

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 22 March 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.
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 applicant claimed personal independence payment (PIP) by the Department for Communities (the Department) from 10 January 2018 on the basis of needs arising from ischaemic heart disease, a heart attack, chronic neck pain, arthritis, and bulging C4/5 and C5/6 discs. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 26 February 2018. The applicant was asked to attend a consultation with a healthcare professional (HCP) and a consultation report was received by the Department on 22 March 2018. The Department obtained a general practitioner (GP) factual report on 4 April 2018. On 17 April 2018 the Department decided that the applicant did not satisfy the conditions of entitlement to PIP from and including 10 January 2018. The applicant requested a reconsideration of the decision. She was notified that the

decision had been reconsidered by the Department but not revised. She 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 22 March 2019 the tribunal disallowed the appeal. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 11 June 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 28 August 2019. On 9 September 2019 the applicant applied to a Social Security Commissioner for leave to appeal.

Grounds

6. The applicant, 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 applicant was not awarded daily living component;
 - (ii) it has not explained why the applicant was not awarded mobility component.
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 materially erred in law. She indicated that the Department did not support the application.
8. In response, Mr Black maintained his submissions, and further submitted that the tribunal had made an irrational or perverse decision.

The tribunal's decision

9. 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 including the Department's submission, which contained a PIP2 questionnaire completed by the applicant, a consultation report from the HCP, a general practitioner (GP) report, a supplementary medical report from a HCP, a GP letter, a further supplementary medical report from a HCP and material relating to an audit of the HCP report by the Department's agent, Capita. The tribunal also had a submission from the applicant's representative, enclosing a pro forma GP questionnaire. The applicant attended the oral hearing and gave oral evidence, represented by Ms Quinn. The Department was not represented.
10. The tribunal noted that the applicant suffered from ischaemic heart disease, bulging discs, neck pain, hip pain, depression and anxiety. She

had experienced a heart attack in December 2017, followed by stenting. She had returned to work in September 2018 on a 2-day per week basis but had stopped work again in the two weeks before the tribunal hearing. She complained of problems with fatigue, breathlessness and chest pain, with counselling and a recent reduction in anti-depressant level. She had been driving until about 5 weeks prior to the tribunal hearing.

11. The applicant stated that she had difficulty with preparing meals, due to lack of motivation and breathlessness on exertion. The tribunal did not accept this. The applicant stated that she had difficulty with showering, being at risk of falling through exhaustion and breathlessness. The tribunal noted her ability to drive on a motorway unaccompanied and declined to accept this. The applicant stated that she needed help with dressing the upper body and lower body, but the tribunal did not accept this evidence. The applicant indicated that she had difficulties engaging with other people, but the tribunal found that any disability was not significant. The applicant stated that she was too anxious to leave the house alone 4 to 5 days per week. The tribunal accepted that she suffered from anxiety but did not accept that she would be unable to plan and follow the route of a journey. The applicant stated that she could not walk more than 20 metres. The tribunal accepted that the applicant's mobility was restricted to 50-200 metres but did not accept that her mobility was as limited as she stated. As she did not reach the threshold for an award of either component the tribunal disallowed the appeal.

Relevant legislation

12. 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.
13. 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

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 first ground submitted by Mr Black is that the tribunal has failed to adequately explain the award of points across a range of daily living descriptors. He then elaborates on this ground, by reference to a pro forma questionnaire completed by the applicant's GP, which offered evidence in support of certain descriptors which the tribunal did not accept.
18. Mr Black characterises this ground as a challenge to the adequacy of the tribunal's explanation of its decision. However, as a reasons challenge, it is clearly doomed to fail. When addressing the evidence in the GP's questionnaire, the tribunal said:

"The Tribunal considered a report from the past General Practitioner dated 17 April 2018 which provided specific information with regard to the Appellant's difficulties carrying out the activities of Daily Living and Mobilising. In light of the evidence contained in General Practitioner's reports dated 9 January 2018 and 22 March 2018 the Tribunal concluded that the report dated 17 April 2018 represents the Appellant's instructions to her General Practitioner rather than an objective set of findings by the General Practitioner".
19. This passage explains that the tribunal rejected the GP's evidence and why it did – namely that it conflicted with other evidence in GP reports to such an extent that it appeared to be based on the appellant's instructions rather than objective assessment. Turning to the broader decision, the tribunal has addressed its reasons under each of the activity headings in a clear way. These enable a person reading the decision to understand its reasons for deciding the appeal as it did. That is all that the obligation to state reasons requires.
20. However, as I interpret his grounds, Mr Black is not actually arguing that he cannot understand the tribunal's reasons for disallowing the appeal. The reasons for the tribunal's decision are expressed plainly, whether or not one agrees with them. There is no basis in law for saying that the reasons are inadequate. Rather, he is trying to say is that he does not agree with the tribunal's reasons on the basis that the evidence in the GP

report compelled a different conclusion. I refuse leave to appeal on the grounds that the reasons for the tribunal's decision are inadequate.

