SP-v-Department for Communities (PIP) [2025] NICom 20

Decision No: C1/25-26(PIP)

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**PERSONAL INDEPENDENCE PAYMENT**

Appeal by the claimant to a Social Security Commissioner

on a question of law from a Tribunal’s decision

dated 18 November 2024

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the claimant against a decision of an Appeal Tribunal, dated 18 November 2024, to the effect that he was not entitled to the mobility and daily living components of Personal Independence Payment (PIP) from and including 9 August 2022.

2. Having considered the circumstances of the case and the grounds of appeal, I am satisfied that the appeal can properly be determined without a hearing. Neither party has requested an oral hearing and both parties agree that the Tribunal was in error of law.

3. Leave to appeal was granted by the Legally Qualified Member on a point of law on 15 May 2025. The determination refers to a “*Potential point of law. Tribunal has erred in law by not adequately explaining reasoning in relation to two descriptors.”*

4. Pursuant to the powers conferred on me by Article 15(7) of the Social Security (Northern Ireland) Order 1998, I allow the appeal, I set aside the decision appealed against and I refer the case to a differently constituted Tribunal for determination.

5. It is imperative that the Appellant notes that while the decision of the Appeal Tribunal has been set aside, the issue of his entitlement to PIP remains to be determined by another Appeal Tribunal.

6. 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 29 December 2022, which decided that the Appellant was not entitled to the mobility and daily living components of PIP from and including 9 August 2022.

 (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. The Appeal Tribunal is directed to take any evidence of subsequent claims to PIP into account in line with the principles set out in *C20/04-05(DLA)*.

 (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.

 (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.

 **Background**

7. On 29 December 2022, a decision maker of the Department decided that the Appellant was not entitled to the mobility and daily living components of PIP from and including 9 August 2022. Following a request to that effect, the decision dated 29 December 2022 was reconsidered on 13 February 2023 but was not changed. An appeal against the decision dated 29 December 2022 was received on 2 March 2023.

8. The Appeal Tribunal hearing took place on 18 November 2024. The Appellant was present and was represented by the Law Centre (Northern Ireland). The Appeal Tribunal disallowed the appeal in relation to both the Daily Living and Mobility aspects of PIP. The Appellant’s score for both components (6 points awarded for Daily Living and 4 for Mobility) was insufficient for an award of entitlement to either component of PIP.

9. On 27 March 2025 an application for leave to appeal to the Social Security Commissioner was received in the Appeals Service (TAS). On 15 May 2025 the application for leave to appeal was granted by the Legally Qualified Panel Member (LQPM).

 **Proceedings before the Social Security Commissioners**

10. On 29 May 2025 an appeal in respect of the Tribunal’s decision of 18 November 2024 was received in the office of the Social Security Commissioners. On 2 June 2025 observations on the appeal were requested from Decision Making Services (DMS). In written observations dated 4 June 2025, Mr Clements, for DMS, supported the appeal on the grounds set out in that submission.

11. The written observations were shared with the Appellant and his representative on 4 June 2025. On 10 June 2025 correspondence was received from Ms Heatherley in which she agreed with the Department’s observations that the decision of the Appeal Tribunal was in error of law. Mr Clements made no further comments in response.

 **Errors of law**

12. 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?

13. 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; …”

 **Discussion**

14. While I am not required to provide detailed reasons in respect of the appeal it may be helpful to the Tribunal to make specific reference to several issues. Firstly, it would be helpful when granting leave to appeal if the Tribunal could be specific in relation to identifying what it considers the potential error(s) of law is. Generic reference to two descriptors does not contain sufficient detail or indeed identify which descriptors are in issue or on what basis the Tribunal’s reasoning may be inadequate.

15. In terms of the adequacy of reasons the Tribunal has an inquisitorial duty to make sufficient enquiries on which to base its findings of fact. It must provide “*an explicit explanation as to why it has preferred, accepted or rejected evidence”C8/08-09(IB).* Also, as Upper Tribunal Judge Gray pointed out in *SC v SSWP (PIP) [2017] UKUT 317 (AAC)* a recitation of the evidence followed by an indication of how many points are awarded is not enough. A finding of fact can only result from subjecting the evidence to analysis. The Tribunal must clearly explain *why* it has made the findings and the decision that it has or as Judge Gray puts it the Tribunal must clearly articulate the “*because*” element and “*that element should explain what the Tribunal accepted or rejected and why”.*  In this case the Tribunal failed to include this important step in its written reasons in relation to Activity 3, Managing Therapy and Monitoring a Health Condition and Activity 4, Washing and Bathing. This constitutes a material error of law.

16. Finally, I note the Tribunal referred to not interfering with the Department’s decision to award 2 points. This may merely be a turn of phrase used by the Tribunal but it is one best avoided. A Tribunal hearing is a hearing ab initio of the claimant’s appeal. It is not an assessment of the reasonableness of the Department’s decision. The use of this terminology creates at least the appearance of a constraint on the Tribunal’s decision making power which does not exist and which may create concern as to the Tribunal’s jurisdiction and independence.

 **Disposal**

17. The most expeditious method of disposal of this appeal is by the application of Article 15(7) of the Social Security (Northern Ireland) Order 1998.



(Signature): E FITZPATRICK

CHIEF COMMISSIONER

22 August 2025