

**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 27 February 2018

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. The decision of the appeal tribunal dated 27 February 2018 is in error of law. The error of law identified will be explained in more detail below. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
2. I am unable to exercise the power conferred on me by Article 15(8)(a) of the Social Security (Northern Ireland) Order 1998 to give the decision which the appeal tribunal should have given. This is because there is detailed evidence relevant to the issues arising in the appeal, including medical evidence, to which I have not had access. An appeal tribunal which has a Medically Qualified Panel Member is best placed to assess medical evidence and address medical issues arising in an appeal. Further, there may be further findings of fact which require to be made and I do not consider it expedient to make such findings, at this stage of the proceedings. Accordingly, I refer the case to a differently constituted appeal tribunal for re-determination.
3. In referring the case to a differently constituted appeal tribunal for re-determination, I direct that the appeal tribunal takes into account the guidance set out below.
4. 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. In accordance with the guidance set out below, the newly constituted appeal tribunal will be undertaking its own determination of the legal and factual issues which arise in the appeal.

## **Background**

5. On 16 May 2017 a decision maker of the Department decided that the appellant was not entitled to PIP from and including 17 February 2017. Following a request to that effect, and the receipt of additional information from the appellant, the decision dated 16 May 2017 was reconsidered on 30 June 2017 but was not changed. An appeal against the decision dated 16 May 2017 was received in the Department on 27 July 2017.
6. Following an earlier adjournment, the substantive appeal tribunal hearing took place on 27 February 2018. The appellant was present and was accompanied by her husband. There was a Departmental Presenting Officer present. The appeal tribunal disallowed the appeal and confirmed the Departmental decision of 16 May 2017.
7. On 2 November 2018 an application for leave to appeal to the Social Security Commissioner was received in the Appeals Service (TAS). On 13 November 2018 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

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

8. On 19 December 2018 a further application for leave to appeal was received in the Office of the Social Security Commissioners. On 21 January 2019 observations on the application were requested from Decision Making Services (DMS). In written observations dated 11 February 2019, Mr Hinton, for DMS, supported the application for leave to appeal on the grounds advanced by the appellant. The written observations were shared with the appellant and her husband on 12 February 2019. On 11 March 2019 email correspondence was received from the appellant's husband.
9. The file became part of my workload on 25 September 2019. On 6 November 2019, I granted leave to appeal. When granting leave to appeal I gave as a reason that it was arguable that the appeal tribunal's reasons were inadequate to explain its decision. On the same date I determined that an oral hearing of the appeal would not be required.

## **Errors of law**

10. 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?
11. 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.”

## **The error of law in the instant appeal**

12. In his written observations on the application for leave to appeal, Mr Hinton made the following submissions:

‘On perusing the tribunal papers with regards to the activities of daily living the proceedings record the restrictions indicated in the Personal Independence Payment (PIP) claim form. In her evidence at the hearing (the appellant) stated that she experienced difficulties

preparing food in respect of chopping and peeling vegetables because of problems with her hands. She used a dosette box for tablets and stated her husband managed her various medications. She also used a shower seat to enable her to wash her feet and lower legs.

Turning to the mobility component (the appellant) stated she could follow a familiar journey but would get agitated if there was a diversion. She stated in her self-assessment form (tabbed document 3) that she would be unable to plan and follow an unfamiliar journey.

With regards to her ability to move around (the appellant) stated walking made her sore but she didn't use aids. On a good day she would be comfortable walking around and would be capable of walking around the front of the City Hall.

The tribunal's reasoning consisted of two pages. The tribunal noted the medication (the appellant) was taking along with the activities she contended restricted her functioning. It then continued as follows and I reproduce in full

*"The HCP assessed the appellant on the 3/5/17 and she notes the following:*

- 1. Suffers stress and anxiety at home and at work;*
- 2. Leaves door open when showering*
- 3. Needs help with tablets*
- 4. Difficulty interacting and communicating with others*
- 5. Low mood;*
- 6. Poor memory;*
- 7. Low motivation;*
- 8. Poor concentration;*
- 9. Under the care of a psychiatrist and a CPN*
- 10. Has fibromyalgia*
- 11. Suffers from IBS*
- 12. Prepares easy meals and does not lift heavy kitchen utensils*
- 13. Anxiety while socialising;*
- 14. Difficulty budgeting when manic, husband takes over;*

