



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. CPIP/904/2021**

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

**Between:**

**Miss V.O.**

Appellant

- v -

**Secretary of State for Work and Pensions (SSWP)**

Respondent

**Before: Upper Tribunal Judge Wikeley**

Decision date: 13 January 2022

Decided on consideration of the papers

**Representation:**

Appellant: Mr Pervez Akhtar, Equality Together

Respondent: Ms Beth Raistrick, DMA, Department for Work and Pensions

**DECISION**

**The decision of the Upper Tribunal is to dismiss the appeal.**

This decision is made under section 11 of the Tribunals, Courts and Enforcement Act 2007.

**REASONS FOR DECISION**

**Introduction**

1. This is an unusual case. The Secretary of State's representative technically opposes the appeal, but has made a new decision granting what the Appellant was asking for in any event. I agree with both representatives that the most appropriate course in these circumstances is to dismiss the claimant's appeal. My reasons for doing so follow.

**The problem**

2. The problem can be explained briefly as follows (a more detailed account of the chronology is at paragraph 5 below). The Appellant made a claim for PIP ('PIP Claim 1'), which was refused by the DWP. The Appellant lodged an appeal with the FTT. The Appellant also made a further PIP claim ('PIP Claim 2'). The Appellant's representative then wrote to the DWP withdrawing PIP Claim 2. The

DWP took no action on the withdrawal; instead it went ahead and made a decision on the second claim, awarding the standard rate of the daily living component for the period 27.03.2019 to 09.06.2025. Subsequently, the FTT heard the Appellant's appeal against the disallowance decision on PIP Claim 1. The FTT did not have sight of the withdrawal letter. The FTT awarded the standard rate of the daily living component and the enhanced rate of the mobility component, but only for the closed period from 10.07.2018 to 26.03.2019. The Appellant appealed to the Upper Tribunal, arguing that there had been a breach of the rules of natural justice. Her representative did not challenge the level of the FTT's award on PIP Claim 1, but rather the length of the award.

### **The solution**

3. The Secretary of State's representative has identified a neat solution to the problem. The Secretary of State has made a new decision (dated 18 October 2021) awarding the Appellant the standard rate of the daily living component and the enhanced rate of the mobility component for the period from 27.03.2019 to 17.10.2024. This effectively ensures that the Appellant continues to receive an award of PIP at the same level as made by the FTT. The current appeal, she argues, is therefore nugatory and so should be dismissed as there is no material error of law.
4. The Appellant's representative, Mr Pervez Akhtar, is understandably content with this solution.

### **The Upper Tribunal's decision to give the claimant permission to appeal**

5. When giving the Appellant permission to appeal, I made the following observations, which explain the chronology in more detail:
  4. On 10.07.2018 the Appellant made a further claim for PIP. For convenience I call this 'the first claim'. This first claim was likewise refused (p.138). On 08.01.2019 that refusal decision was again upheld in a MRN (p.144). On 07.05.2019 the Appellant lodged a late appeal against that decision on her first claim (pp.1-6).
  5. Also on 07.05.2019, Mr Akhtar wrote to the DWP PIP Unit in Wolverhampton saying that the Appellant "will not be continuing with the latest PIP claim she has registered" (p.207). This was a reference to a further PIP claim she had made on 27.03.2019 (which I call 'the second claim'). It seems clear the DWP took no action on Mr Akhtar's letter and failed to treat it as a withdrawal of a claim (see regulation 31 of the Universal Credit etc (Claims and Payments) Regulations 2013 (SI 2013/380)). This letter from Mr Akhtar was not in the appeal file before the FTT when it made its decision on the first claim.
  6. Instead, the DWP processed the new PIP claim in the usual way and in the event on 11.07.2019 the DWP made an award of the standard rate daily living component (but no award of mobility). This award was for the period from 27.03.2019 to 09.06.2025 (p.159). The DWP notified the FTT accordingly (p.157), pointing out that the tribunal was therefore now dealing with a closed period that ended on 26.03.2019 (the day before the new second claim).

