

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 28 November 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Limavady.
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) at the high rate of the mobility component and the middle rate of the care component. Following the changes brought about by the Welfare Reform (NI) Order 2015 he claimed personal independence payment (PIP) from the Department for Communities (the Department) from 27 September 2016 on the basis of needs arising from diabetes, numbness and tingling in both hands, osteoarthritis in fingers, knees, hips and ankles, low back pain, circulation problems, sensitivity and numbness in toes and "blue toe" syndrome.
5. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 27 October 2016, along with a prescription list, in addition to various appointment letters. The appellant was asked to attend a consultation with a healthcare professional (HCP) and a

consultation report was received by the Department on 7 December 2016. On 5 March 2017 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 27 September 2016. The appellant requested a reconsideration of the decision. He was notified that the decision had been reconsidered by the Department but not revised. He was asked whether he wanted previous DLA evidence to be taken into account and he said that he did. A supplementary medical report was received in the Department. 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. The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 2 April 2019. 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 10 May 2019. On 23 May 2019 the appellant applied to a Social Security Commissioner for leave to appeal.

Grounds

7. The appellant, represented by Mr Black of Law Centre NI, submits that the tribunal has erred in law on the basis that:
 - (i) it has made a perverse or irrational decision on the issue of planning and following journeys;
 - (ii) it has not adequately explained the decision not to award the mobility component, despite the previous DLA mobility high rate mobility award.
8. The Department was invited to make observations on the appellant's grounds. Mr Williams of Decision Making Services (DMS) responded on behalf of the Department. Mr Williams submitted that the tribunal had not materially erred in law. He indicated that the Department did not support the application.

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 appellant, a PA4 V3 consultation report from the HCP, some medical evidence and material relating to the previous DLA claim, along with two addendum submissions. It had access to the appellant's general practitioner (GP) records and a submission from his representative, and to papers from previous adjourned hearings of the appeal. The appellant attended the hearing and gave oral evidence, represented by Mr Simpson. The Department was represented by Ms Burrows.

10. The tribunal accepted that the appellant had diabetes which was poorly controlled, with vascular problems in the right foot, and bilateral hip pain due to osteoarthritis. The tribunal asked questions relating to the disputed daily living activities, namely 1 (Preparing food), 2 (Taking nutrition), 3 (Managing therapy), 4 (Washing and bathing) and 6 (Dressing and undressing), and the mobility activities. It accepted that points should be awarded for activity 1(c), 3(b)(i), 4(d) and 6(d), totalling 7 points for daily living activities and activity 2(b), totalling 4 points for mobility activities. It rejected submissions that the appellant had relevant problems with taking nutrition due to poor grip, and with communication due to poor hearing. It rejected submissions that he could not plan and follow a journey due to anxiety around the risk of hypoglycaemic episodes, noting the high threshold for “overwhelming psychological distress”.

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.

Assessment

13. 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.
14. 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.
15. 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.
16. I will deal with the appellant’s second ground first, as it is a generic ground which has been considered in other applications on previous occasions. I will grant leave to appeal on this ground. However, for the reasons stated most

recently in *JF-v-Department for Communities* [2019] NI Com 72 and *LMcC v Department for Communities* [2020] NI Com 19, I reject this ground. In those cases, I held that there was no automatic requirement on a tribunal to explain a refusal of PIP mobility component in the context of an appellant who held a previous DLA high rate mobility award, unless the case involved some obvious inconsistency that required particular elucidation. The simple fact of the matter is that the rules of entitlement for DLA mobility component and PIP mobility component are different, following a political decision to change them.

17. In the circumstances of this case, the tribunal accepted that the appellant can stand and then move more than 50 metres but no more than 200 metres either aided or unaided, awarding points for mobility activity 2(b). I do not consider that this assessment is inconsistent with the previous award of DLA high rate mobility component, or that the tribunal required to explain itself in any greater detail than it did. It is self-evident from the conditions of entitlement to PIP that many claimants previously awarded DLA may not retain their entitlement.
18. The appellant's first ground submits that the tribunal has reached an irrational decision on mobility activity 1. An entry in the HCP report at page 21 is referred to where the HCP reports "In the face to face assessment it was reported he can plan and follow journeys. He went into the wrong office twice and asked for directions and followed the directions". It is submitted that the fact that the appellant went into the wrong office twice indicates his inability to plan and follow a journey, and that relying on this as evidence of the contrary is irrational.
19. The submission advanced on behalf of the appellant by his representative was that he could not follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. In his PIP2 questionnaire the appellant had referred to his unstable diabetes and frequent hypoglycaemic episodes, saying that he became anxious sometimes and felt more confident and secure if he had someone with him in unfamiliar places.
20. In oral evidence the appellant told the tribunal that he drove an automatic car, but needed his wife with him all the time in case he took a hypoglycaemic episode. He had notified the DVLA. He said that he was aware on the onset of a "hypo", and said that he was not allowed to drive for two hours after a hypo under the driving licence restrictions. When asked why he needed someone to be with him when he was out of the house, he referred to the issue of driving, saying that he needed his wife to drive. He denied telling the HCP that he went to the wrong office and said that his wife was with him.
21. At the relevant time the activity was as follows:

<i>Activity</i>	<i>Descriptors</i>	<i>Points</i>
1. Planning and Following journeys.		

- a. Can plan and follow the route of a journey unaided. 0
- b. Needs prompting to be able to undertake any journey to avoid overwhelming psychological distress to the claimant. 4
- c. Cannot plan the route of a journey. 8
- d. Cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid. 10
- e. Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant. 10
- f. Cannot follow the route of a familiar journey without another person, an assistance dog or an orientation aid. 12

22. In determining the particular activity, the tribunal found no corroboration in the medical records for any problem that would impair the appellant’s ability to plan and follow the route of a journey. It found no reference to anxiety, distress or forgetfulness. It applied relevant case law to determine the meaning of “overwhelming psychological distress” in the activity, finding this to be a high threshold. It concluded that the appellant was aware of his conditions and careful to adhere to DVLA restrictions. It decided that, as per the overall opinion of the HCP, it was likely that the appellant could plan and follow the route of a journey unaided.

23. It does not appear to me that the tribunal placed particular weight on the issue of whether the appellant had asked for directions after going to the wrong office. The tribunal addressed the appellant’s overall condition and the evidence in general in reaching a conclusion. While it placed weight on the HCP’s opinion, which included the reference to asking directions, this opinion was further based on a range of additional evidence. It appears to me most significant, however, that the tribunal addressed the threshold of overwhelming psychological distress and found that this was not reached. I do not accept that the tribunal has made an irrational decision on the totality of the evidence before it or on the particular issue advanced by the appellant.

24. I disallow the appeal.

(signed): O Stockman

Commissioner

23 June 2020