

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 15 October 2019

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 LD/5236/19/02/D.
2. An oral hearing of the application has not been requested.
3. For the reasons I give below, I grant leave to appeal. However, I disallow the appeal.

REASONS

Background

4. The appellant had previously been awarded disability living allowance (DLA) from 2012, most recently at the high rate of the mobility component and the middle rate of the care component from 13 August 2013. As his award of DLA was due to terminate under the legislative changes resulting from the Welfare Reform (NI) Order 2015, he claimed personal independence payment (PIP) from the Department for Communities (the Department) from 26 October 2018 on the basis of needs arising from asbestosis, chest pain, chronic fatigue, chronic depression, anxiety disorder, poor concentration, insomnia, poor appetite, thoughts of life not worth living, type 2 diabetes, childhood trauma and dyslexia.

5. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 30 November 2018 along with further evidence. He asked for evidence relating to his previous DLA claim to be considered. The appellant attended a consultation with a healthcare professional (HCP) and the Department received an audited report of the consultation on 21 March 2019. On 12 April 2019 the Department decided that the appellant satisfied the conditions of entitlement to the daily living component of PIP at the standard rate but did not satisfy the conditions of entitlement to the mobility component. The appellant 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.
6. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member on 15 October 2019. The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 30 September 2020. 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 23 November 2020. On 23 December 2020 the appellant applied to a Social Security Commissioner for leave to appeal.

Grounds

7. The appellant, represented by Sean O'Farrell of Advice North West, submits that the tribunal has erred in law by inconsistency in awarding points for a number of daily living activities on the basis of a need for prompting arising from the appellant's mental condition but not for activity 4 (Washing and bathing).
8. The Department was invited to make observations on the appellant's grounds. Mr Arthurs of Decision Making Services (DMS) responded on behalf of the Department. Mr Arthurs pointed to an error of fact in the appellant's grounds. However, he also submitted that the tribunal had erred in law, but articulated this in terms of the adequacy of the tribunal's reasons, and therefore on a slightly different basis to the appellant. He indicated that the Department supported the application for leave to appeal.
9. Mr O'Farrell responded, acknowledging the error pointed out by Mr Arthurs. He adopted the submissions of Mr Arthurs on the tribunal's reasons and submitted that there was an error of law in relation to both activity 4 and 6, when contrasted with 1 and 10.

The tribunal's decision

10. 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, past DLA evidence, current medical evidence and a consultation report from the HCP. It also had a representative's submission prepared on behalf of the appellant and the appellant's medical records. The appellant attended the hearing, represented by Mr McGuinness, and gave oral evidence. The Department was represented by Mr Shields.

11. In its statement of reasons, the tribunal noted that, whereas the appellant had told the HCP that he stopped work 10 years previously, the medical records suggested that he had been working as a taxi driver in May 2016. It observed that he was receiving DLA at the high rate of the mobility component and the middle rate of the care component at this time, but indicated that it did not have all the evidence on which this award was based.
12. It agreed with the Department's finding that the appellant required prompting to prepare and cook food, awarding 2 points for daily living activity 1.d. It found that he did not satisfy activity 2. It accepted that he would benefit from a dosette box, awarding 1 point for activity 3.b(i). It concluded that he did not require prompting to wash and bathe, awarding no points for activity 4. It found that he had no difficulty managing toilet needs, awarding no points for activity 5. It found that he did not require prompting to dress, awarding no points for activity 6. It found no difficulty with activity 7. While noting that dyslexia had been suggested but never diagnosed, the tribunal accepted that the appellant required prompting to be able to understand complex written information, awarding 2 points for activity 8.c. The tribunal accepted a need for prompting to engage with other people, awarding 2 points for activity 9.b. The tribunal accepted that the appellant required prompting or assistance to make complex budgeting decisions, awarding 2 points for activity 10.b.
13. In relation to mobility, the tribunal accepted that the appellant had some anxiety since being stabbed in 2014. However, it did not accept that he was unable to plan and follow the route of a journey, awarding no points for mobility activity 1. In relation to physical difficulties walking, the tribunal did not accept that the appellant was as restricted by shortness of breath to the extent claimed, but that he was able to mobilise between 50-200 metres, awarding 4 points for mobility activity 2. Accordingly, it allowed standard rate daily living component, but disallowed mobility component.

