

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 30 August 2017

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The decision of the appeal tribunal dated 30 August 2017 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.
2. Having made the necessary further findings of fact, I 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, as follows:

The claimant's appeal against the Department's decision dated 11 October 2016 is allowed. She is entitled to the daily living component and the mobility component of personal independence payment (PIP), in each case at the standard rate, from 9 November 2016 to 8 November 2019 (both dates included).

Sums already paid by way of personal independence payment in respect of the above period are to be treated as paid on account of the award made by this decision.

REASONS

3. The claimant had appealed against the Department's decision dated 11 October 2016 that she did not qualify for an award of either component of PIP at any rate. On her appeal, the appeal tribunal awarded 8 points for the mobility component and 7 points for the daily living component. Thus, she became entitled to an award of the mobility component at the

standard rate but was still not entitled to the daily living component and sought to appeal further. I gave leave to appeal on 16 May 2019 on grounds which, while taking into account what she had written, formulated the points somewhat differently and stayed consideration of her own grounds. Both the Department and the claimant were given the opportunity to comment on the grounds I had identified.

4. Neither party has sought an oral hearing of the appeal before the Social Security Commissioners and I do not consider one is necessary.
5. The Department's representative, Mr Arthurs, supports the appeal on only one of the grounds I had identified and invites me to remit the case. The claimant, while understandably agreeing that the tribunal's decision was in error of law, expresses her dissatisfaction at the (admittedly considerable) time the adjudication process has taken, gives further evidence as to the difficulties she faces¹ and indicates a strong preference that the decision be remade rather than remitted to a further appeal tribunal.
6. So far as the daily living activities are concerned, the appeal tribunal awarded the following points:

Preparing food 1(b) – 2 points

Medication/Therapy 3(b)(i) – 1 point

Washing and bathing 4(b)² – 2 points

Managing toilet needs 5(b) – 2 points.

7. The area of focus in the appeal is on the tribunal's assessment of the claimant's ability to dress and undress. According to her GP, writing in late 2016 (it appears for the purpose of the mandatory reconsideration process), the claimant has (among other conditions) "widespread osteoarthritis affecting hands/feet and back". Osteoarthritis was noted as having been "confirmed on X ray – severe right hand". The GP stated the effects of the disabling conditions in terms that she "Requires help with personal care. Reduced mobility. Requires help with pants etc and dressing." She had been referred for joint injections (and indeed underwent one to the joint at the base of her right thumb in late November 2016) and to Occupational Health for the provision of aids. (These matters were capable of evidencing the circumstances obtaining at the date of the decision under appeal, as it was unlikely there would have been any sudden change after it.) There was no report from the

¹ Some of this evidence appears to relate to circumstances obtaining only after the date of the Department's decision under appeal and so cannot be taken into account

² 4(d) was stated but appears to be in error

occupational therapist (“OT”) in evidence, but the claimant gave details orally of the aids provided – a stool for the shower and a special bed frame. The record of proceedings indicates that the claimant did “say [sc. to the OT] about dressing aids but can’t use them”. The claimant described to the tribunal how she was unable to wear a splint to the right hand as it made the pain and swelling worse and that even with an injection, her “bad” hand (i.e. her right) swelled up and gave her constant pain.

8. The tribunal indicated that it accepted the evidence of the GP. Whether or not it was the reason why it awarded the points for an aid or appliance for washing and bathing (it is possible to read the tribunal’s reasons in more than one way) it clearly did accept that because of “widespread arthritis affecting her hands...the activity of washing and bathing was compromised in that she would struggle to open washing products and squeeze tubes of, for example, toothpaste.” Turning to managing medication/therapy, the tribunal does not explain why it awarded the point, but the claimant has no cognitive limitation nor any mental health issue such as would make the organisation of her medication necessary; the inference must be (as Mr Arthurs accepts) that the tribunal considered the claimant needed help with tasks involving fine motor skills, such as managing the special screw tops on medication jars or handling small fiddly tablets. So that is two activities in connection with which the tribunal, having accepted the GP’s advice, proceeded on the basis of a limitation of fine motor skills. (There is a possible third one in relation to preparing food, although the tribunal’s reasoning is a little ambiguously stated.)

