



**DECISION OF**

The Hon. Lord Fairley

**ON AN APPLICATION FOR PERMISSION TO APPEAL  
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)**

**IN THE CASE OF**

LF

Appellant

- and -

Social Security Scotland,

Respondent

FTS Case reference: FTS/SSC/AE/23/01079

Representation

For the Appellant: Money Matters Advice Centre

For the Respondent: Anderson Strathearn LLP

11 October 2024

**Decision**

Permission to appeal is refused.

**Reasons for decision**

1. The appellant applied to the respondent for an award of Adult Disability Payment. His application was refused, and he appealed to the First-tier Tribunal for Scotland (“FTS”).



2. Initially, the appellant requested an oral hearing of his appeal to the FTS. In accordance with rule 23(1) of the FTS's rules of procedure, that request made the holding of such a hearing mandatory. A hearing was therefore listed for 25 April 2024. At the request of the appellant, however, the hearing was permitted to take place by teleconference. Intimation of that hearing was given to the appellant and to the respondent on 4 April 2024.
3. On 23 April 2024, the appellant's representatives intimated the withdrawal of his request for an oral hearing. The reasons given for that were related to the appellant's health. Due to the proximity of the teleconference hearing on 25 April, the appellant's representatives were advised by email on 23 April that the teleconference hearing would continue as previously arranged unless the FTS notified any change to that position.
4. It is clear from the email from the FTS to the appellant on 23 April and from paragraph 3 of the FTS's subsequent Decision Notice of 26 April that, as at 23 April 2024, no decision had been taken by the FTS under rule 23(1)(b) as to whether or not it was able to decide the merits of the appeal without a hearing. That issue was held over to the start of the teleconference hearing on 25 April.
5. On 25 April, therefore, the teleconference hearing was started. The respondent was on the call, but the appellant was neither in attendance nor represented. As a preliminary matter, the FTS invited representations from the respondent about the appellant's recent request to convert the appeal to a determination on the papers alone. The respondent's representative is recorded as having responded as follows:-

"I would have no objection with that I think that the only problem I would foresee would be from the appellant's perspective, because I don't really see that there would be enough information of benefit from the perspective of the appellant. You know, from their perspective, I think they ought to discuss some of the daily living and mobility components would be, you know, in their best interests. So I think to be decided on papers wouldn't be in their best interests."

6. Notwithstanding that representation, The FTS decided to convert the oral hearing to a hearing on the papers alone (referred to in the procedure rules as a "papers case") and asked the respondent to leave the call. The FTS thereafter considered the appeal as a papers case and, having done so, refused the appeal.
7. At paragraph 7 of its reasons, the FTS noted that whilst the appellant appeared to have a history of alcohol addiction issues, it could see no basis in the medical records submitted to it for awarding him points under any of the descriptors for daily living or mobility. It noted that whilst it was probably the case that the appellant suffered from anxiety and alcohol issues, he did not meet the relevant standard for an award of points under any of the relevant descriptors.



## *The proposed grounds of appeal*

8. The application for permission contains two proposed grounds of appeal.
9. First, it is submitted that the respondent's representative was allowed to make unchallenged material representations regarding the sufficiency of the materials before the tribunal at an oral hearing on 25 April 2024 which the FTS did not have jurisdiction to convene. Within this proposed ground, the appellant submits that the respondent effectively advocated to the FTS that the claim should fail based on the papers alone at a point in time when he had been invited to comment only on a procedural rather than a substantive matter.
10. The second proposed ground of appeal is that the FTS failed to give adequate reasons for not awarding any points under daily-living descriptor 9c and, in consequence, failed to consider awarding points for prompting with daily living activities 2, 3, 4, 6 and 10 and mobility activity 1.