Relevant legislation

14. 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.

15. 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.

Assessment

16. 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.
17. 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.
18. 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.
19. On the basis that each of the parties submits that there is an arguable error of law, I grant leave to appeal. However, I do not consider that this is an appropriate case in which to exercise my discretion under Article 15(7) of the Social Security (NI) Order 1998 to set aside the decision of the appeal tribunal without a determination on the question of error of law. With the consent of the appellant, I will proceed to determine the application as if it was an appeal.
20. It appears to me that the application is based on an erroneous premise or misunderstanding by the appellant. The Department at first instance had awarded of 11 points to the appellant for activities including activity 6 (dressing and undressing). When the tribunal decided the appeal, however, it did not uphold the award of two points for activity 6. It awarded 9 points for daily living activities overall. The submission of the appellant is to the effect that there was inconsistency between the lack of an award of points for a need for prompting to wash, when points were awarded for dressing, preparing food and making budgeting decisions. This is factually wrong as no points were awarded for dressing.
21. There is a closer relationship, it seems to me, between washing and dressing – both of which are concerned with personal hygiene and

appearance – and preparing food or making budgeting decisions. I believe that the case for inconsistency would be stronger if points had been awarded for a need for prompting in order to dress, while not being awarded for prompting to wash. However, that is not the actuality. I consider that the appellant's submission retains some force, but is weakened as a result of the erroneous understanding.

22. Mr Arthurs for the Department has expressed some support for the application. He observes, as I have, that the appellant is under a misapprehension as to the points awarded. He nevertheless submits that there is some merit in the appellant's submission in principle. He observes that "the expectations are different for each activity". He then addresses the tribunal's use of the term "reduced motivation" as contrasted with "lack of motivation". He notes that the tribunal found that the appellant lacked motivation in relation to activities 1 and 10, but had reduced motivation in relation to activities 4 and 6. He asked how "reduced motivation" differed from "a lack of motivation" and how it should be applied across the descriptors. He finds a lack of clarity in the tribunal's reasons as a result and submits that it may have erred in law for that reason.
23. For my part, I find no difficulty in understanding the difference between lack of motivation and reduced motivation. The former refers to a complete absence of motivation, while the latter refers to a diminished level of motivation. It is not inconsistent to lack any motivation to climb a mountain but at the same time [only] to have reduced motivation to walk to the shops. Whereas both involve walking, as Mr Arthurs himself said, the expectations are different for each activity.
24. It seems to me that there is a world of difference between a need for prompting to make complex budgeting decisions and the need for prompting to wash. The steps involved in each activity are very different. In consequence, the factors inhibiting each activity and the nature of any prompting required may be very different. It was not inherently inconsistent of the tribunal to find that a man who lacks motivation to pay bills on time is still be able to wash himself every day.
25. Similarly the tribunal found that the appellant did not have motivation to prepare and cook food for himself every day, due to lack of concentration and lack of interest, whereas it did not accept that he lacked motivation to dress. Basing its conclusions on the level of medical management of the appellant, the tribunal judged that the appellant could dress and undress without a need for prompting. In terms of cooking, the appellant indicated that he did not cook and had never learned to cook. It is plain that the tribunal accepted that there was a difference between the reduction in motivation to cook – an activity that remained unfamiliar to the appellant – and reduction in motivation to dress – an activity for which he will have had the skills since childhood. It was not inconsistent of the

tribunal to find that the appellant dressed himself, but was content to rely on family and friends to prepare food for him.

26. For these reasons, I consider that the tribunal has not erred in law and I disallow the appeal.

(signed): O Stockman

Commissioner

31 March 2021