*15. No evidence of cognitive, intellectual or memory impairment.*

*Applying the evidence to the activities in which the appellant claims she is restricted the tribunal found:*

- 1. Preparing food: cannot cook and prepare a meal unaided*
- 2. Eating and drinking: can take nutrition unaided*
- 3. Managing treatment: uses a dosette box to manage medication;*
- 4. Washing and bathing: can wash and bathe unaided*
- 5. Dressing and undressing: can dress and undress unaided;*
- 6. Communicating: can express and understand verbal information unaided;*
- 7. Mixing with other people: can engage with other people unaided;*
- 8. Budgeting: can manage complex budgeting decisions unaided;*
- 9. Going out: can plan and follow the route of a journey unaided;*
- 10. Moving around: can stand and then move more than 200 metres, either aided or unaided.*

*The appellant scored 1 point on the daily living descriptors and 0 points on the mobility descriptors and the tribunal found this was underpinned by the evidence. She is therefore not entitled to the PIP daily living and mobility components.*

*The appeal is dismissed and the decision of the Department dated 16/5/17 is upheld”.*

The tribunal has stated that its decision is “underpinned by the evidence”. However, it would appear to me that it has placed sole reliance on the report of the Health Care Professional but failed to indicate how it assessed evidence provided by (the appellant).

I would accept that brevity regarding a tribunal’s statement of reasons does not necessarily constitute an error in law providing the reasoning is sound, covers all

the relevant issues raised and resolves any conflicts of opinion in a satisfactory manner. It is my contention that the tribunal has failed to meet any of these conditions.

In a GB Upper Tribunal decision, *SC v SSWP(PIP [2017] UKUT 0317 (CPIP/663/2017)* Judge Gray set out in general terms the requirements for a tribunal to follow when assessing evidence. At paragraph 23 she stated:

*“The tribunal’s task is to make an assessment of the probable level of the appellant’s functional abilities within the activities of the schedule to the regulations based upon the entirety of the evidence. Whilst bearing in mind that people react differently to ill-health and to medication intended to be of benefit, it will assess the probative value of the different parts of the evidence using its expert knowledge as to what level of functional disability is likely given the particular diagnoses and the level of treatment, as well as other evidential tools such as plausibility, inconsistency and its own common sense. In setting out its findings it is necessary to indicate what evidence is accepted or the extent to which certain evidence is accepted, and the reasons for the conclusions arrived at”.*

In line with the aforementioned decision, how then did the tribunal meet the criteria laid down in its assessment of the evidence with regards to (the appellant’s) case?

On perusing the record of proceedings it is true that (the appellant) did not provide detailed evidence to the tribunal as to how her medical conditions impacted upon the activities of daily living and mobility as set out in her self-assessment form. However her self-assessment form did contain detailed information concerning assistance she required with regards to the activities of daily living with the exception of toileting and reading. She also provided detailed information concerning assistance with regards to mobility activities. In its reasoning the tribunal simply listed the activities (the appellant) contended she had difficulties with. However, I see no indication in its reasoning as to how it assessed this evidence.

Furthermore, a short time prior to the hearing (the appellant) submitted detailed correspondence (date-stamped 19 February 2018) to be put before the tribunal. She set out how her various conditions affected her day to day activities and the assistance she was getting from her family. However, this evidence has not been referred to by the tribunal in its reasoning and I would contend that as this formed a central part of (the appellant's) claim the tribunal had a duty to assess and comment upon it.

Consequently in line with the above I would contend the tribunal had a duty to undertake a more rigorous assessment of the evidence submitted by (the appellant) and to give an explicit explanation as to why it has preferred, accepted or rejected the evidence before it. Its failure to do so renders its decision erroneous in law.'

13. I agree with Mr Hinton's thorough analysis and for the reasons which he has set out also agree that the decision of the appeal tribunal is in error of law.

### **Disposal**

14. The decision of the appeal tribunal dated 27 February 2018 is in error of law. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
15. 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 16 May 2017 in which a decision maker of the Department decided that the appellant was not entitled to PIP from and including 17 February 2017;

(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; 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.

(signed): K Mullan

Chief Commissioner

12 February 2020