

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 2 February 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The decision of the appeal tribunal dated 2 February 2018 is in error of law. The error of law identified will be explained in more detail below. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
2. I am unable to exercise the power conferred on me by Article 15(8)(a) of the Social Security (Northern Ireland) Order 1998 to give the decision which the appeal tribunal should have given. This is because there is detailed evidence relevant to the issues arising in the appeal, including medical evidence, to which I have not had access. An appeal tribunal which has a Medically Qualified Panel Member is best placed to assess medical evidence and address medical issues arising in an appeal. Further, there may be further findings of fact which require to be made and I do not consider it expedient to make such findings, at this stage of the proceedings. Accordingly, I refer the case to a differently constituted appeal tribunal for re-determination.
3. In referring the case to a differently constituted appeal tribunal for re-determination, I direct that the appeal tribunal takes into account the guidance set out below.
4. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of her entitlement to Personal Independence Payment (PIP) remains to be determined by another appeal tribunal. In accordance with the guidance set out below, the newly constituted appeal tribunal will be undertaking its own

determination of the legal and factual issues which arise in the appeal. The appellant will also recall the advice which she was given by the appeal tribunal concerning its powers with respect to her existing award of PIP and her own options in relation to those powers.

Background

5. On 25 April 2017 a decision maker of the Department decided that the appellant was entitled to the standard rate of the daily living component and the enhanced rate of the mobility component of PIP from 24 May 2017 to 11 April 2023.
6. Following a request to that effect and the collation of additional medical advice by the Department, the decision dated 25 April 2017 was reconsidered on 3 August 2017 but was not changed.
7. An appeal against the decision dated 25 April 2017 was received in the Department on 29 August 2017.
8. I have noted that the appellant commenced complaint proceedings at the same time as seeking reconsideration of the decision of 25 April 2017.
9. The appeal tribunal hearing took place on 2 February 2018. The appellant was present and was represented. The appeal tribunal disallowed the appeal and issued Decision Notices to the following effect:

‘From 24/5/17 the appellant is entitled to the mobility component (standard rate). The award is until 11/4/20.’

‘From 24/5/17 the appellant is entitled to the daily living component (standard rate). The award is until 11/4/20.’
10. On 3 July 2018 an application for leave to appeal was received in the Office of the Appeals Service (TAS). On 16 July 2018 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

Proceedings before the Social Security Commissioner

11. On 17 August 2018 a further application for leave to appeal was received in the Office of the Social Security Commissioners. On 29 August 2018 observations on the application for leave to appeal were requested from Decision Making Services (DMS). In written observations dated 10 September 2018, Mr Arthurs, for DMS, supported the application for leave to appeal on three of the grounds advanced on behalf of the appellant. Written observations were shared with the appellant and her representative on 13 September 2018.
12. On 26 November 2018 I granted leave to appeal. When granting leave to appeal I gave as a reason that certain of the grounds of appeal were

arguable. On the same date I determined that an oral hearing of the appeal would not be required.

13. Further correspondence was received from the appellant on 15 January 2019 and a reply was sent to the appellant by the Legal Officer.

Errors of law

14. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
15. In *R(I)2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:

- “(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
- (ii) failing to give reasons or any adequate reasons for findings on material matters;
- (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
- (iv) giving weight to immaterial matters;
- (v) making a material misdirection of law on any material matter;
- (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word ‘material’ (or ‘immaterial’). Errors of law of which it can be said that they would have made no difference to the outcome do not matter.”

Analysis

16. In the application for leave to appeal, the appellant’s representative made a number of submissions including the following:

‘With regard to the mobility component the Occupational Therapist awarded 12 points. Nothing has changed since

same and our Client considers the Tribunal were wrong in law to decrease same.'

17. In his written observations, Mr Arthurs made the following submission in response to this issue:

'Regulations 5 and 6 of The Personal Independence Payment Regulations Northern Ireland) 2016 provides for the scoring of the daily living activities and mobility activities respectively. In order to obtain a standard rate of either component a claimant must score at least 8 points and in order to obtain an award of the enhanced rate of either component a claimant must score at least 12 points.

The decision maker awarded (the appellant) the standard rate of the Daily Living component having scored 9 points and the enhanced rate of the Mobility component on the basis of scoring 12 points.

In respect of the tribunal's decision I would like to draw attention to paragraphs 3 and 4 of the Reasons for Decision, which are recorded as follows (any emphasis is mine):

*"3. ...Following assessment the decision maker on 25 April 2017 awarded her 9 points in respect of daily living and 12 points in respect of mobility activities. Consequently, **she was entitled to both components at the standard rate.**"*

Pausing there, it could be assumed that this declaration is a typo had it not been for the additional comments in paragraph 4 as follows (any emphasis is mine):

*"4. ...Having considered all of the evidence we scored the appellant at 8 points in respect of the daily living and 10 points in respect of mobility. **In effect she remained entitled to the same level of benefit.**"*

The scores noted in paragraph 4 are reflective of what is noted on the scoresheets attached to the decision notice of the tribunal.

As can be seen from the text in bold there is clearly some confusion as to whether or not the tribunal intended that (the appellant) should remain entitled the enhanced rate of the mobility component or indeed she was only entitled

to the standard rate. Having perused the statement of reasons it is my opinion that the tribunal meant to maintain the enhanced award of the mobility component. My reasons for this conclusion is that apart from the paragraphs referred to above the tribunal does not appear to have considered the mobility component in its reasons for decision. This would indicate that the tribunal were satisfied that Ms Armstrong was entitled to the enhanced rate of the mobility component. This mistake would amount to an error in law.

Alternatively if the tribunal has meant to reduce the award of the mobility component to the standard rate, it has failed to give any reasons for doing so, in which case I would submit that the tribunal has erred in law in that respect.'

18. There is a clear error in the approach of the appeal tribunal to the mobility component. In the statement of reasons for the appeal tribunal's decision there is no reference to the mobility component of PIP apart from the perplexing paragraph 4. As was noted by Mr Arthurs, it is not clear from the contents of paragraph 4 whether (i) the appeal tribunal intended to maintain the appellant's extant award of entitlement to the enhanced rate of the mobility component or (ii) intended to reduce the entitlement to the standard rate. No matter what was the intention but particularly if it was as in (ii), there was a requirement to address the issue in the statement of reasons through findings of fact based on the appeal tribunal's assessment of the evidence which was before it. The confusing approach by the appeal tribunal has caused both a degree of concern on the part of the appellant and uncertainty for the Department which is required to implement the appeal tribunal's decision.

Disposal

19. The decision of the appeal tribunal dated 2 February 2018 is in error of law. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
20. I direct that the parties to the proceedings and the newly constituted appeal tribunal take into account the following:
 - (i) the decision under appeal is a decision of the Department, dated 25 April 2017 in which a decision maker of the Department decided that the appellant was entitled to the standard rate of the daily living component and the enhanced rate of the mobility component of PIP from 24 May 2017 to 11 April 2023;

- (ii) the Department is directed to provide details of any subsequent claims to PIP and the outcome of any such claims to the appeal tribunal to which the appeal is being referred;
- (iii) it will be for both parties to the proceedings to make submissions, and adduce evidence in support of those submissions, on all of the issues relevant to the appeal; and
- (iv) it will be for the appeal tribunal to consider the submissions made by the parties to the proceedings on these issues, and any evidence adduced in support of them, and then to make its determination, in light of all that is before it.

(signed): K Mullan

Chief Commissioner

8 April 2019