CCB-v-Department for Communities (PIP) [2025] NICom 7

Decision No: C28/24-25(PIP)

**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 26 January 2024

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant’s application for leave to appeal from the decision of an appeal tribunal with reference BE/13053/22/02/D.

2. For the reasons I give below, I set aside the decision of the appeal tribunal under Article 15(7) of the Social Security (NI) Order 1998.

3. I refer the appeal to a newly constituted tribunal for determination.

**REASONS**

 **Background**

4. The appellant claimed personal independence payment (PIP) from the Department for Communities (the Department) from 18 March 2022 on the basis of needs arising from post-traumatic stress disorder (PTSD), neuropathy, depression, anxiety, diabetes, arthritis, angina, “mini stroke”, narrowing of arteries in heart, fibromyalgia, high blood pressure and perforated discs in her lower back. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 27 April 2022. The appellant was asked to participate in a consultation with a healthcare professional (HCP) which took place at the appellant’s home. The Department received a report of the consultation on 22 June 2022. On 7 July 2022 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP at any rate from and including 18 March 2022. The appellant requested a reconsideration of the decision and the Department obtained a supplementary advice note and a GP factual report. The appellant was notified that the decision had been reconsidered by the Department but not revised. She appealed.

5. The appeal was considered at a hearing on 26 January 2024 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 1 May 2024. 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 2 July 2024. On 31 July 2024 the appellant applied to a Social Security Commissioner for leave to appeal.

 **Grounds**

6. The appellant, represented by Ms Stride, submits that the tribunal has erred in law by:

 (i) Misapplying the law.

 (ii) Failing to give adequate reasons.

 (iii) Not hearing evidence from her witness.

 (iv) Failing to address the evidence.

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 submitted that the tribunal had erred in law on one of the submitted grounds. He indicated that the Department supported the application.

 **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 what it termed “Appeal papers”. I assume that this is a reference to the Department’s submission, which I can see contained a PIP2 questionnaire completed by the appellant, a report of a consultation conducted over the telephone by a HCP, two supplementary advice notes and a factual report and patient history printout from her GP. A record of adjourned proceedings indicates that the appellant’s GP records and a further Departmental submission were before a previous tribunal, and I have no reason to doubt that these were before the present panel. The appellant attended and gave oral evidence, accompanied by Ms Stride.

9. The panel recorded evidence addressed to each of the daily living and mobility activities. On the basis that she could drive a car, it found that she could prepare a cooked main meal for herself. It found no restriction in taking nutrition. It found no restriction in managing therapy or monitoring a health condition. It accepted that she used a shower seat, awarding 2 points for descriptor 4.b. It accepted that she used incontinence pads, awarding 2 points for descriptor 5.b. On the basis that she drove a car and worked as a designer, it found that she could dress and undress. It found no problems with communication, reading and understanding, engaging with others and managing budgeting decisions. It found that she could plan and follow a journey, based on her employment as a designer. It accepted that she had some mobility limitations that limited her in moving around, awarding 4 points for mobility descriptor 2.b. As this was insufficient to reach the threshold for an award of PIP, 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 clamant 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.

 **Submissions and 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. Mr Killeen for the Department offers support for the application on the basis of the adequacy of the tribunal’s reasons. The Department’s support indicates that this is an arguable issue and I grant leave to appeal, therefore.

17. The appellant submitted that the tribunal had erred on the grounds that neither the submissions of Ms Stride nor the medical evidence submitted by her had been addressed by the tribunal in its reasons.

18. In his observations, Mr Killeen has noted that it was not certain from the record of proceedings whether the tribunal had the appellant’s medical records before it. He observes a reference in the record of proceedings to “GP notes No pain relief at time of decision”, but comments that this could be a reference to the material printed out and accompanying the GP factual report in the Departmental submission.

19. In the context of an LQM having directed the appellant to produce her medical records, he submitted that there was a particular onus on the tribunal to account for and acknowledge them. Whereas the appellant had not directly referred the tribunal to any particular piece of evidence, he submitted that this did not remove the onus on the tribunal to consider the medical records. He submitted that the lack of any reference to the medical records – even a brief one - indicated that the tribunal’s reasons were inadequate.

20. Mr Killeen noted that the appellant criticised the HCP report and referred to making a complaint about it. He observed that there was no reference to this in the supplementary Departmental submission or by the tribunal. He followed the issue up with Capita and was told that there was no record of a complaint from the appellant. However, even if there was no complaint, he observed that the tribunal had not engaged at all about the appellant’s criticism of the assessment report. Again, on this basis he submitted that the tribunal had not carried out its inquisitorial function fully. In the absence of any conclusions on the issue he submitted that it had given inadequate reasons.

21. More generally, Mr Killeen acknowledged that the tribunal had not asked the appellant about all her medical conditions. He submitted that, while PIP was not based on conditions but rather their effects on a person, the tribunal had not probed certain claimed conditions such as PTSD. He accepted that it was not clear how the medical evidence had been weighed by the tribunal or even if it had engaged with it in the absence of explicit findings. For all these reasons he accepted that the tribunal had erred in law.

22. Whereas the tribunal has made clear findings that reject the appellant’s evidence, based on her employment and her practice of driving to work, there is merit in the submissions of the parties as to the lack of findings regarding the appellant’s medical conditions and their effects on her. I share the reservations of the parties as to the adequacy of the tribunal’s reasons. At the very least it should be obvious that the medical records had been before the tribunal and considered by it.

23. As each of the parties to the appeal expresses the view that the decision appealed against is erroneous in point of law, I have decided to exercise my discretion to set aside the decision under Article 15(7) of the Social Security (NI) Order 1998 without a formal finding of error of law.

24. I refer the appeal to a newly constituted tribunal for determination.

(Signed): O STOCKMAN

COMMISSIONER

3 March 2025