

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 16 May 2019

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. Both parties have expressed the view that the decision appealed against was erroneous in point of law.
2. Accordingly, pursuant to the powers conferred on me by Article 15(7) of the Social Security (Northern Ireland) Order 1998, I allow the appeal, I set aside the decision appealed against and I refer the case to a differently constituted tribunal for determination.
3. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of her entitlement to Personal Independence Payment (PIP) remains to be determined by another appeal tribunal.
4. I direct that the parties to the proceedings and the newly constituted appeal tribunal take into account the following:
 - (i) the decision under appeal is a decision of the Department, dated 27 July 2018, which decided that the appellant was entitled to the enhanced rate of the mobility component of PIP from 29 August 2018 to 4 July 2022 but was not entitled to the daily living component from and including 29 August 2018;
 - (ii) the Department is directed to provide details of any subsequent claims to PIP and the outcome of any such claims to the appeal tribunal to which the appeal is being referred. The appeal tribunal is

directed to take any evidence of subsequent claims to PIP into account in line with the principles set out in *C20/04-05(DLA)*;

- (iii) it will be for both parties to the proceedings to make submissions, and adduce evidence in support of those submissions, on all of the issues relevant to the appeal; and
- (iv) it will be for the appeal tribunal to consider the submissions made by the parties to the proceedings on these issues, and any evidence adduced in support of them, and then to make its determination, in light of all that is before it.

Background

5. On 27 July 2018, a decision maker of the Department decided that the appellant was entitled to the enhanced rate of the mobility component of PIP from 29 August 2018 to 4 July 2022 but was not entitled to the daily living component from and including 29 August. Following a request to that effect, the decision dated 27 July 2018 was reconsidered on 2 September 2018 but was not changed. An appeal against the decision dated 27 July 2018 was received in the Department on 25 September 2018.
6. Following an earlier adjournment, the substantive appeal tribunal hearing took place on 16 May 2019. The appellant was present and was represented by Mr McGuinness from Advice NI. There was no Departmental Presenting Officer present. The appeal tribunal disallowed the appeal and confirmed the Departmental decision of 27 July 2018. The appeal tribunal did apply a descriptor from Part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ('the 2016 Regulations') which the decision maker had not applied. The score for this descriptor, combined with the score for a descriptor which had been applied by the decision maker was insufficient for an award of entitlement to the daily living component of PIP at the standard rate – see article 83 of the Welfare Reform (Northern Ireland) Order 2015 and regulation 5 of the 2016 Regulations.
7. On 8 August 2019 an application for leave to appeal to the Social Security Commissioner was received in the Appeals Service (TAS). In this application, the appellant was represented by Mr McGuinness. On 9 October 2019 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

Proceedings before the Social Security Commissioners

8. On 1 November 2019 a further application for leave to appeal was received in the office of the Social Security Commissioners. In this application, the appellant was, once again, represented by Mr McGuinness. On 17 December 2019 observations on the application for leave to appeal were requested from Decision Making Services ('DMS'). In written observations

on the application dated 10 January 2020, Mr Arthurs, for DMS, supported the application for leave to appeal on two of the grounds which had been advanced on behalf of the appellant.

9. The written observations were shared with the appellant and Mr McGuinness on 13 January 2020. Written observations in reply were received from Mr McGuinness on 21 January 2020 and were shared with Mr Arthurs on 11 April 2020.
10. On 9 June 2020 I granted leave to appeal. When granting leave to appeal I gave as a reason that it was arguable that the appeal tribunal erred in the manner in which it addressed the potential applicability of activity 9 in part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016. On the same date I determined that an oral hearing of the appeal would not be required.
11. In the latter part of 2020 and into 2021 priority had to be given to a large group of cases in the office of the Social Security Commissioners. That, and the further effects of the Covid-19 pandemic has led to a delay in the promulgation of this decision for which apologies are extended to the appellant, Mr McGuinness, and Mr Arthurs.

Errors of law

12. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
13. In *R(I) 2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:
 - “(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
 - (ii) failing to give reasons or any adequate reasons for findings on material matters;
 - (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
 - (iv) giving weight to immaterial matters;
 - (v) making a material misdirection of law on any material matter;

- (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word 'material' (or 'immaterial'). Errors of law of which it can be said that they would have made no difference to the outcome do not matter."

Disposal

14. The most expeditious method of disposal of this appeal is by the application of Article 15(7) of the Social Security (Northern Ireland) Order 1998. I would ask the parties to note, therefore, that I am making no substantive decision on the principal issue which the parties have raised.

(Signed): K Mullan

Chief Commissioner

6 March 2023