PV v SECRETARY OF STATE FOR WORK AND PENSIONS
[2019] UKUT 82 (AAC)
UPPER TRIBUNAL CASE NO: CPIP/1917/2018

DECISION OF THE UPPER TRIBUNAL (ADMINISTRATIVE APPEALS CHAMBER)

As the decision of the First-tier Tribunal (made on 30 January 2018 at Derby under reference SC309/17/02057) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

DIRECTIONS:

A. The tribunal must undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.

B. The reconsideration must be undertaken in accordance with *KK v Secretary of State for Work and Pensions* [2015] UKUT 417 (AAC).

C. In particular, the tribunal must investigate and decide whether there were grounds to supersede the decision awarding the claimant a personal independence payment for the inclusive period from 20 December 2013 to 10 September 2017 and, if so, her entitlement from and including 4 August 2017.

D. In doing so, the tribunal must not take account of circumstances that were not obtaining at that time: see section 12(8)(b) of the Social Security Act 1998. Later evidence is admissible, provided that it relates to the time of the decision: *R(DLA) 2 and 3/01*.

REASONS FOR DECISION

1. The First-tier Tribunal's decision in this case demonstrates a misunderstanding about the nature of supersession that is regularly made. The submission by the Secretary of State's representative may also show a different misunderstanding.

2. The claimant made a claim for a personal independence payment in 2013 and the Secretary of State made an award, consisting of the standard rate of both the daily living component and the mobility component, for the inclusive period from 20 December 2013 to 10 September 2017. That decision was made under section 8(1)(a) of the Social Security Act 1998. Section 17 provides that that decision was final, subject to review, supersession or appeal.

3. In 2016, the claimant was sent a form to complete as part of a check on her proper entitlement. She was later interviewed and examined by a health professional. This led to a decision on 4 August 2017 that the claimant was not

entitled to a personal independence payment from and including that date. That decision was made on supersession under section 10.

4. The claimant exercised her right to appeal to the First-tier Tribunal, but without success. The tribunal realised that it was necessary to find a ground to supersede. In paragraph 4 of the tribunal's written reasons, the judge wrote:

> The Tribunal first turned its attention to the grounds for supersession. The previous Decision Maker awarded [the claimant] 8 points for cooking. At the most recent assessment the Health Professional found in his opinion that she could prepare food (p161) and that conclusion was reached on the basis of the HP's physical and mental assessment. That in the Tribunal's opinion was sufficient to establish a change of circumstances. The Tribunal accordingly proceed to determine the substantive issue whether [the claimant] was entitled to an award of the Personal Independence Payment.

The tribunal relied on a change of circumstances, which is a ground for supersession under regulation 23 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.

5. The tribunal's approach was wrong and I set its decision aside for making an error in point of law. It is not possible to find a ground for supersession before the tribunal has embarked on the analysis of evidence and made its findings of fact. Paragraph 4 of its reasons shows that it decided that there was a ground for supersession before it reached that stage. What it did was to decide that there was a ground for supersession either (a) because there was evidence before the health professional that there had been one or (b) because the health professional had found that there was one. If the tribunal meant (a), it was wrong, because evidence of a possible change of circumstances is not a ground for supersession; there has to have been one. If the tribunal meant (b), it was wrong, because the health professional's opinion could not be a change of circumstances that was relevant to the claimant's entitlement; it was her physical and mental condition that mattered (sections 78 and 79 of the Welfare Reform Act 2012), not someone's opinion about what it was.

6. This may seem technical, but it is important to get it right. Supersession is a procedure that allows a decision to be changed. It operates when the new decision is made. It is at that moment that the change of circumstances has to be found in order to justify making a new decision in accordance with section 17.

7. What the tribunal should have done was: (a) assess the evidence; (b) make its findings of fact; (c) decide on the basis of those findings whether there was a ground to supersede the decision making the award; and if there was, (d) decide what the claimant's proper entitlement was. It cannot separate the fact-finding on grounds for supersession from that for the claimant's entitlement.

8. The submission of the Secretary of State's representative could be read as suggesting that there has to be a separate ground for supersession of each

component of a personal independence payment. If I have understood her submission correctly, that is wrong. Again I go back to basics. Section 10 authorises a supersession of a decision. The decision in this case was the decision made under section 8(1)(a) awarding a personal independence payment. There was only one decision, because personal independence payment is a single benefit, albeit one that contains two components (section 77 of the Welfare Reform Act). Any ground for supersession in respect of any aspect of a decision making an award allows the claimant's whole entitlement to be reconsidered and the decision replaced.

9. If the tribunal's reasons, read as a whole, showed that it had properly considered the claimant's ability to prepare food, I would have decided that the language of paragraph 4 was not material to the outcome of the appeal. It did not do so. It dealt with the claimant's ability to prepare food as if her only impediment was to be found in her 'cognitive or intellectual deficits'. But that overlooked evidence from the health professional's interview in 2017 at page 156, which mentioned physical difficulties. The tribunal did not deal with that evidence.

Signed on original
on 11 March 2019

Edward Jacobs
Upper Tribunal Judge