

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Application by the claimant for leave to appeal
and appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 25 May 2023

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference CN/10128/22/02/D.
2. For the reasons I give below, I grant leave to appeal. I allow the appeal and I set aside the decision of the appeal tribunal under Article 15(8)(b) of the Social Security (NI) Order 1998. I direct that the appeal shall be determined by a newly constituted tribunal.

REASONS

Background

3. The applicant had previously been awarded personal independence payment (PIP) by the Department for Communities (the Department) from 30 January 2018 to 29 January 2021 at the enhanced rate of the daily living component and the standard rate of the mobility component. As his award was coming to an end he was invited to make a fresh claim. He duly claimed on 21 December 2020 on the basis of needs arising from inflammatory bowel disease, eczema, asthma, severe social anxiety and an inguinal hernia. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 21 December 2020 along with further evidence. The applicant was asked to participate in a consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 30 March 2021. A supplementary advice note was received on a number of occasions between April and December 2021. On 18 January 2022 the Department

decided that the applicant satisfied the conditions of entitlement to the daily living component at the standard rate from 30 January 2021 to 22 March 2024 but did not satisfy the conditions of entitlement to the mobility component. The applicant requested a reconsideration of the decision, submitting further evidence. He was notified that the decision had been reconsidered by the Department but not revised. He appealed.

4. The appeal was considered at a hearing on 25 May 2023 by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal disallowed the appeal, maintaining the award made by the Department. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 21 July 2023. The applicant applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 29 September 2023. On 27 October 2023 the applicant applied to a Social Security Commissioner for leave to appeal.

Grounds

5. The applicant submits that the tribunal has erred in law by failing to take account of evidence that he cannot engage with other people and needed to be accompanied on all journeys, and had not taken account of the assistance he received from his father. On this basis he submitted that the tribunal had made mistakes as to material facts, and/or reached findings of fact which were perverse.
6. The Department was invited to make observations on the applicant's grounds. Mr Killeen of Decision Making Services (DMS) responded on behalf of the Department. Mr Killeen submitted that the tribunal had erred in law. He indicated that the Department supported the application.

The tribunal's decision

7. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of the Department's submission, containing the PIP2 questionnaire completed by the applicant, various supplementary reports, a consultation report from the HCP, an employment and support allowance report, further evidence and further supplementary reports. The tribunal also had sight of the applicant's medical records. The appeal was listed as an oral hearing, but the applicant did not attend, having requested the tribunal to proceed in his absence.
8. The tribunal considered the documentary evidence before it. Placing weight on the medical records and evidence of his daily life, it accepted that the applicant should be awarded 10 points for daily living activities and 4 points for mobility activities. It awarded daily living component at the standard rate from 30 January 2021 to 22 March 2024.

Relevant legislation

9. PIP was established by article 82 of the Welfare Reform (NI) Order 2015. It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily activities or mobility activities is limited, or severely limited, by their physical or mental condition. The Personal Independence Payment Regulations (NI) 2016 (the 2016 Regulations) set out the detailed requirements for satisfying the above conditions.
10. The 2016 Regulations provide for points to be awarded when a descriptor set out in Schedule 1, Part 2 (daily living activities table) or Schedule 1, Part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points will be awarded the enhanced rate of that component.
11. Additionally, by regulation 4, certain other parameters for the assessment of daily living and mobility activities, as follows:
 - 4.—(1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.
 - (2) C’s ability to carry out an activity is to be assessed—
 - (a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or
 - (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.
 - (3) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—
 - (a) safely;
 - (b) to an acceptable standard;
 - (c) repeatedly; and
 - (d) within a reasonable time period.
 - (4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.
 - (5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

Assessment

12. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
13. Leave to appeal is a filter mechanism. It ensures that only applicants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
14. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.
15. The basis on which Mr Killeen offers support to the application is his submission that the tribunal had not adequately addressed the applicant’s ability to engage with people that he did not know well and that it relied too much on the applicant’s ability to drive a car when assessing his ability of plan and follow a journey.
16. The relevant descriptors for daily living activity 9, engaging with other people, appear at Schedule 1, Part 2 to the 2016 Regulations. This provides:

9. Engaging with other people face to face.	a. Can engage with other people unaided.	0
	b. Needs prompting to be able to engage with other people.	2
	c. Needs social support to be able to engage with other people.	4
	d. Cannot engage with other	8

people due to such engagement causing either –

(i) overwhelming psychological distress to the claimant, or

(ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person.

17. Mr Killeen observes the applicant's ground that the tribunal ignored the medical evidence that stated that he was regularly accompanied by his father. He refers to the applicant's letter to the tribunal dated 15 February 2023 stating that he finds it extremely difficult to speak to other people and needs his father to accompany him. He observed a possible misunderstanding of the applicant's evidence by the tribunal.
18. The tribunal had stated its belief that the applicant required prompting but did not need social support in order to engage with other people face to face. In making this finding, it relied upon evidence of engagement with medical personnel on a regular basis. Mr Killeen cited a number of cases from the Commissioners and Upper Tribunal, notably that of Upper Tribunal Judge Gray in *PM v Secretary of State for Work and Pensions* [2017] UKUT 154, where she said at paragraph 12:

“12. The definition of ‘engage socially’ informs activity 9 (*SF-v-SSWP (PIP)* [2016] UKUT 543 (AAC)). It includes the ability to establish relationships. The ability, therefore, to engage with people known to her (family and existing friends) or with whom she needs to engage for a specific and limited purpose (health professionals or the tribunal) is insufficient to engage the baseline (zero scoring) descriptor...”
19. Mr Killeen submitted that, whilst the tribunal had considered the applicant's ability to engage with medical professionals and his family, and noted that his father was in attendance during numerous medical appointments, it did not appear to have considered his ability to engage with other groups of people, including people he didn't know well. In failing to explore this issue further, he contended that the tribunal had materially erred in law.
20. I do accept that there is merit in the applicant's ground and accept the concession of Mr Killeen on this issue. The tribunal appears to have based its conclusions solely upon instances of social engagement with family and with medical personnel. I consider that there was insufficient evidence to indicate the level of social support needed by the applicant outside those limited types of social engagement.

21. Mr Killeen further submits that the tribunal has erred in its assessment of the applicant's ability to plan and follow a journey for the purposes of activity 1 of Part 3 of Schedule 1. I do not need to consider that aspect of the application, and I will not express a view on the merits, as I have decided the application on other grounds.
22. For the reasons I have given, I allow the appeal and I set aside the decision of the appeal tribunal. I direct that the appeal shall be determined by a newly constituted tribunal.

(Signed): O STOCKMAN

COMMISSIONER

31 July 2024