

New PIP case-law victory – meaning of “safely”

In order for a claimant to be considered to carry out an activity they must be able to do so “safely” (Regulation 4(3) and Regulation 7(1)(a) of the Social Security (Personal Independence Payment) Regulations 2013).

A 3 Judge Upper Tribunal (CPIP/1599/2016 – decision of 9 March 2017) has definitively decided that the concept of “safely” is much broader than has been argued by the DWP. This means that even events that could be considered to be “unlikely”, such as a fire occurring whilst a deaf claimant has their cochlear implant processors removed for bathing, must be considered if the consequences of such an event happening are sufficiently serious. So a claimant in this situation cannot bathe “safely” and so scores 2 points for the washing and bathing activity (4c. Needs supervision or prompting to be able to wash or bathe).

This is now the way the DWP and Tribunals MUST consider the issue of whether a claimant can carry out ALL daily living and mobility activities “safely”.

Does this mean all deaf claimants will score 2 points for activity 4 - washing and bathing?

All those who have non-waterproof hearing technology, and who cannot hear a smoke or fire alarm without their hearing aids or cochlear implants, must now be scored at two points for washing and bathing.

What if the claimant has an adapted smoke alarm such as strobe lighting?

This also scores 2 points (4b. Needs to use an aid or appliance to be able to wash or bathe) as long as they would be reliant on the light rather than the siren in the event of a fire.

Will this improve the situation for the mobility component?

Yes, because if there is a real and serious risk to the claimant’s safety because of the effect of their deafness (and any other impairments), they cannot carry out the activity “safely” and so are considered not to be able to carry it out at all.

Will this apply indefinitely?

It might do, although the DWP could appeal further. But it will be the correct position for the foreseeable future and we will notify you of any changes.