

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Application to a Social Security Commissioner
for leave to appeal on a question of law from the decision of a Tribunal
dated 4 July 2022

DECISION OF THE SOCIAL SECURITY COMMISSIONER

The appeal is allowed. Under Article 15(8)(a) of the Social Security (NI) 1998 I set aside the decision numbered BE/1714/20/02/D of the Appeal Tribunal sitting at Belfast on 4 July 2022 as being in error of law. I remit the matter back to a freshly constituted Tribunal for rehearing.

REASONS

Background

1. The appeal below concerned entitlement to a Personal Independence Allowance under the Regulations (Northern Ireland) 2016 (hereafter “the PIP Regulations”). The decision under appeal was made on 20 January 2020 in respect of a renewal application for his PIP award. This had been in payment from 8 February 2017 at the enhanced rate of the daily living award only.
2. The decision of the Department of Communities (the Department) was that no award was merited from the date of its decision.
3. The Tribunal held an oral hearing at the appellant’s request. He attended with his wife, and his representative at that hearing was Ms Corr of the Law Centre NI. The Tribunal dismissed the appeal, explaining its reasons in a decision that was set out in writing some months later, following which an application for leave to appeal was lodged.
4. Leave was granted by the Legal Member, and the matter comes before me as an appeal.

The position of the parties before me

5. Mr McCloskey, also of the Law Centre, acts for the appellant. He argues that there was a fundamental mistake of fact that, in effect, tainted the decision of the Tribunal. It was found that, at the material time, the appellant's wife was working for 50 hours a week. The materiality of the finding is that it was the foundation of the Tribunal doubting the appellant's evidence, as the level of assistance he said she gave him was unlikely given her being out at work for so much of the week. With his application for leave, the appellant provided evidence of her taxable income which showed that her working for so many hours was unlikely, and leave was granted by the legal member of the Tribunal that had made the finding.
6. The appellant's central argument is supported by the Department, in a helpful submission from Mr Clements, who formally agrees that the appellant's wife was working for only 24 hours a week at the time under consideration.
7. I am grateful to both representatives for their detailed submissions, and for their co-operation, which has assisted me significantly.

The agreed matters

8. There is common ground between the parties that this factual error by the Tribunal amounts to an error of law that requires me to set aside the decision and direct that the matter be reheard.
9. Given that support, I need not dwell long on the detail: I accept that the Statement of Reasons drafted by the legal member is based on a false premise. This was that the account of the appellant could not be accepted, because the evidence of the assistance provided to him by his wife during a typical day was unlikely given her work pattern of 50 hours each week; accordingly, his evidence was found to lack credibility.

An error of fact can amount to an error of law

10. In cases where a factual error has a real bearing on the outcome, it may become an error of law: in *DC v Department for Social Development* (ESA) [2014] NICom 49 Mr Commissioner Stockman explained this, citing two seminal cases from the Court of Appeal in England and Wales, *R(Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 [28-32] and *E & R v Home Secretary* [2004] EWCA Civ 49 (*E & R*).
11. The circumstances where this might happen are limited but include the feature of this case of a factual mistake where the statutory authority has an interest in the decision being made on the best information, and on the correct factual basis. Social Security law is quintessentially such an area: see, for example, the judgment of Baroness Hale in *Kerr v Department for Social Development Northern Ireland* [2004] UKHL 23, where she

described the process of social security decision-making as a collaborative one between the department and a claimant, the aim being a decision which is correct in its factual premises.

12. Where that is not so, the factual error may be elevated to an error of law, as an “unfairness resulting from a misunderstanding or ignorance of an established and relevant fact.” Carnwath LJ (as he then was) in *E & R*.

Other matters

13. There are other errors put forward, but I do not need to deal with them in this judgment: the thrust of the submissions was in respect of the material error of fact above, and that is sufficient for me to allow the appeal. I mention, however, that the mistake the Tribunal made in relation to the error of fact was in pinning the appellant’s credibility to those false colours.
14. The actual assistance that his wife gave to the appellant at the material time may fall to be assessed, but the critical issue as a matter of law is not what help he received, but what help his disablement meant that he reasonably needed, whether he received that level of support or not: *MB v Secretary of State for Work and Pensions* [2016] UKUT 250 (AAC) at [20] (Upper Tribunal Judge Hemingway).

The rehearing

15. This will be an oral hearing, and the appellant will have the opportunity to explain his difficulties to the Tribunal afresh. While the panel will take heed of the level of agreement between the parties on the issue before me, it will make its own judgment on the evidence, and, as is my custom, I caution the appellant that success before me on a point of law is no guarantee of success on the facts before the Tribunal.



(signed) P Gray

Deputy Commissioner (NI)

6 December 2023