

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 24 April 2019

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Belfast on 24 April 2019.
2. An oral hearing of the application has been requested. However, I consider that the proceedings can properly be determined without an oral hearing.
3. For the reasons I give below, I grant leave to appeal. However, I disallow the appeal.

REASONS

Background

4. The applicant claimed personal independence payment (PIP) by telephone from the Department for Communities (the Department) from 23 November 2017 on the basis of needs arising from nerve damage, sciatica and foot drop. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 4 January 2018. He was asked to attend a consultation with a healthcare professional (HCP) and a consultation report was received by the Department on 20 February 2018. On 27 February 2018 the Department decided that the applicant did not satisfy the conditions of entitlement to PIP from and including 23 November 2017. The applicant requested a reconsideration of the decision, and he was notified that the decision had been reconsidered by the Department but not revised. He appealed.

5. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. After an oral hearing, the tribunal disallowed the appeal. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 31 July 2019. The applicant 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 1 October 2019. On 4 November 2019 the applicant applied to a Social Security Commissioner for leave to appeal.

Grounds

6. The applicant submits that the tribunal has erred in law on the basis that it wrongly placed weight on the fact that he worked three days each week and failed to address medical evidence submitted by him on the day of hearing.
7. The Department was invited to make observations on the applicant's grounds. Ms Patterson of Decision Making Services (DMS) responded on behalf of the Department. Ms Patterson submitted that the tribunal had not erred in law as alleged and indicated that the Department did not support 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 documentary material before it consisting of the Department's submission, containing the questionnaire completed by the applicant and a consultation report from the HCP. It also had sight of extracts from the applicant's general practitioner (GP) records. The applicant attended the hearing and gave oral evidence.
9. The applicant indicated that the disputed daily living activities were activity 1 (Preparing food), 2 (Taking nutrition), 3 (Managing treatment), 4 (Washing and bathing), 6 (Dressing and undressing), 9 (Engaging with other people), and mobility activities 1 (Panning and following a journey) and 2 (Moving around). He told the tribunal that at the date of decision he worked 3 days per week, driving 30 miles to work each way. He relied on medication for pain relief and had taken some days off work due to lack of sleep. He reported that he would require motivation to undertake unfamiliar journeys. He used a stick to help in walking and managed 50 to 200 metres most days. He found it difficult to keep track of medication, but did not use a dosette box. At the relevant date he felt down and needed encouragement for all activities of daily living. He indicated that his balance was compromised and that he used a high stool for cooking, although he would not feel like eating. He would have benefitted from a rail in the shower. He indicated no toileting problems, although saying that a raised seat would have been better. He indicated that he had no aid for putting on socks or shoes, but would have

benefitted from one. He gave evidence that he mixed with people in work but did not go out socially due to pain and his unusual gait.

10. The tribunal accepted that the applicant would be restricted in physical mobility to 50-200 metres, awarding 4 points for activity 2(b). It accepted that he reasonably required an aid to cook food and to wash/bathe, awarding 2 points for 1(b) and 2 points for 4(b). It did not accept that the applicant needed prompting to undertake a journey, noting his ability to drive a round trip of 60 miles to and from his workplace 3 days each week. It noted that the applicant had described no difficulty with taking nutrition, managing medication or dressing/undressing on his PIP2 questionnaire. It found that the independent evidence did not suggest significant difficulties in these areas. In the light of all the evidence it did not accept that he had difficulty engaging with other people.

Relevant legislation

11. 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.
12. 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.
13. By regulation 4 of the 2016 Regulations, certain standards apply to the manner in which the activities must be carried out. It provides:
 - 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](#).

...

By regulation 7(1) of the 2016 Regulations, a further requirement is that the relevant descriptor must be satisfied on a majority of days to attract a score. It provides:

7.—(1) The [descriptor](#) which applies to C in relation to each activity in the tables referred to in regulations 5 and 6 is—

- (a) where one [descriptor](#) is satisfied on over 50 per cent. of the days of the [required period](#), that [descriptor](#);

...

