

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 21 September 2018

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 13 February 2018, which decided that the appellant was not entitled to either component of PIP from and including 9 November 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.

Background

5. On 13 February 2018 a decision maker of the Department decided that the appellant was not entitled to PIP from and including 9 November 2017. Following a request to that effect and the receipt of additional evidence the decision dated 13 February 2018 was reconsidered on 13 April 2018 but was not changed. An appeal against the decision dated 13 February 2018 was received in the Department on 8 May 2018.
6. The appeal tribunal hearing took place on 21 September 2018. The appellant was present and was represented. There was a Departmental Presenting Officer present. The appeal tribunal disallowed the appeal and confirmed the decision dated 13 February 2018.
7. On 27 February 2019 an application for leave to appeal to the Social Security Commissioners was received in the Appeals Service (TAS). On 6 March 2019 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

Proceedings before the Social Security Commissioner

8. On 1 April 2019 a further application for leave to appeal was received in the office of the Social Security Commissioners. The applicant was represented in this application by Mr Black of the Law Centre (Northern Ireland) On 7 May 2019 observations on the application for leave to appeal were requested from Decision Making Services ('DMS'). In written observations dated 4 June 2019, Mr Arthurs, for DMS, supported the application for leave to appeal on the grounds submitted on behalf of the appellant. Written observations were shared with the appellant and Mr Black on 7 June 2019.

9. The case became part of my workload on 21 January 2020. On 18 March 2020 I granted leave to appeal. In granting leave to appeal, I gave, as a reason that the grounds of appeal, as set out in the application for leave to appeal, were arguable. 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.”

Analysis

12. The agreed error of law with which I concur is the manner in which the appeal tribunal addressed certain of the evidence which was before it. In his written observations on the application for leave to appeal, Mr Arthurs set out the error, as follows:

(The appellant) has provided supporting medical evidence in the form of a letter from Dr R dated 24 April 2018. When referencing this letter the Tribunal noted the following in its Record of Proceedings:

“It had been noted that the letter from Dr R had been unsigned and this was explained to the Appellant and his Representative.”

In the Reasons for Decision the Tribunal made the following observations in relation to the letter from Dr R:

“Furthermore, (the appellant) was helpful in providing 2 letters referred to above. The first of these was an unsigned letter dated 24.04.2018 carrying the typed name of the author Dr LR from the Ulster Hospital Dundonald. She is a General Practitioner with specialist interest in headaches. The letter was clearly requested by the Appellant for the purpose of today’s PIP application. It deals with the Appellant’s cluster headaches and all of the information provided to us is generalised in nature insofar as it does not specifically address or help us deal with any measurement or yardstick that would allow us to determine how this condition – specifically his cluster headaches – impact upon the activities of Daily Living.

We had noted in the second paragraph that “often headaches will occur in cluster bouts of weeks or month, followed by long periods of remission”. This would appear to conflict with what (the appellant) tells us today in that he gets headaches every day. Nonetheless what is clear from both (the appellant)

and from Dr R is that the headaches are not for the majority of the time and when they arise they do so for modest periods during the day.”

The emphasis in the above excerpt is mine and I would like to refer to the full paragraph from Dr R’s letter quoted by the Tribunal:

“Cluster headache is a rare headache disorder and is one of the most painful conditions known to man. Sufferers experience abrupt attacks, which are debilitating and excruciatingly painful. Often headaches will occur in cluster bouts of weeks or months, followed by long periods of remission. (The appellant), however, is in a small subgroup of patients who experience chronic cluster headaches, meaning that he has them more than 15 days per month. In a given day he may have a number of attacks, and feels exhausted and depressed even after the pain is gone.”

Again the emphasis is mine and when you compare the emphasised text it is clear that the Tribunal has omitted a crucial part of the letter from Dr R, leading to a failure to recognise the extent of (the appellant’s) condition and therefore likely forming inaccurate opinions on his functional limitations which in itself would amount to an error in law. It is also clear that Dr R contends that (the appellant) suffers from these headaches a minimum of 15 days per month, meaning that at least 50% of the time in every month (the appellant) may suffer from a cluster headache. Again this is contrary to the findings of the Tribunal, who claim repeatedly that the headaches are not for the majority of the time.

...

I would also add that a further perverse finding by the Tribunal may be identified when it states that *“This would appear to conflict with what (the appellant) tells us today in that he gets headaches every day.”* I can find no evidence in the Record of Proceedings that (the

appellant) ever made such a claim. I can however identify, in the Record of Proceedings, the following admission by (the appellant):

“The headaches have become more severe over the last few years. I would get up to 20 per month.”

Although this exceeds the 15 days stated in Dr R’s letter it is not a claim of every day as the Tribunal recorded. I therefore additionally contend that any decision reached based on this misstatement of the facts would amount to an error in law on the part of the Tribunal.’

13. Accordingly, as both parties have expressed the view that the decision appealed against was erroneous in point of law, 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.

(signed): K Mullan

Chief Commissioner

7 July 2020