



**DECISION OF**

The Hon. Lord Fairley

**ON AN APPLICATION FOR PERMISSION TO APPEAL  
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)**

**IN THE CASE OF**

Social Security Scotland

Appellant

- and -

AS

Respondent

FTS Case reference: FTS/SSC/AE/23/00343

18 March 2024

**Decision**

Permission to appeal is refused.

**Reasons for decision**

*Background*

1. The respondent made an application for Adult Disability Payment (“ADP”). She was found to be ineligible for ADP, having been awarded a total of 4 points for assistance with daily living activities and no points for mobility activities.



2. The appellant appealed to the First-tier Tribunal (“FTS”). The FTS heard evidence from the respondent. On 10 November 2023, it allowed her appeal to the extent that it related to mobility activities. It concluded that she met the requirements of descriptor 1(f) of Schedule 1 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54). That resulted in an award of 12 points, and an entitlement to the mobility component at the enhanced rate. The appellant seeks to challenge that decision. It sought permission from the FTS to appeal to the Upper Tribunal for Scotland (“UTS”). On 5 December 2023, the FTS refused permission to appeal.

## *Grounds of appeal*

3. In summary, the proposed grounds of appeal are that the FTS failed properly to apply the ratio of *MH v. Secretary of State for Work and Pensions* [2016] UKUT 431 by failing to note that descriptor 1(f) could be engaged by a psychological condition only if inability to follow a familiar route without assistance arose from “overwhelming psychological distress”. Alternatively, it was submitted that the FTS had not provided adequate reasons for its conclusion that the respondent could not “follow the route of a familiar journey” without assistance.

## *The FTS decision*

4. At para. 15.13, the FTS made a finding in fact, reflecting descriptor 1(f), that:

“The Appellant cannot follow the route of a familiar journey without another person’s assistance”

5. The basis for that finding was the evidence of the respondent as recorded by the FTS in the following two paragraphs:

“23. The Appellant said that she does not go out on her own and that she ‘needs her mother at all times’. She said that, when she is out of the house, she feels as if she is going to have a panic attack but has not had one. She said that her palms feel sweaty and that she just wants to go home...

28. The Appellant said that, when she was pregnant, she was unable to attend appointments with the midwife. She said that these were usually in a hospital which is only five minutes’ walk from her house. She said that she could not attend these appointments on her own and that her mother always went with her.”

6. At paragraph 40, the FTS gave its reasons for concluding that the requirements of descriptor 1(f) were met:



“The Appellant’s evidence was that she goes nowhere without being accompanied by her mother. This occurs when she goes shopping and would constitute a familiar journey. When pregnant she required to be accompanied by her mother to attend a hospital which is a short walking distance from her home. Her mother accompanies her to GP appointments. On the balance of probability, the tribunal accepted this evidence and determined that the Appellant cannot follow the route of a familiar journey without another person and that this meets the requirements of descriptor 1 (f) and an award of 12 points.”

## *Law*

7. An appeal from the FTS to the UTS is competent only on a point of law. Permission can be granted only where the appellant identifies an arguable material error on a point of law (*PD v Midlothian Council* [2021] UT 19 para 10). An appeal process is not simply a re-run of the hearing before the FTT (*Subesh v SOSHD* [2004] EWCA Civ 56 at para. 42).
8. The decisions in the three appeals reported as *MH v. Secretary of State for Work and Pensions* [2016] UKUT 431 were based upon the following propositions:
  - the meaning of “follow the route of a journey” in descriptor 1(f) includes the concept of an ability to navigate, but is not confined to that;
  - descriptors 1(e) and 1(f) are related; the former relates to the situation where a claimant does not take journeys due to overwhelming psychological distress; the latter relates to the situation where journeys can be undertaken but only with assistance;
  - the need for assistance in descriptor 1(f) may arise entirely from anxiety, but only if a claimant suffers from “overwhelming psychological stress” will such anxiety be a potential cause of the claimant being “unable to follow the route of a journey.”

## *Permission decision and reasons*

9. The FTS’s reasons do not mention *MH*, nor do they make reference to the expression “overwhelming psychological distress” as an essential causal requirement to the application of descriptor 1(f) in a case where inability to follow a route arises from anxiety alone. It is clear, however, from paragraphs 15.13, 23, 28 and 40 of the FTS’s reasons, however, that it concluded that the respondent’s inability to follow the route of a familiar journey was indeed caused by such overwhelming psychological distress. That is the only sensible interpretation of the FTS’s reasons.
10. The issue of whether or not *MH* was binding on the FTT is, therefore, moot in the circumstances of this appeal. Even on the hypothesis that *MH* was binding on the FTS,



the reasons given by the FTS are tolerably clear and are consistent with the principles set out in *MH*.

11. In short, the FTS made a finding in fact at para 15.13 that was open to it on the evidence recorded by it at paras 23 and 28. Its reasons at para 40 are clear and disclose no arguable error of law of the type suggested in the proposed grounds of appeal.
12. For these reasons, permission to appeal is refused.

The Hon. Lord Fairley