Assessment

14. 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.
15. Leave to appeal is a filter mechanism. It ensures that only applicants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
16. 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.
17. The applicant firstly refers to regulation 7 of the PIP Regulations. This provides that any descriptor which applies must be satisfied on over 50 per cent of the days of the required period. He submits that the tribunal has erred by finding that he is not entitled to points for descriptors on the basis that he worked 3 days each week, submitting – correctly – that these days do not constitute a majority.

18. However, this mischaracterises the way in which the tribunal considered the applicant's work. It did not decide the appeal on the basis that the applicant had no eligibility on days which he worked. Rather it addressed the applicant's functional restrictions over the course of the relevant period, but took notice of the fact that he worked on 3 days each week to address his capabilities generally. Thus, for example, in assessing the applicant's statement that he needed encouragement to undertake a journey, it was relevant to consider that he drove 60 miles to and from work 3 days each week. It was equally relevant to the tribunal that the applicant worked with the public 3 days each week, when addressing the issue of engaging with other people. It was not invalid for the tribunal to find this ability relevant to the non-working days of the week. I do not consider that the applicant establishes an arguable case on this basis.
19. The applicant secondly submits that the tribunal did not address his ability to perform activities safely in accordance with regulation 4(3) of the 2016 Regulations above. He refers to the award of points for the activities of preparing food, washing and moving around. He points out the medical reports confirming that he suffers from a permanent foot drop, with high dosage of painkillers. He submits that by analogy with the scoring activities he should have been awarded points for dressing, preparing food, taking nutrition, managing treatments, mixing with other people and planning and following journeys.
20. In the case of taking nutrition, managing medication and dressing/undressing, the tribunal had noted that the applicant had indicated no difficulty with these in his PIP2 questionnaire. Noting his occupation, the tribunal did not accept that this was due to difficulty completing forms. It further found that the medical evidence did not suggest difficulty in these areas.
21. It appears to me that there is no direct analogy between the scoring descriptors accepted by the tribunal and the most of the activities the applicant seeks to argue for. For example, the tribunal accepted that the applicant had problems standing and used a high stool to cook. However, the activities of taking nutrition, managing treatment, engaging with others and planning journeys do not require standing. I acknowledge that there is merit in one aspect of this point, namely that the applicant identified problems dressing and indicated that he used a sock aid, which might attract 2 points for activity 6(b). I grant leave to appeal on this point, as it is arguable that the tribunal made an inconsistent finding on dressing. However, I conclude that it would not be a material error of law as, if the applicant is right, the total number of daily living points would rise to 6, which is still not enough to change the outcome of the appeal.
22. The applicant's third point relies on the Upper Tribunal decision in *CG v Secretary of State for Work and Pensions* [2016] UKUT 194, submitting that the tribunal had erred in addressing the area of prompting. That case concerned a recovering alcoholic who suffered from anxiety and

depression and neuro-dermatitis. Additionally, he had a history of his having suffered a head injury after an assault in 1981. He said that one of the ways in which his health problems impacted upon him was to significantly lower his motivation though he also claimed difficulty with concentration, memory functions and nervousness in certain social situations. In the present case, there is no evidence of any mental health condition being claimed, diagnosed or treated. I do not accept that this ground raises an arguable point of law.

23. Finally, the applicant submits that the tribunal has not given an accurate record of the proceedings as it does not include the further medical evidence he submitted on the day. I understand this as a reference to extracts from his medical records running, I estimate, to some 50 pages. However, I do not expect a tribunal to summarise documentary evidence submitted on the day of hearing in its record of proceedings. The evidence submitted by the applicant case has been placed on the file and can speak for itself. He does not identify any respect in which the tribunal has been inaccurate in its treatment of the evidence, and it appears to me that this ground simply takes issue with the fact that the tribunal has not summarised the documentary evidence. I do not consider that this gives rise to an arguable error of law.
24. I grant leave to appeal on the ground identified above, but I disallow the appeal.

(signed): O Stockman

Commissioner

16 June 2020