

**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 5 September 2017

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. As will be explained in greater detail below, both parties have expressed the view that the decision appealed against was erroneous in point of law.
2. Accordingly, 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.
3. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of her entitlement to Personal Independence Payment (PIP) remains to be determined by another appeal tribunal.
4. 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 17 January 2017, which decided that the appellant was not entitled to PIP from and including 18 October 2016;
  - (ii) the Department is directed to provide details of any subsequent claims to Disability Living Allowance and the outcome of any such claims to the appeal tribunal to which the appeal is being referred;
  - (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; and

(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**

5. On 17 January 2017 a decision maker of the Department decided that the appellant was not entitled to DLA from and including 18 October 2016. Following a request to that effect, the decision dated 17 January 2017 was reconsidered on 3 April 2017 but was not changed. The decision maker did apply a descriptor from Part 2 of Schedule 2 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ('the 2016 Regulations') which the original decision maker had not applied. The score for this descriptor, combined with the scores for the descriptors which had been applied by the decision maker was insufficient for an award of entitlement to PIP – see article 83 of the Welfare Reform (Northern Ireland) Order 2015 and regulation 5 of the 2016 Regulations.
6. An appeal against the decision dated 17 January 2017 was received in the Department on 27 April 2017. Further information was received in the Department from the appellant on 20 June 2017, 26 June 2017 and 27 June 2017.
7. The appeal tribunal hearing took place on 4 March 2016. The appellant was present and was represented. There was no Departmental Presenting Officer present. The appeal tribunal allowed the appeal in part making an award of entitlement to the standard rate of the mobility component of PIP from 15 February 2017 to 14 February 2019 at disallowing entitlement to the daily living component of PIP from and including 15 October 2016.
8. On 5 February 2018 an application for leave to appeal to the Social Security Commissioners was received in the Appeals Service (TAS). On 29 March 2018 the application for leave to appeal was rejected by the Legally Qualified Panel Member (LQPM). The LQPM determined that the application for leave to appeal had been received outside of the prescribed time limits for making such an application and that special reasons did not exist for extending the prescribed time limits.

## **Proceedings before the Social Security Commissioner**

9. On 2 June 2018 a further application for leave to appeal was received in the Office of the Social Security Commissioners. On 24 July 2018

observations on the application for leave to appeal were requested from Decision Making Services (DMS). In written observations dated 10 August 2018, Mr Arthurs, for DMS, opposed the application for leave to appeal on one of the grounds submitted on behalf of the appellant. Written observations were shared with the appellant and her representative on 15 August 2018. Written observations in reply were received from the appellant's representative on 17 September 2018 and were shared with Mr Arthurs on 19 September 2018.

10. On 3 October 2018 a written submission was received from Mr Arthurs in which he resiled from his earlier opposition to the application for leave to appeal and indicated his support for that application on an identified ground of appeal. The further written submission was shared with the appellant and her representative on 8 October 2018. Correspondence was received from the appellant's representative on 22 October 2018. In light of the contents of that correspondence and certain queries which were raised the Legal Officer wrote to the appellant's representative on 23 October 2018.
11. On 16 November 2018 I accepted the late application for special reasons on 27 November 2018 further correspondence was received from the appellant's representative.
12. On 30 January 2019 I granted leave to appeal. In granting leave to appeal, I gave, as a reason that one of the grounds of appeal, as set out in the application for leave to appeal, was arguable. On the same date I determined that an oral hearing of the appeal would not be required.

### **Errors of law**

13. 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?
14. 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; ...

Each of these grounds for detecting any error of law contains the word 'material' (or 'immaterial'). Errors of law of which it can be said that they would have made no difference to the outcome do not matter."

## **Analysis**

15. In the written observations in reply to those made by Mr Arthurs, the appellant's representative made the following submission on behalf of the appellant:

'We recognise the legitimacy of collating information and making assumptions. However this was and is not the case in this instance.

(The appellant) was also questioned in detail, when exhausted on daily living activities. Being exhausted at this stage, under the opinion the tribunal had already made its mind up (the appellant) simply went on with a hostile questioning and the Disability Panel Member. We, at this time thought we would have an opportunity to challenge these things at the end.

From many false assumptions (the appellant) did not respond to let us take just one. In a letter from Dr Brook the pain management consultant reporting from an appointment he mentioned (the appellant) liked to cook. This obscure comment from the report was without context and was used by the tribunal as a proof that (the appellant) was capable of coping with cooking on her own and therefore required no assistance. What Dr Brook failed to write, and we were not given an opportunity to explain was the fact that (the appellant's) mother cooks and when the opportunity arises (the appellant) likes to be involved at the level to which she can participate.'

16. In his further written submission, Mr Arthurs made the following submission in reply:

'(The appellant) also returns to the issue of the comments of Dr Brooks about her enjoyment of cooking. (The appellant) contends these comments were considered by the tribunal without context. As stated in my observations of 10 August 2018 it is obvious that the comments were

considered but that the tribunal did appear to enquire further, providing (the appellant) with an opportunity to provide context. The tribunal were able to note her claims that she can prepare vegetables if seated, she would be the assistant for meals, she uses a perching stool and her difficulty was in moving things in and out of the oven. The tribunal did not rely solely on the comments of Dr Brooks and were convinced she was capable of preparing and cooking a meal. Whilst the tribunal note that (the appellant) advised that she could prepare vegetables **if** seated, it does not make a specific finding as to whether or not she would be able to prepare vegetables without the use of a perching stool and in failing to do so the tribunal has failed in its inquisitorial role and as such has erred in law. If it is accepted that (the appellant) does in fact require to use a perching stool in order to assist in preparing food, she would then qualify for 2 points under descriptor 2b of Activity 1 “*needs to use an aid or appliance to be able to either prepare or cook a simple meal*”. These points when added to the 6 points awarded by the tribunal under the daily living activities would in effect mean that (the appellant) would qualify for an award of the standard rate of the daily living component.

...

In view of my concession on issue 1 above it is now my submission that the tribunal has in fact erred in law and I would resile from my original position noted in my observations of 10 August 2018.’

17. It is clear, therefore, that both parties have expressed the view that the decision appealed against was erroneous in point of law.
18. Accordingly, 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.
19. I would add the following. The date of claim to PIP in this case was 18 October 2016. I have noted that in the decision notice for the appeal tribunal’s decision in relation to the mobility component of PIP, the appeal tribunal has recorded that it was allowing the appeal in connection with the mobility component and was making an award of entitlement to the standard rate of the mobility component of PIP from 15 February 2018 to 14 February 2019. In the statement of reasons for the appeal tribunal’s decision in connection with the mobility component, the appeal tribunal has recorded that ‘... The tribunal have assessed the appropriate period for the award as being two years to allow for any improvement in her condition at

the end of that period.’ It is clear, therefore, that the period of award recorded in the decision notice is inconsistent with the statement about the period of award made in the statement of reasons. Further, the appeal tribunal has given no explanation as to why it has given a commencement date for the period of the award as 15 February 2018 and not the date of claim of 18 October 2016.

(signed): K Mullan

Chief Commissioner

13 March 2019