

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 7 August 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Belfast.
2. For the reasons I give below, I grant leave to appeal. However, I disallow the appeal.

REASONS

Background

3. The appellant claimed personal independence payment (PIP) by telephone from the Department for Communities (the Department) from 11 July 2016 on the basis of needs arising from depression, osteoarthritis, fibromyalgia, diabetes, sciatica, glaucoma and cataracts. She was asked to complete a questionnaire to describe the effects of her disability and returned this to the Department on 12 August 2016. She enclosed a letter from a cognitive behavioural psychotherapist. She was asked to attend a consultation with a healthcare professional (HCP) and a consultation report was received by the Department on 21 September 2016, with a supplementary medical report received on 10 October 2016. On 25 October 2016 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 11 July 2016. The appellant requested a reconsideration of the decision, and she was notified that the decision had been reconsidered by the Department but not revised. She appealed.

4. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. After a hearing on 7 August 2018 the tribunal allowed the appeal, awarding the standard rate of the mobility component from 11 July 2016 to 10 July 2019, but disallowing the daily living component.
5. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 24 January 2019. The appellant 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 28 March 2019. On 8 April 2019 the appellant applied to a Social Security Commissioner for leave to appeal.

Grounds

6. The appellant, represented by Mr Milne of the Royal National Institute for Blind people (RNIB), submits that the tribunal has erred in law on the basis that it failed to adequately address the mental health problems of the appellant and to give adequate reasons.
7. The Department was invited to make observations on the appellant's grounds. Mr Arthurs of Decision Making Services responded on behalf of the Department. Mr Arthurs submitted that the tribunal had not erred in law as alleged and indicated that the Department did not support the application.

The tribunal's decision

8. 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 appellant, a consultation report from the HCP and a supplementary advice note. It further had sight of her GP notes and records, a submission from her representative, containing Upper Tribunal decision *LC v SSWP* [2016] UKUT 150, a letter from a counsellor, an MLA and a cognitive behavioural therapist, as well as the record of a previous hearing. The appellant attended the hearing and gave oral evidence, represented by Ms Hanna of RNIB, and accompanied by her sister, who also gave evidence. The Department was represented by Mr Noble.
9. The tribunal identified the activities in dispute and noted the various medical conditions affecting the appellant, including mental health issues, type II diabetes, vision problems, sciatica, incontinence, fibromyalgia and right frozen shoulder. It addressed the mobility component, and accepted evidence that the appellant had become socially withdrawn and required prompting to undertake any journey, finding that an award of 4 points for activity 1(b) was appropriate. It accepted the agreed position of the parties that the appellant should score 4 points for activity 2(b). As this totalled 8 points, the tribunal awarded the mobility component.

10. The tribunal addressed daily living activities 1, 2, 3, 4, 5, 6 and 9. It did not accept the evidence of the appellant that she was unable to prepare food due to poor grip and did not accept that at the relevant time of assessment that there were any concerns about self-neglect (1). It similarly declined to accept that she would be likely to have difficulties taking nutrition (2). The tribunal considered that the appellant's management of her diabetes was sub-optimal and awarded 1 point for 3(b). The tribunal found that the evidence did not support significant functional restriction in washing and bathing (4). The tribunal accepted that the appellant required to use an aid to manage incontinence and awarded 2 points for 5(b). The tribunal accepted that the appellant needed prompting to dress, awarding 2 points for 6(c)(i). The tribunal accepted that the appellant had become socially isolated and awarded 2 points for activity 9(b). Accordingly it disallowed the daily living component.

Relevant legislation

11. 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.
12. 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.

Submissions and leave to appeal

13. 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.
14. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
15. 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.

16. The submission advanced on the appellant's behalf by Mr Milne of RNIB took issue with the tribunal's treatment of the evidence before it, and in particular the report of Ms Coleman dated 3 August 2016. This listed the appellant's presenting problems and the reason for her referral to the Cognitive Behavioural Psychotherapy service. The appellant submitted that the tribunal did not take aspects of this evidence into account and that no explanation was given for not considering those aspects.
17. Mr Milne for the appellant submitted that only some items on the list of presenting problems indicated by Ms Coleman were considered and, then, only in respect of three of the scheduled activities. He submitted that the discharge of the appellant from psychiatric care was given undue weight by the tribunal, arguing that it was not a sign of improvement. He also submitted that, whereas the appellant's physical and mental problems are addressed separately, the combination of physical and mental problems was not properly addressed. He further submitted that the tribunal did not fully address the evidence before it and that its reasons were flawed in consequence.
18. Mr Arthurs for the Department responded by setting out the contents of Ms Coleman's letter and observed that the appellant's representative selectively referred to the three disputed activities where no points were awarded, yet that the tribunal awarded points for four daily living activities. Mr Arthurs referred to an extract from the appellant's GP records cited by the tribunal as evidence that discharge was properly taken as indicative of an improvement in the appellant's condition. He submitted that the tribunal was not obliged to provide a detailed response to each issue raised in each piece of evidence, but that it was sufficient that it was obvious how it has reached its decision in the light of the evidence available. Mr Milne replied to Mr Arthurs' observations, reiterating his submissions and submitting in particular that all factors in Ms Coleman's evidence were not considered by the tribunal.
19. The submissions of Mr Milne placed particular weight on the report of Ms Coleman, submitting that the tribunal did not consider "significant and well-informed evidence ... without explanation". He submitted that it would have made a significant difference to the outcome if it had been accepted and explored. He submitted that the tribunal erred by considering only three of a list of ten presenting problems identified by Ms Coleman.
20. I accept that Mr Milne has raised arguable points and therefore I must grant leave to appeal.

