

Decision No: C17/20-21(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 30 January 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 Downpatrick.
2. An oral hearing of the application has not been requested.
3. For the reasons I give below, I grant leave to appeal. However, I disallow the appeal.

**REASONS**

**Background**

4. The appellant was awarded disability living allowance (DLA) from 29 April 2002, most recently at the high rate of the mobility component and the middle rate of the care component from and including 7 January 2009. As his award of DLA was due to terminate he was invited to claim personal independence payment (PIP) by the Department for Communities (the Department). He made a claim from 21 May 2018 on the basis of needs arising from acute gouty arthritis, osteoarthritis, bursitis in his knees, tennis elbow, frozen shoulder, plantar fasciitis, vertigo, sciatica, chronic obstructive airways disease, type 2 diabetes and diverticular recti. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 19 June 2018. The appellant was asked to attend a consultation with a healthcare professional (HCP) and a consultation report was received by the Department on 6 July 2018, having been audited by the Department's medical service provider. On 5 August 2018 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 21 May 2018. The appellant requested a reconsideration of the decision. 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 a hearing on 30 January 2019 the tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 20 June 2019. 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 14 August 2019. On 11 September 2019 the appellant applied to a Social Security Commissioner for leave to appeal.

## **Grounds**

6. The appellant, represented by Mr Black of Law Centre NI, submits that the tribunal has erred in law on the basis that:

- (i) It has not explained why the appellant was not awarded mobility component despite having received DLA high rate mobility component for several years.

7. The Department was invited to make observations on the appellant's grounds. Mr Kirk of Decision Making Services (DMS) responded on behalf of the Department. Mr Kirk submitted that the tribunal had not materially erred in law 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 appellant and a consultation report from the HCP. It had a brief report of his medical problems and medication history from his general practitioner (GP) and information that indicated that the HCP report had been audited by the Department's agents. The tribunal had sight of the appellant's medical records, with his consent. The appellant attended the hearing and gave oral evidence. The Department was not represented.

9. The tribunal identified 9 disputed activities. The appellant indicated that gout was his main problem, but that he also suffered from chronic obstructive pulmonary disease (COPD), plantar fasciitis and osteoarthritis. He would experience a gout attack lasting from 3 days to a week on 6 to 8 occasions a year. He would be breathless on stairs. Last year he could walk 400 metres on the flat but could not walk at all when gout was bad. He accepted that he could walk 200 metres most of the time. He stated that he could not prepare food when he had gout, but could manage otherwise. He described a similar pattern with washing and showering. He described some difficulty getting to the toilet in time and rising from the toilet, holding on to a basin to aid him. He was able to get dressed sitting on the bed. He described a previous panic episode which resulted in him being taken to A&E, where he was given paracetamol and advised to lie down in a dark room.

10. The tribunal found that the appellant had 4-6 flare ups of gout a year, only lasting for a few days, supported by evidence of his medication regime. The gout was limited to his right hand. The tribunal found that COPD also flared up from time to time. He did not report any mental health condition. It found that his daily life included the ability to drive, take his

grandchild to school, use computers and play golf fortnightly. It was satisfied that he did not attract points for any disputed activities except for managing toilet needs. It disallowed the appeal accordingly.

### **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.

### **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. The appellant's ground of application for leave to appeal has been considered in other applications on previous occasions. Mr Black submits that the tribunal's reasons are inadequate, because they do not explain why the appellant was not awarded PIP mobility component despite having received DLA high rate mobility component for several years.

17. It is an arguable ground and I grant leave to appeal. However, for the reasons stated most recently in *JF-v-Department for Communities* [2019] NI Com 72 and *LMcC v Department for Communities* [2020] NI Com 19, I reject this ground. In those cases, I held that there was no automatic requirement on a tribunal to explain a refusal of PIP mobility component in the context of an appellant who held a previous DLA high rate mobility award, unless the case involved some obvious inconsistency that required particular elucidation. The simple fact of the matter is that the rules of entitlement for DLA mobility component and PIP mobility component are different, following a political decision to change them. As a result, many claimants previously awarded DLA may not retain their entitlement.

18. Moreover, in this case, the appellant accepted that he could walk 200 metres most of the time and sometimes he could manage 400 metres. He told the HCP that he played golf once a fortnight. I consider that it is self-evident why no points were awarded under Mobility activity 2, and why he did not qualify for PIP mobility component.

19. I do accept that there is inconsistency between the previous award of DLA high rate mobility component and the tribunal's PIP assessment. However, this does not place a question-mark over the PIP award as much as over the past DLA award. The evidence of the appellant regarding his walking ability and his playing of golf does not appear consistent with the DLA high rate mobility criteria, the most common of which required virtual inability to walk. However, that is not the issue before me.

20. For the reasons I have given above, I disallow the appeal.

(signed)

**Odhrán Stockman**  
**Commissioner**

**23 June 2020**