9. The tribunal’s reasoning for refusing an award of points for dressing/undressing was contained in two paragraphs. On page 6 of its reasons it recorded:

“Although Dr Salter stated the appellant had difficulty with dressing, he did not clarify further and the OT did not provide the appellant with any aids to assist her, which implied the assessment concluded they were not needed. However, the appellant stated that she had been offered aids to assist her with dressing but that she could not use them because of the arthritis in her right hand.”

10. I am not persuaded that the above paragraph accurately records the evidence as set out in the record of proceedings, which more naturally reads that it was the claimant who raised the matter but was told there was nothing suitable.

11. At page 7 the tribunal states:

“Although Dr Salter stated that the appellant had difficulty dressing, he did not state what difficulties. The appellant stated that she could not do up buttons and she had

difficulty pulling clothes on and off. The appellant then described how she dressed herself which involved bending forwards and pulling clothes over her head. She also attempted to fasten her own clothes, which took a long time. The appellant stated that it took her an hour to dress in the morning. The Tribunal did not accept this evidence and found that the appellant exaggerated her difficulties. She may have a degree of arthritis, which was described as severe, only in connection with her right hand but there was no independent evidence that the disability alleged by the appellant was as great as she alleged. In addition, it is possible to purchase clothes that do not involve complicated fastenings if indeed the appellant could not do up buttons. The Tribunal did not award any points for dressing and undressing.”

12. Even if one were to proceed on the basis, possibly generous to the tribunal, that in this paragraph it was referring to “arthritis described as severe” as being found only in the claimant’s right hand (for there was evidence of widespread, if less severe, arthritis elsewhere) and to the lack of independent evidence as concerning the effects of the disability (for there was independent evidence of the disability from the GP), the decision in my judgment still contains several errors in law.
13. In particular, as the Department accepts, it is inconsistent with the findings in relation to other descriptors accepting a material degree of limitation of fine motor skills.
14. I also consider that the tribunal failed to make sufficient findings to apply reg 4(2A)(d) and (4)(c) properly. The claimant only had to show that it took her more than twice as long to dress or undress as a person without a limiting condition. For people without disability, dressing is not generally a time-consuming process. Even if her evidence of it taking one hour was an exaggeration, there was solid evidence from the GP of severe arthritis affecting what was (though the tribunal did not expressly note it) her dominant hand, along with evidence of more generalised osteoarthritis, and it was entirely plausible that the claimant had a sufficient degree of limitation to score points for that activity. The tribunal referred to the need to apply reg 4, but it is not evident that it actually did so on this aspect.
15. I also gave leave to appeal on whether the tribunal adequately addressed the claimant’s contention that the reason why OT aids for manual dexterity had not been prescribed was because she could not use them. That too is made out. Contrary to the Department’s view, merely because the tribunal considered that the claimant was in some ways exaggerating the effects of her condition does not provide a sufficient reason when its reasons for concluding that she was exaggerating rested on the view it took of what the OT had or had not ordered. In order to

rely on that it first needed to address why items had not been ordered where there were competing possibilities as to why that might be so.

16. Accordingly, I set aside the decision of the appeal tribunal. I find as fact that the limitation caused by osteoarthritis affecting the claimant's dominant hand causes a limitation of her ability to manage buttons, zips, clasps, laces and other fastenings. The law does not require her to confine herself to items of clothing lacking these features: see *PE v Secretary of State for Work and Pensions (PIP)* [2015] UKUT 309 (AAC). I further note the extract from the DWP's *PIP Assessment Guide*, cited in *Social Security Law 2019/20 Vol 1* at 4.247 that:

“This activity assesses a claimant's ability to put on and take off [...] un-adapted clothing that is suitable for the situation. This may include the need for fastenings such as zips or buttons and considers the ability to put on/take off socks and shoes.”

17. Taken together with the lack of flexibility caused by more generalised osteoarthritis which would affect her ability to bend and flex her torso, the degree of limitation is such that it would be likely to take her more than twice as long to dress and undress unaided as a person without a limiting condition. On that basis she is entitled to a further 2 points, achieving 9 in total for the daily living component.

(signed): C G WARD

Deputy Commissioner (NI)

15 October 2019