Assessment

21. Mr Milne submitted that the tribunal had erred in law in its approach to a report provided by Ms Coleman, a cognitive behavioural psychotherapist dated 3 August. This listed current presenting problems as:

- Low mood
- Loss of interest
- Self neglect
- Withdrawn from family and friends
- Sleep disturbance
- Appetite loss
- Weight loss
- Despairing thoughts of life not worth living
- Chronic pain
- Difficulty moving around house
- Difficulty in getting to the toilet due to the nature of her condition, resulting in incontinence at times and causing great distress to her
- Loss of memory and concentration at times

The report continued:

“She was referred to our service for issue with OCH Hoarding, resulting in

- Inability to throw away possessions
- Severe anxiety when attempting to discard items, this includes everyday rubbish
- Great difficulty categorising or organising possessions
- Great distress, such as feeling overwhelmed or embarrassed by possessions
- Suspicion of other people touching things
- Functional impairments, including loss of living space, social isolation, family or marital discord, financial difficulties, health hazards”.

22. Mr Milne for the appellant submitted that the tribunal in its statement of reasons had ignored the majority of presenting problems. He further

submitted that extreme levels of hoarding in her living space would have had an extreme impact on her ability to maintain any kind of hygiene and to prepare food reliably and safely.

23. It seems to me that, while the tribunal was required to set out its findings in respect of the individual activities in issue in the appeal, it was not required to make exhaustive findings in respect of the evidence before it. Thus, for example, when considering the activities of preparing food and taking nutrition, the tribunal referred to the listed presenting problems of self-neglect, appetite loss and weight loss. It did not refer to matters such as low mood, sleep disturbance or difficulty moving around the house, as these do not directly bear on the relevant activities. I see no error in law arising from the tribunal's consideration of the most relevant of the presenting problems to the particular activities it addressed.
24. However, it is also evident that the tribunal considered all of the evidence before it in its general assessment of the appellant's functional limitations. The appellant's medical records contained the records of mental health reviews, including a report of April 2016 that indicated that the appellant's sleep pattern was poor but that there were no problems with her appetite and weight. It preferred this evidence to the references in the report of Ms Coleman, observing that hoarding was the principal reason for referral to CBT services. The tribunal was entitled to prefer the report of the mental health team to the evidence of Ms Coleman on matters such as appetite loss and weight loss. While the tribunal summarised the reason for the appellant's referral to CBT services as "hoarding", the broader reasons articulated in the bullet points above are consistent with that behaviour and there is nothing of more specific relevance to the scheduled activities, bar perhaps social isolation. However, the tribunal acknowledged the appellant's difficulty in engaging face to face with other people by an award of points for descriptor 9(b).
25. Mr Milne made a general submission that the appellant would be cooking in unhygienic circumstances as a result of her hoarding behaviour. However, this particular submission was not made to the tribunal in the general submission forwarded to the tribunal on the appellant's behalf. It does not appear to be based on any evidence before the tribunal. I cannot accept the submission to this effect from Mr Milne, as it appears entirely speculative.
26. Mr Milne further made submissions of fact regarding the circumstances in which patients may be discharged from psychiatric review. Again, I have no evidence to support this assertion, or any statement to help me understand how Mr Milne, who is based in London, has any personal knowledge of psychiatric services in Northern Ireland.
27. Both of these points amounted to an attempt to re-argue matters of fact that were for determination by the tribunal. I see no error of law arising on the grounds submitted.

28. Mr Milne submitted that the tribunal had not considered the combination of physical and mental problems experienced by the appellant. He did not give any specific example of this and it does not appear to me that this is the case. For example, the tribunal addressed the activity of washing and bathing in terms of both the physical and the psychological limitations of the appellant. It accepted the evidence of the HCP to the effect that the appellant was able to wash and bathe independently and unaided safely, to an acceptable standard, repeatedly and within a reasonable time frame. The tribunal was correct to focus on the functional limitation resulting from physical and mental disability and had sufficient evidence to make the finding of fact that it did.
29. More generally, the standard of reasons that is required of the tribunal is that a person reading the decision, and in particular the appellant, can understand how the decision was arrived at. I consider that the reasons for the decision are clear and I reject this ground of appeal.
30. It does not appear to me that the tribunal has materially erred in law and I disallow the appeal.

(signed): O Stockman

Commissioner

25 November 2019