

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 9 September 2021

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal from the decision of an appeal tribunal with reference DP/11610/18/03/D.
2. An oral hearing of the appeal has not been requested.
3. For the reasons I give below, I allow the appeal. I set aside the decision of the appeal tribunal under Article 15(8)(b) of the Social Security (NI) Order 1998 and I refer the appeal to a newly constituted tribunal for determination.

REASONS

Background

4. The appellant had previously been awarded disability living allowance (DLA) from 28 March 2014, most recently at the high rate of the mobility component and the middle rate of the care component. As her award of DLA was due to terminate under the legislative changes resulting from the Welfare Reform (NI) Order 2015, she claimed personal independence payment (PIP) from the Department for Communities (the Department) from 29 June 2018 on the basis of needs arising from ME/chronic fatigue syndrome, osteoarthritis, fibromyalgia, depression, vertigo, anxiety, irritable bowel syndrome, hip, knee and finger pains, stress incontinence, granuloma annulare, dry eyes, menopause, possible hearing loss and agoraphobia.

5. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 1 August 2018 along with further evidence. She asked for evidence relating to her previous DLA claim to be considered. The appellant was asked to attend a consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 11 September 2018. On 3 October 2018 the Department decided that the applicant did not satisfy the conditions of entitlement to PIP from and including 29 June 2018. The applicant requested a reconsideration of the decision, submitting further evidence. The Department obtained a Supplementary Medical Report in response. She was notified that the decision had been reconsidered by the Department, awarding some additional points, but the outcome was not revised. She appealed, but waived the right to attend an oral hearing of the appeal.
6. The appeal was listed as an oral hearing on 9 September 2021 and considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal disallowed the appeal. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 1 December 2021. The applicant applied to the LQM for leave to appeal from the decision of the appeal tribunal and leave to appeal was granted by a determination of the salaried LQM issued on 9 February 2022. The LQM granted leave to appeal on the question of whether the tribunal had given adequate reasons for its decision. On 9 March 2022 the appellant lodged her appeal with the office of the Social Security Commissioners.

Grounds

7. The appellant, represented by Ms Rothwell of Law Centre NI, submits that the tribunal has erred in law by failing to give adequate reasons and by making a mistake as to a material fact.
8. The Department was invited to make observations on the appellant's grounds. Mr Killeen of Decision Making Services (DMS) responded on behalf of the Department. He accepted that the decision of the appeal tribunal was erroneous in law and indicated that the Department supported the appeal.

The tribunal's decision

9. 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, previous DLA evidence, medical evidence, a consultation report from the HCP, further medical evidence and a supplementary medical report. It had a written submission from the applicant's representative and a copy of her medical records. The appellant attended the hearing and gave oral evidence, represented by Ms Corr and accompanied by her son. The Department was not represented.

10. The tribunal found that the level of difficulty indicated by the appellant in planning and following a journey was inconsistent with the daily activities undertaken by her. It found that her ability to mobilise varied, and accepted that she would be able to mobilise more than 50 but less than 200 metres (awarding 4 points for mobility activity 2.b. It accepted that she would need to use a dosette box to manage medication, and aids to manage washing and bathing and toileting (awarding a total of 5 points for daily living activities 3.b(i), 4.b and 5.b). However, it concluded that she could perform all the other daily living activities most of the time. In making this finding it determined that her evidence lacked credibility and was inconsistent with the medical evidence generally and the nature of the medical conditions affecting her.

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.
13. 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

14. The LQM has granted leave to appeal on the basis of whether the tribunal's reasons are adequate. The grounds advanced referred to my decision in the case of *PH v Department for Communities* [2021] NI Com 7, where I said at paragraphs 25-26:

“25. Mr Arthurs usefully reminds me of the decision of Mrs Commissioner Brown in C34/06-07(DLA) where she commented that the tribunal is not required to comment on every piece of evidence before it. However, a tribunal's reasons must adequately explain the decision.

26. I consider that a tribunal's explanation of its decision will generally require an indication of its assessment of the most important pieces of evidence and its rationale for preferring particular evidence where there is a conflict. A tribunal must strike a balance between an exhaustive and exhausting assessment of each piece of evidence before it and a bland generalisation of the evidence as a whole”.

15. The grounds further refer to *FMcA v Department for Communities* [2021] NI Com 17, where it was held that where a tribunal indicates that an aid or appliance could be used by an appellant, it should specify the nature of the aid it has in mind.
16. Mr Killeen submitted observations on behalf of the Department. He referred to another case, *R3/01(IB)(T)*, where the Tribunal of Commissioners had indicated that if a tribunal makes clear that it does not believe the claimant's evidence or that it considers him to be exaggerating that will be sufficient. The tribunal is not expected to give reasons for its reasons. There may be situations when a further explanation will be required but the only standard is that the reasons should explain the decision. He observed that the Tribunal of Commissioners had said that the only rule was that the reasons for the decision must make the decision comprehensible to the reasonable person reading it.
17. In this context, he observed that the tribunal had not specified what evidence it found to lack credibility or what evidence it had attributed weight to. On this basis he accepted that from the statement of reasons it was impossible to ascertain why the tribunal had awarded points for some activities but not others.
18. He further advanced support for the appellant's case on the basis that the tribunal – while accepting a need for aids in three activities - had not clearly explained why it had not considered that there was a need for use of an aid when cooking a meal. He noted that the appellant used a perching stool following an occupation therapy assessment, albeit that the report post-dated the decision under appeal. He also queried why the tribunal had awarded no points for activity 9, when the Department had supported an award of points for activity 9.b. If these points had been awarded the appellant would have been entitled to standard rate care component.
19. It appears to me that the reasons, as submitted by the appellant and accepted by the Department, do not make the decision comprehensible to the reasonable person reading it. I accept that the reasons fail to specify the particular medical evidence relied on to reject credibility. I consider that the basis for rejecting the appellant's credibility on some matters but not others is expressed too generally to be fully understood.
20. It follows that I accept the submissions of the parties that the tribunal has erred in law by failing to give adequate reasons. I allow the appeal and set aside the decision of the appeal tribunal.

(signed): O Stockman

Commissioner

8 June 2022