7. On 19.06.2020 the FTT heard the original appeal against the DWP decision dated 27.10.2018 on the first claim. The FTT allowed the appeal, awarding the Appellant 11 daily living points and 14 mobility points. As a result it made an award of standard rate daily living and enhanced rate mobility. It made the award for the closed period from 10.07.2018 (the date of claim) to 26.03.2019 (the day before the date of the new claim and award).

8. Understandably the Appellant would prefer, going forward, to have the benefit of the FTT decision over the benefit of the DWP decision on the new claim. The problem identified by the FTT, when refusing permission to appeal, is that the only decision that was before the FTT as a matter of jurisdiction was the DWP decision of 27.10.2018 on the first claim. The decision on the second claim was a different decision giving rise to separate appeal rights (see p.231, see also statement of reasons at pp.217-218 paragraphs 9 and 10).

9. That is all true so far as it goes. However, the reasoning at [8] above arguably overlooks one important factor. The DWP is required by the FTT procedural rules to provide “copies of all documents relevant to the case in the decision maker’s possession” (see rule 24(4)(b)). It is quite true that Mr Akhtar’s letter of 07.05.2019 was a document relevant to the *second* claim (which indeed it purported to withdraw). But it is also arguable it was relevant to the *first* claim. The consequence of the DWP deciding the second claim regardless of the withdrawal (if that is what it was) had the effect of limiting the jurisdiction of the FTT in deciding the appeal on the first claim. On that basis, it is arguable there was a breach of natural justice and rule 24.

10. It is arguable that the FTT did not have all the relevant information before it when it made its decision. Had it known about Mr Akhtar’s letter, it might have adjourned for inquiries to be made as to whether the decision on the second claim was properly made in all the circumstances. I therefore grant the application for permission to appeal to the Upper Tribunal. The Secretary of State’s representative should consider (if she supports the appeal) whether the case should be remitted for re-hearing or decided at UT level. In addition, are there any steps that can be taken to ‘unravel’ the Secretary of State’s decision of 11.07.2019 on the second claim?

### **The Secretary of State’s response to the appeal to the Upper Tribunal**

6. Ms Beth Raistrick, who now acts for the Secretary of State in these proceedings, accepts that the omission of the representative’s letter withdrawing PIP Claim 2 was an error of law in the light of rule 24. The DWP appeals writer should have included the letter as it was relevant to the FTT’s jurisdiction and the length of any PIP award.
7. However, Ms Raistrick does not support the Upper Tribunal allowing the appeal and setting aside the FTT’s decision. As she correctly points out, if the FTT’s decision of 19.06.2020 is set aside, the operative decision is the DWP disallowance decision dated 27.10.2018 on PIP Claim 1. If the appeal were remitted to a fresh FTT, there would be no guarantee that the new tribunal would make the same level of award as the FTT on 19.06.2020. In addition, the

FTT on 19.06.2020 only made limited findings of fact, meaning that it may not a straightforward matter for the Upper Tribunal to re-make the decision. In addition, one would still face the difficulty that PIP Claim 2 had been decided and not appealed.

8. Ms Raistrick accordingly proposed the neat solution identified and explained in paragraph 3 above,

#### **The Upper Tribunal's analysis**

9. There was an inadvertent breach of natural justice by the FTT on the appeal relating to PIP Claim 1 as the tribunal decided the appeal in ignorance of the fact that its jurisdiction had not in fact been curtailed by the DWP decision on PIP Claim 2, as that latter claim had been withdrawn. The breach of natural justice flowed from the official error by the DWP appeals writer. However, the very fair approach adopted by the Secretary of State's representative in making a new revision decision means that the error of law was not material. This is because of the subsequent award of PIP at the same level as the FTT awarded but for a much longer period.

#### **Conclusion**

10. Accordingly, and without prejudice to the Secretary of State's revision decision dated 18 October 2021, I dismiss the Appellant's appeal (section 11 of the Tribunals, Courts and Enforcement Act 2007).

**Nicholas Wikeley  
Judge of the Upper Tribunal**

Authorised for issue on 13 January 2022