

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 20 July 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 11 July 2017, which decided that the appellant was not entitled to either component of PIP from and including 3 April 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 11 July 2017 a decision maker of the Department decided that the appellant was not entitled to PIP from and including 3 April 2017. Following a request to that effect and the receipt of additional evidence the decision dated 11 July 2017 was reconsidered on 8 August 2017 but was not changed. An appeal against the decision dated 11 July 2017 was received in the Department on 4 September 2017.
6. The appeal tribunal hearing took place on 7 June 2018. The appellant was present, was accompanied by her husband and was represented. There was a 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 for a fixed period of four years from 9 August 2017. I return to the commencement date of entitlement below. The appeal tribunal disallowed the appeal in respect of the daily living component. The appeal tribunal did apply descriptors from Part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ('the 2016 Regulations') which the decision maker had not applied. The score for these descriptors, combined with the score for the descriptor which had been applied by the decision maker was insufficient for an award of entitlement to the daily living component of PIP at the standard rate – see article 83 of the Welfare Reform (Northern Ireland) Order 2015 and regulation 5 of the 2016 Regulations.
7. On 14 November 2018 an application for leave to appeal to the Social Security Commissioners was received in the Appeals Service (TAS). On 27 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 11 December 2018 a further application for leave to appeal was received in the office of the Social Security Commissioners. The appellant was represented in the application by Mr Black of the Law Centre (Northern Ireland). On 21 January 2019 observations on the application for leave to appeal were requested from Decision Making Services ('DMS'). In written observations dated 19 February 2019, Mr Arthurs, for DMS, supported 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 Mr Black on 19 February 2019. On 27 February 2019 written observations in reply were received from Mr Black.

9. The case became part of my workload on 29 April 2020. On that date I granted leave to appeal. In granting leave to appeal, I gave, as a reason, as it was arguable that the appeal tribunal had erred in the manner in which it addressed the potential applicability of activity 9 in Part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016, as amended. 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 the potential applicability of activity 9 in Part 2 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016, ('the 2016 Regulations'), as amended.
13. In his written observations on the application for leave to appeal, Mr Arthurs set out the error, as follows:

'Mr Black, of Law Centre (NI) on behalf of (the appellant), contends that the Tribunal has not explained why evidence provided by her in relation to Daily Living Activity 9: *Engaging With Other People Face to Face* was not considered in the Reasons for Decision.

Mr Black makes several references to (the appellant's) mental state when discussing her ability to engage with other people, and these were recorded as follows in the Record of Proceedings: *"Does not like missing with people", "Never goes anywhere alone, even local shop", "does not want to engage with people" and "Never shops alone"*. Mr Black believes that had these statements been accepted by the Tribunal she would have been considered as in need of social support to complete this activity. An award under these conditions would be 9(c), *Needs social support to be able to engage with other people*.

When considering the Tribunal's reasons it is clear it preferred the Health Care professional's (HCP) report of 26 June 2017 as can be seen by the first page of its reasons:

"The HCP assessed the appellant on 26 June 2017 and she notes the following:

1.
2. *Leaving the house is limited by her anxiety and she prefers to be accompanied by her husband.*
3.
4.
5.
6.
7.
8.
9.
10.

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

1.
2.
3.
4.
5.
6. ...
7. ...
8. ...
9. *Mixing with other people: needs prompting to be able to engage with other people (2points)*
10. ...
11. ...
12. ...”

My interpretation of the above excerpt is that the *only* evidence considered by the Tribunal is the HCP report of 26 June 2017. As can be seen from the Tribunal’s reasoning there is no analysis of all the evidence available, why certain evidence was considered acceptable and the rest unacceptable; rather there is the acceptance of one element of the evidence and an award of points based on this. The Tribunal is entitled to accept any one piece of evidence as definitive however it has a duty to explain its reasons for this and I would contend that the Tribunal has failed to do this. For this reason I believe the Tribunal has erred in law and would agree with Mr Black’s contention.’

14. I agree that the appeal tribunal has failed to assess any of the appellant’s own evidence concerning her limitations in respect of engaging with other people face to face. The appeal tribunal also had before it a report from the appellant’s General Practitioner (GP) in which the GP makes reference to the appellant’s problems with depression and the appellant reporting that ‘... her ability to engage in work or social activities is particularly restricted.’ Once again, there is no mention whatsoever of this evidence in the statement of reasons for the appeal tribunal’s decision. The appellant and/or her representative had gone to the trouble of obtaining evidence from the GP which, it was expected, was supportive of her claim to entitlement to PIP. In such circumstances, the appellant and her representative are entitled to know what the appeal tribunal made of the evidence and, if it was rejected, as it appears to have been in the instant cases, the reasons for that rejection.

15. In *R(A)1/72*, the Chief Commissioner, considering an appeal from a delegated medical practitioner acting on behalf of the Attendance Allowance Board, said:

“The obligation to give reasons for the decision in [a case involving a conflict of evidence] imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met, does no more than this. It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reasons for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. For the purpose of the regulation which requires the reasons for the review decision to be set out, a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all.”

16. I agree with Mr Black and Mr Arthurs that a higher scoring descriptor in activity 9 in Part 2 of Schedule 1 to the 2016 Regulations might have applied had the appeal tribunal undertaken a proper assessment of all of the evidence which was before it. As such, the error in the inadequate evidential assessment is material as the award of a higher-scoring descriptor would have taken the appellant over the threshold for entitlement to the standard rate of the daily living component of PIP.
17. 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

21 July 2020