirty clothes is universally (or virtually so) exercised by having clean clothes in a cupboard, dresser or wardrobe and dirty clothes in a laundry basket or washing machine – that is, they are located in different places; that finding of fact was made because such a conclusion is driven by common sense and the expertise of the Tribunal."

12. The tribunal in making that finding and in giving reasons for their conclusion did so in the context of the fact that the claimant has visual impairment but has not completely lost her sight. I refer in that connection to findings in fact 6.1, 6.2, 6.9, 6.10 and their comments in the Reasons that distinguishing between one item of clean clothing and another is a matter of feel for the fabric and some visual check on colour and other appropriateness. I am therefore satisfied when the tribunal's statement is read as whole the conclusion reached by them was one within the bounds of a reasonable judgement. Essentially the ground of appeal disagrees with that conclusion but such disagreement does not demonstrate an error in law and the tribunal have set out a sufficient reasoned basis in respect of the issues of identifying clean clothing, staining of clothing and its selection.

(Signed)
D J MAY QC
Judge of the Upper Tribunal
Date: 26 August 2015