21. The rejected GP report indicates that the applicant could not walk more than 20 metres, that she needed help with specified activities of daily living, that she was socially isolated during periods of depression and that she would not go out alone during a flare-up of anxiety. The real issue is whether the decision of the tribunal not to follow the GP report was irrational. I will grant leave to appeal on this ground, as the issue merits further exploration.
22. It can be seen that the tribunal based its conclusions that the report was not reliable on the premise that the GP report was based on the applicant's instructions rather than the GP's own opinion. The report is a pro forma which advice agencies have used regularly to provide evidence from a claimant's GP in a simple and efficient way addressed to various PIP activities. In the light of Article 13(8)(b) of the Social Security (NI) Order 1998, it very properly asks the GP to answer questions regarding their patient as of the date of the decision under appeal, which it sets out.
23. The pro forma also says:

"Answer only where you know the answer or could reasonably answer based on your knowledge of your patient".
24. Therefore, while it does not include the sort of statements that might appear in an expert report placed before a court, it does emphasise that the evidence should be the opinion of the medical practitioner.
25. However, there are obvious shortcomings with the form. It cannot for reasons of space address the specific descriptors that appear in the legislation, as they are further defined in the legislation or are interpreted by relevant jurisprudence. Therefore, the GP's understanding of what is meant by "cook" may not be consistent with the understanding of social security tribunals.
26. Equally, the information given in response to questions on the pro forma is not always necessarily helpful. For example, in relation to the activity of preparing and cooking food, the question reads:

Do you know of any difficulty [the applicant] would have preparing and cooking a main meal for one? (e.g. peeling, chopping and coping with hot pans or motivation/memory etc)
27. In this case the response was "Yes – related neck and hip pain". However, this in my judgment is not a particularly helpful answer, since

no light is shed on any particular functional restriction that may be relevant to the activity of preparing and cooking food.

28. In another question the GP was asked:

“Are you aware if their condition impacts on their ability to engage with others in social situations?”

29. The response was “Yes – social isolation during episodes anxiety and depression”. However, this reference to “episodes” suggested a variable worsening of the applicant’s condition without indicating any degree of frequency for the episodes. Again, in my judgment this is not a particularly helpful answer, as it does not address the regularity and duration of any impaired function.

30. In relation to the activities of “Dressing and undressing” and “Washing and bathing”, the GP’s responses were more direct, saying:

“Needs help family socks and bending to dress ... and help in/out bath”.

31. In relation to mobility, the GP had been asked, “Are you aware if they require assistance or supervision to go out on their own?”, to which the reply was:

“During flare of anxiety will not go out alone”.

32. A further question read, “If they have limited mobility, how far do you think they could normally walk before having to stop due to severe discomfort?; this was followed by tick boxes reading “<20 metres”, “<50 metres”. “< 200 metres”, “No restriction”. In this case the GP had ticked “<20 metres” and had written:

“Due severe hip and neck symptoms”.

33. On the daily living activities of “Preparing food” and “Engaging with others”, the GP’s responses on the pro forma would not have compelled any award of points. Under the daily living activities of “Dressing and undressing” and “Washing and bathing”, the GP’s responses might have led to an award of 3 points for 4(e) and 2 points for 6(d). This total of 5 points is below the relevant threshold and therefore any decision not to award these points is not material to the outcome of the appeal.

34. However, the tribunal rejected the evidence on the basis that it represented the applicant’s instructions to the GP, rather than the GP’s opinion. The basis for this was two other pieces of evidence from the same GP practice. One was a letter dated 9 January 2018. This indicated that the applicant had shortness of breath and chest pain and underwent further urgent investigation with a stress test on 23 May 2018

which was normal, and indicated that she was awaiting cardiac review. It made no reference to other significant problems. The second was a report dated 22 February 2018 which had been requested from the applicant's GP practice by the Department's agent, Capita. This referred to ischaemic heart disease with ongoing cardiac rehabilitation. It referred to depression, low mood and anxiety. It related depression to poor sleep, caring for a sick mother, limited support, anxiety and ongoing stresses. There was no reference to significant neck and hip symptoms in either report.

35. In the PIP2 questionnaire, the applicant stated that she always had someone nearby when she showered, for reassurance, and that her daughter would help to wash her hair. She stated that after showering, when she was tired and breathless, her daughter will often help to put on tops over her head, or when experiencing neck pain to help put one arm into a coat or cardigan. To the HCP the applicant had reported that she managed to shower and wash from head to toe daily, but that her daughter would wash her hair once a week. In terms of dressing, she reported that sometimes her daughter would help her put on something that is tight 2-3 times a week.
36. In other words, there was no other evidence that the applicant would require help in and out of a bath, or that she would require help in dressing her lower body prior to the representative's submission, accompanied by the GP pro forma.
37. Further, the applicant in her PIP2 questionnaire linked mobility problems to breathlessness, rather than neck and hip pain. In the HCP examination, she indicated that she would take 10 minutes to walk 200 metres or more, and have to stop twice in that time due to breathlessness.
38. Again, there was no reference to significant mobility restrictions of under 20 metres due to hip and neck pain prior to the representative's submission, accompanied by the GP pro forma.
39. It appears clear that the evidence in the GP pro forma lies somewhere outside the boundaries of the evidence given by the applicant herself, the HCP and two other reports from the same GP practice. Whether that evidence was based on the applicant's instructions to the GP or the GP's own understanding of the applicant's condition, it was certainly a very generous reading of the evidence.
40. As is well-established, a tribunal has to address itself to conflicts in evidence. The evidence in this case presented a very clear conflict between what was said in the pro forma and what had been said in the PIP2, in the HCP report and the two other reports from the applicant's GP practice. The latter documents were entirely consistent with each other. The pro forma by contrast stood alone. I cannot explain why that

report had the content that it did. The tribunal made a finding that it was based on the applicant's instructions. However, it was not necessary, in my judgment, for the tribunal to have sought explanation for the divergence of opinion. It was what it was, a piece of evidence that was quite inconsistent with the other evidence in the case. It was entirely reasonable for the tribunal to have placed no weight on it, in the light of that inconsistency with all the other evidence in the case.

41. I do not accept that the tribunal has erred in law and I disallow the appeal.

(signed): O Stockman

Commissioner

29 June 2020