

**DC v SECRETARY OF STATE FOR WORK AND PENSIONS
[2016] UKUT 0011 (AAC)
UPPER TRIBUNAL CASE NO: CPIP/2819/2015**

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

This decision is given under section 11 of the Tribunals, Courts and Enforcement Act 2007:

The decision of the First-tier Tribunal under reference SC303/15/00077, made on 8 June 2015 at Reading, did not involve the making of an error on a point of law.

REASONS FOR DECISION

A. Activity 3

1. This case concerns the interpretation and application of Activity 3 in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (SI No 377):

Activity	Descriptors	Points
3. Managing therapy or monitoring a health condition.	a. Either- (i) does not receive medication or therapy or need to monitor a health condition; or (ii) can manage medication or therapy or monitor a health condition unaided.	0
	b. Needs either- (i) to use an aid or appliance to be able to manage medication; or (ii) supervision, prompting or assistance to be able to manage medication or monitor a health condition.	1
	c. Needs supervision, prompting or assistance to be able to manage therapy that takes no more than 3.5 hours a week.	2
	d. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 3.5 but no more than 7 hours a week.	4

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	e. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 7 but no more than 14 hours a week.	6
	f. Needs supervision, prompting or assistance to be able to manage therapy that takes more than 14 hours a week.	8

There are a number of definitions relevant to this case in paragraph 1 of Schedule 1:

'manage medication or therapy' means take medication or undertake therapy, where a failure to do so is likely to result in a deterioration in C's health.

'monitor health' means

- (a) detect significant changes in C's health condition which are likely to lead to a deterioration in C's health; and
- (b) take action advised by a-
 - (i) registered doctor;
 - (ii) registered nurse; or
 - (iii) health professional who is regulated by the Health Professions Council,

without which C's health is likely to deteriorate.

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

'therapy' means therapy to be undertaken at home which is prescribed or recommended by a-

- (a) registered-
 - (i) doctor;
 - (ii) nurse; or
 - (iii) pharmacist; or
- (b) health professional regulated by the Health Professions Council.

2. In giving permission to appeal to the Upper Tribunal, Judge Bano said:

I am giving permission to appeal so that consideration can be given to how PIP Activity 3 should be applied to someone in the claimant's position – what descriptor should be applied to a person who needs continual

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supervision to monitor their health condition but who does not normally need any significant help in connection with therapy or medication?

I have accepted for the purposes of this decision that the claimant does need continual supervision in the general meaning of those words. The Secretary of State's representative does not accept that that is the case, but I do not need to resolve that issue.

B. The claim

3. The claimant claimed a personal independence payment on 20 May 2014. He completed a questionnaire, setting out the difficulties he experienced as a result of his paranoid schizophrenia. On Activity 3, he wrote:

I am in a 24-hour staffed care home so that my mental state is be continuously assessed.

Prolonged failure to take medication renders me prone to paranoia and hallucinations.

4. A health professional interviewed and examined the claimant. In her opinion, descriptor b applied. This is how she explained her opinion:

Due to his medical condition and level of input it is reasonable to expect that supervision would be required to manage his health condition and this is supported by him currently living in a 24 hour care home soon to be moving to supported living.

5. The decision-maker accept the health professional's opinion. As Activity 3b was the only descriptor that applied, the decision-maker refused the claim on 24 October 2014.

C. The appeal to the First-tier Tribunal

6. The claimant exercised his right of appeal to the First-tier Tribunal. The tribunal confirmed the 1 point for Activity 3b, and added a further two points for Activity 10b, making a total of 3. As that did not reach the minimum threshold of 8 points for the daily living component at the standard rate, the tribunal dismissed the appeal. On Activity 3, the tribunal accepted that the main function of the care home was to monitor his condition and make sure there were no signs of deterioration. Someone knocked on his door twice a day to check on him. He managed his own medication and had a review of his care plan every 6 months. He was not receiving therapy that required supervision for more than 3½ hours a week.

D. The appeal to the Upper Tribunal

Monitoring a health condition

7. There is no doubt that the claimant satisfied descriptor b on the basis that he needed some form of help (whether supervision, prompting or assistance) to

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monitor his health condition. It is impossible to read monitoring a health condition into any other descriptor. It is not mentioned. The language of the descriptors and the terms of the definitions distinguish between this and managing medication or therapy. If the claimant is to score more points for Activity 3, this can only be done on the basis that he needs help to manage therapy.

Medication

8. I deal briefly with medication. This is given to the claimant but the time taken to administer it would not exceed 3.5 hours a week for descriptor c (2 points), even if medication could be considered as therapy for the purposes of that descriptor.

Therapy

9. The claimant's representative has accepted that there are difficulties in scoring more points on the basis that the claimant requires his health condition to be monitored. She has argued that the assistance he requires can properly be classified as therapy. She points out that he was placed in supported and supervised accommodation. He is well and living in the community because of the support he receives. Staff give him his medication. They help with his daily life to keep his stress levels to a minimum. She relies on the Department's guidance, which refers to safety and to the risk of deterioration that can arise from a failure to carry out therapy.

10. This is an ingenious argument, but I do not accept it. It is necessary to start with the facts. What is it that the staff do for the claimant? I accept what the representative says, but the question is whether that is therapy. There is no definition of what 'therapy' involves. No doubt, that reflects the many and varied forms that it may take. But I do not accept that keeping an eye on the claimant to spot deterioration and the support provided with his general living to help keep him free from stress amounts to therapy. It is support, certainly, and important support that has proved effective, but it is not therapy. Therapy may be difficult to define with precision, but it is a concept that has limits. There are many things that are beneficial for a claimant that are not therapy. A job, for example, may help a claimant socialise and develop self-esteem. It might even be described as therapeutic. But it would not generally be properly described as therapy.

11. Something more than a beneficial effect is necessary. I do not propose to lay down what would or might be sufficient to amount to therapy. It is sufficient to say that the evidence in this case does not contain it.

Judge Bano's concern

12. Judge Bano's concern is understandable against the background of the change from disability living allowance to personal independence payment for those of working age. One condition of entitlement to disability living allowance

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was that the claimant reasonably required 'continual supervision throughout the day in order to avoid substantial danger to himself or others': section 72((1)(b)(ii) of the Social Security Contributions and Benefits Act 1992.

13. There are a number of differences between that provision and Activity 3. First, continual, the word used for disability living allowance, is not the same as continuous, the word used for personal independence payment: see *R(A) 1/72*. The tribunal's findings show that the supervision in the care home was not continuous. Staff were present throughout the day and night, they could be called on if required, they checked on the claimant at regular intervals, and they provided general support with daily living. That is based on the oral evidence at the hearing. But even taken together, it is not continuous. Second, even if the availability of the staff could amount to supervision in a general sense, supervision as defined for the purposes of personal independence payment requires presence. That is a demanding requirement, which was not satisfied on the evidence. The claimant was largely left to his own devices. I do not need to decide what degree of proximity is required for presence, but the mere availability of staff in the care home is not sufficient in the circumstances of this case to amount to presence. Third, unlike disability living allowance, personal independence payment contains precise time requirements for descriptors c to f. And those time requirements only apply to managing therapy. Even if the medication is therapy, the evidence does not support a finding that help is required for as much as 3.5 hours a week.

14. In short, the answer to the question posed by Judge Bano in his grant of permission is that only descriptor b applies to someone in the claimant's position.

**Signed on original
on 6 January 2016**

**Edward Jacobs
Upper Tribunal Judge**

Corrected on 19 February 2016