## *Submissions for the appellant*

11. Mr Brown submitted that the FTS ought not to have convened an oral hearing to consider the appellant's request to convert the hearing of the merits of the appeal to a papers case. In any event, having started the teleconference call on 25 April, it ought not to have invited or permitted submissions from the respondent which had the potential to influence the merits of the underlying appeal. The submissions made by the respondent had that potential as they might be taken as submissions about the weakness or inadequacy of the evidence submitted on the papers. These were serious procedural irregularities.
12. In relation to the second proposed ground, Mr Brown submitted that there was written evidence before the FTS in the form of a letter dated 28 April 2023 from an alcohol and drug recovery service, and a letter dated 28 October 2022 from the Glasgow City Health and Social Care Partnership which tended to support the appellant's claim in his original application pro-forma that: "I cannot engage with other people at all because of severe anxiety or stress". The FTS had not given adequate reasons for rejecting that medical evidence and had thus failed to give adequate reasons for refusing to award points under daily-living descriptor 9c: "Needs social support to be able to engage socially with other people". Had the FTS awarded 4 points under descriptor 9c for daily-living, it ought then to have gone on to consider whether or not the appellant met the requirements for



“prompting” under each of daily-living descriptors 2, 3, 4, 6 and 10 and mobility descriptor 1.

## *Submissions for the respondent*

13. Mr Halley submitted that the FTS had been perfectly entitled to seek the views of the respondent on the request to convert the hearing of the appeal to a papers case, and had also been entitled to do so as a preliminary issue at the teleconference fixed for 25 April of which the appellant had been given notice. The submissions made by the respondent were no more than a reminder to the FTS that it needed to take care in exercising its discretion under rule 23(1)(b) of the rules, even where neither party sought an oral hearing.
14. In relation to ground 2, whilst it was not conceded that this was arguable, the respondent made no substantive submission on the issue of permission.

## *Decision and reasons*

15. An appeal from the FTS to the UTS is competent only on a point of law, and permission ought to be granted only where the appellant identifies an arguable material error on a point of law (*PD v Midlothian Council* [2021] UT 19 para 10).
16. The first proposed ground of appeal is not arguable. In terms of rule 23 of the FTS’s procedure rules, if neither party objects to the appeal being decided without an oral hearing, the tribunal must still exercise a discretion to decide whether or not it can decide the matter as a papers case. In the particular circumstances of this case, the FTS was entitled to seek the views of the respondent before exercising its discretion on that procedural issue. In ordinary course, those views might well have been sought in writing. Having regard to the timing of the request to convert the appeal to a papers case, however, it was legitimate for the FTS to deal with that request as a preliminary issue at the teleconference on 25 April previously listed. The fact that the appellant had signified a reluctance or inability on medical grounds to participate in an “in-person” hearing on the merits of his appeal did not prevent the FTS from seeking the views of the respondent on the more limited procedural issue of the appellant’s application to convert the appeal to a papers case. It was entitled to seek the respondent’s views on that procedural issue by such means as would result in the most efficient resolution of it.
17. On a fair reading of the comments made by the respondents representative on 25th April 2024, they were merely an invitation to the FTS to consider its exercise of the rule 23(1)(b) discretion with care. The essence of the representation was that, as a generality, determination of an appeal on the papers alone might be to the appellant’s detriment. That was an entirely proper and legitimate submission. It did not encroach beyond that



generality into an analysis of the quality of the evidence on any of the claimed descriptors.

18. The second proposed ground depends upon there being something in either of the two letters founded upon which might have engaged the test in daily-living descriptor 9c. Had that been the case, the FTS might have had to explain why it rejected that evidence. The difficulty with this proposed ground, however, is that the high point of the written medical evidence presented to the FTS was that the appellant could on occasions feel overwhelmed (letter of 28 April 2023). The Tribunal was entitled to conclude that such evidence was insufficient to engage daily-living descriptor 9c. The informed reader would be left in no doubt that the FTS's reason for rejecting the claim under that descriptor was that there was no evidence to support it. That conclusion was plainly open to the FTS given that none of the medical records directly or indirectly addressed the descriptor 9c test. This ground is also not arguable.
19. For these reasons, permission to appeal the FTS's decision of 26 April 2024 is refused.

The Hon. Lord Fairley