

## **Personal Independence Payment (PIP)**

### **Implementation of legal judgment MM: Frequently Asked Questions (FAQ)**

#### **The MM judgment**

##### **What does the MM judgment mean?**

The MM Supreme Court judgment was handed down on 18th July 2019. The case concerned the definition of “social support”, when engaging with other people face to face, in Activity 9 of the Personal Independence Payment (PIP) regulations, and how far in advance that support can be provided.

The full judgment is available online at:

<https://www.supremecourt.uk/cases/docs/uksc-2017-0215-judgment.pdf>

The Department has undertaken significant work to implement the Supreme Court judgment into the PIP assessment process. We consulted Mind, the mental health charity (who intervened in the Supreme Court Case) and have updated the PIP Assessment Guidance (PIPAG) to reflect the clarity provided by this judgment.

The MM judgment was implemented into our assessment processes from 17 September 2020, for new PIP decisions. We are currently considering the administrative exercise we will need to carry out to identify other claimants who may benefit.

#### **Implementing the MM judgment into the PIP assessment process**

##### **When did you implement the MM judgment into the PIP assessment process?**

DWP published the updated PIPAG on 17 September 2020. Our Case Managers and Healthcare Professionals working for our Assessment Providers started using the updated guidance on the same day.

##### **Where can I find the guidance (PIPAG)?**

The updated PIP Assessment Guide can be found here:

<https://www.gov.uk/government/publications/personal-independence-payment-assessment-guide-for-assessment-providers/pip-assessment-guide-part-2-the-assessment-criteria>.

##### **What does this mean for a PIP assessment coming up?**

We have changed the PIP Assessment Guide so that it reflects the clarification provided by the Supreme Court judgment. Since 17 September 2020, new PIP decisions have been made on the updated guidance to reflect the change to how we assess “social support” when we consider engaging with other people face to face, in Activity 9. This will result in some people being eligible for more support under PIP.

## **MM Administrative Exercise**

### **What are your plans for checking past claims that may be affected by the MM judgment?**

We are currently considering the administrative exercise we will need to carry out to identify those who may benefit.

We will be consulting with stakeholders over our plans for the exercise.

This is a really important area of work, and we are determined to get it right for all claimants and start the exercise as soon as we can.

### **How will you identify people who may benefit?**

We will be treating the Upper Tribunal's decision on 6 April 2016 as the "relevant determination" and will be using this date for checking claims.

We will be checking claims where claimants may be entitled to more points for Activity 9 (Engaging with other people face to face), in line with the Supreme Court judgment.

The extra points will need to make a material difference to a claimant's PIP award i.e. where it means they should now be entitled to an award of the Daily Living component of PIP, either at the standard or enhanced rate.

We will provide further detail once our plans for the administrative exercise are finalised.

### **What will this mean for current PIP claimants?**

Claims within the scope of the administrative exercise will be reviewed. If this leads to an increase in PIP, claimants will receive a backdated payment. This will usually either be from the date of the UT decision on 6 April 2016 or the start of their PIP award, if this was after the decision.

Claimants that have always been on the enhanced Daily Living rate of PIP will not be reviewed as part of this exercise.

Claimants will be notified if we review their case.

Decision makers will not be reducing PIP awards as part of the administrative exercise to backdate payments.

### **What will this mean for PIP claimants who have previously been disallowed PIP?**

We will be checking claims which have been disallowed after the Upper Tribunal's decision on 6 April 2016 to see if they are within scope for inclusion in the exercise.

If claimants were disallowed PIP after the UT decision, and DWP's decision was upheld by a Tribunal, their disallowance decision will not be reviewed. It is DWP decisions we will be checking. We do not have the power to change Tribunal decisions on the basis that their decision is wrong in law.

If claimants were disallowed PIP before the UT decision on 6 April 2016, their disallowance decision will not be reviewed.

If claimants fall into either of these categories and think that the UT decision means that they are entitled to PIP, they should consider making a new PIP claim.

### **Will claimants get compensation?**

We will pay claimants any arrears of PIP they are due as a result of the Supreme Court judgment.

### **Do previous claimants or claimants currently entitled to PIP need to do anything? Or should they simply wait for a letter?**

No. We will write to everyone we identify who is affected by these changes. Claimants do not need to contact DWP at this stage.

### **How will this affect someone who has claimed PIP more than once since the Upper Tribunal decision?**

We will be looking at all periods of entitlement to PIP since 6 April 2016, so multiple claims will be considered. Additionally, claimants currently on the enhanced Daily Living rate of PIP who were on a lower Daily Living (nil or standard) rate at some stage between 6 April 2016 and 17 September 2020 may be in scope of the exercise if their award could materially change as a result of the UT decision.

### **What about claimants who have appealed their PIP claim and their award was decided by a tribunal?**

If a claimant's needs arising from their health condition or disability have changed since their award was decided by a tribunal they can ask for their claim to be reviewed as a Change of Circumstances, at any time. This may result in a change of their PIP award.

We will look again at the claimant's award, which could mean that their PIP might be increased, reduced, stopped or stay the same.

### **Will this affect anyone who is currently appealing their PIP decision with the courts and tribunals service?**

No. The tribunals are obliged to apply the law (including the MM Supreme Court judgment) to all appeals, and to award claimants accordingly.