

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 8 August 2022

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal from the decision of an appeal tribunal with reference CR/8217/21/02/D.
2. For the reasons I give below, I exercise the power given by Article 15(7) of the Social Security (NI) Order 1998 to set aside the tribunal decision and refer the appeal to a newly constituted tribunal for determination.

REASONS

Background

3. The appellant claimed personal independence payment (PIP) from the Department for Communities (the Department) from 12 March 2021 on the basis of needs arising from Chondromalacia Patellae, disc degeneration, "lazy bowel" and depression. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 14 May 2021 along with further evidence. The appellant was asked to attend a consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 9 July 2021. On 3 August 2021, the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 12 March 2021. The appellant requested a reconsideration of the decision, submitting further evidence. The Department obtained a Supplementary Advice Note. The appellant was notified that the decision had been reconsidered by the Department but not revised. She appealed.

4. The appeal was considered at a hearing on 8 August 2022 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 3 October 2022. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal and leave to appeal was granted by the salaried LQM in a determination issued on 17 November 2022. On 29 November 2022, the appellant lodged her appeal with the office of the Social Security Commissioners.

Grounds

5. Leave was granted on the specific grounds of whether the tribunal had made sufficient enquiry and findings of fact; whether it had addressed evidence of the use of aids, such as a dosette box, adequately; and whether they had wrongly conflated aspects of cognition and intellectual functioning in a work role with the question of experiencing anxiety.
6. The appellant had generally submitted that the tribunal has erred in law by:
 - (i) failing to give adequate reasons in relation to particular aspects of evidence related to daily living activities;
 - (ii) misapplying the relevant law relating to the use of aids and appliances;
 - (iii) failing to make sufficient findings;
 - (iv) failing to give adequate reasons in relation to particular aspects of evidence related to mobility activities;
 - (v) failing to address the fact of the appellant's previous PIP award and the reasons for departing from it.
7. 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. Mr Killeen accepted that the tribunal had erred in law. He indicated that the Department supported the appeal.

The tribunal's decision

8. 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, with attached evidence, a telephone consultation report from the HCP, employment and support allowance evidence, a supplementary advice note, along with an extract from the appellant's general practitioner (GP) records, a submission from

her representative and a statement from her daughter. The appellant attended the hearing along with her representative, Ms Corr, and gave oral evidence. The Department was not represented.

9. The tribunal accepted that the applicant had a long history of depression and knee and back pain. It observed that a previous award had been made by the department on the basis of a need to use an aid in activity 1 (Preparing food), 4 (Washing/bathing), 5 (Managing toilet needs) and 6 (Dressing/undressing). It noted that the applicant was employed full-time and regularly walked to work, finding this inconsistent with an award of points under the mobility activities. In relation to mobility activity 1 (Planning and following a journey) it took into account that her work involved a fairly high level of cognitive and intellectual functioning. The tribunal accepted that the applicant would benefit from use of an aid in relation to daily living activities 4 and 5, and also that she should score 2 points for activity 9.b (Engaging with other people). However, it did not accept that she had need to an aid to prepare food or to dress, finding that her evidence and that of her daughter was exaggerated. As the appellant scored 6 points for daily living activities and none for mobility activities, the tribunal disallowed the appeal.

Relevant legislation

10. 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.
11. 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.
12. 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

13. As indicated above, leave to appeal was granted by the salaried LQM on the specific grounds of whether the tribunal had made sufficient enquiry and findings of fact; whether it had addressed evidence of the use of aids, such as a dosette box, adequately; and whether it had wrongly conflated aspects of cognition and intellectual functioning in a work role with the question of experiencing anxiety.

14. Mr Killeen for the Department offers support for the appeal. Relevant to the first ground on which leave was granted. Nevertheless, he observed that the tribunal stated in its reasons:

9. ... in relation to the other physical Daily living activities, it seems that no aids were prescribed and having considered all the evidence in the round, the tribunal concluded that the evidence of the appellant and her

daughter had been exaggerated and it was not supported by the available medical evidence.

15. While accepting that the tribunal's assessment of credibility was a matter for itself, he considered that there was inconsistency in accepting that aids were required for the activities of washing and managing toilet needs due to knee pain, yet that a perching stool was not required.
16. He noted that the tribunal made findings in relation to walking based on the appellant's evidence to the effect that:

My knees are sore all the time. I wear a patch and take extra pain medication as necessary. It flares up if I walk to work, which takes 15 minutes ...

I walk to work, it takes me 15 - 20 minutes. It should only be 5 - 10 minutes. I have to rest before going into the building. It takes me longer walking home because it is uphill. I am limited by pain in my knees and back.

17. He further observed the tribunal's findings to the effect that:

5. ... the Appellant at the relevant date was in full-time employment and that she regularly walked from her home to her place of employment and back again. The tribunal felt that this level of mobility was not consistent with any award of points under the moving around descriptors.

18. Whereas he accepted that the tribunal stated that it would address the appellant's ability to complete the activities "safely, to an acceptable standard, repeatedly and within a reasonable time frame", as required by regulation 4(3) above, Mr Killeen observed no mention of these considerations in the tribunal's reasons. He offered support to the appellant on the basis that "although she may regularly walk to work, there is no mention or apparent consideration of the distance walked, the time taken and the consideration of pain. The later point comes to the fore considering the tribunal awarded points due to pain in her knees for 2 Daily Living activities".
19. Mr Killeen further offered support for the appeal on the basis of the adequacy of the tribunal's reasons for departing from a previous award in the case.
20. In light of the support of the Department, which results in each of the parties submitting that the tribunal has erred in law, I consider that this is an appropriate case to exercise the power given by Article 15(7) of the Social Security (NI) Order 1998 to set aside the tribunal decision and refer the appeal to a newly constituted tribunal for determination. This is done without a formal finding of error of law on the part of the tribunal.

(signed): O Stockman

Commissioner

5 April 2023