



Appeal No. UA-2025-000138-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

LP

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: Kester Disability Rights
Respondent: Mr B Wadham (DMA Leeds)

On appeal from

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC992/22/00768
Digital Case No.: 1660301397969263
Tribunal Venue: Truro (by telephone)
Decision Date: 5 June 2024

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the following directions.

DIRECTIONS

- 1. This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- 2. The new First-tier Tribunal should not involve the tribunal judge, medical member or disability member previously involved in considering this appeal on 5 June 2024.**

3. The appellant is reminded that the new First-tier Tribunal can only consider the appeal by reference to their health and other circumstances as they were at the date of the original decision by the Secretary of State under appeal (namely 8 June 2022).
4. If the appellant has any further written evidence to put before the First-tier Tribunal relating to that period, including any further medical evidence, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.
5. The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Introduction

1. The appellant appeals against the First-tier Tribunal's decision of 5 June 2024 refusing the appellant's appeal against the decision of the Secretary of State of 8 June 2022 that the appellant was not entitled to Personal Independence Payment (PIP) under Part 4 of the Welfare Reform Act 2012 (WRA 2012) and The Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) (the PIP Regulations).
2. The Tribunal confirmed the Secretary of State's decision that the appellant scored 5 points on the daily living activities (3b, 5b and 8b) and 0 points on mobility activities.
3. The First-tier Tribunal's Statement of Reasons (SoR) was issued on 15 October 2024 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 31 January 2025. The appellant filed the notice of appeal to the Upper Tribunal on 11 February 2025 (in time) and I granted permission to appeal in a decision dated 25 February 2025.
4. The Secretary of State has responded to the appeal and supports the appeal. Both parties are content for me to issue a decision on the papers. I am satisfied that it is appropriate for me to do so as this is a straightforward case where neither the parties or the Tribunal will benefit from an oral hearing.

The grant of permission to appeal

5. I granted permission to appeal because I considered it arguable that the First-tier Tribunal erred in law by failing to take into account the evidence of the Chartered

Counselling Psychologist when considering the appellant's ability to carry out daily living activities 6 and 9. Alternatively, it was arguable that the First-tier Tribunal's reasons were inadequate to explain why 0 points were awarded for these activities given the evidence of the Chartered Counselling Psychologist.

The Secretary of State's submissions

6. In his very helpful submissions, Mr Wadham has reviewed the evidence in the bundle in detail and agrees that the First-tier Tribunal's reasons were inadequate. I consider that the detail of the submissions will be helpful to the Tribunal at the remitted hearing, so I reproduce them in full here:-

4.2 Upon reading the SOR and evidence bundle in its entirety, it appears there is a discrepancy between the evidence preferred by the Tribunal and that submitted by the claimant, which does not appear to have been adequately addressed. Pages 81 to 86, and page 92 of the Tribunal appeal bundle contains a comprehensive autistic spectrum assessment report for the claimant completed in November 2020 by Dr Jenny Nam, Chartered Counselling Psychologist. This includes diagnostic testing and detailed explanations of the claimant's condition. Additionally, pages 87 to 91 include a letter from Dr Nam, dated 07/03/2022 supporting the claimant's Personal Independence Payment application, with specific references to how the claimant's Autistic Spectrum Disorder (ASD) affects their ability to perform daily living and mobility activities.

4.3 In paragraph 8 of the SOR it is stated that the Tribunal has considered all the documents in the 104 page Tribunal appeal bundle, and additions A to U, provided after the appeal was lodged. The Tribunal's findings appear to align largely with the information provided in the HP report [pages 49 - 74 of the Tribunal appeal bundle], suggesting this may have influenced their findings however, there are few references to specific evidence in the SOR. The HP report itself provides brief summaries of each activity, for instance a single sentence regarding dressing and undressing. This identifies issues but does not elaborate on them. The scoring for daily living activity 6 is provided as part of a summary for awarding descriptor A for multiple activities, without specific justification for that activity [pages 51, 53, 57 and 60 of the Tribunal appeal bundle].

4.4 I note in paragraph 53 of the SOR the Tribunal does reference Dr Nam's autism assessment report dated 02/11/2020, showing the Tribunal have considered it. However, there was no apparent explanation as to why the Chartered Counselling Psychologist's report was disregarded, and no further reference to this assessment in the SOR. There was also no direct reference to Dr Nam's supporting letter dated 07/03/2022, which contains further information specifically related to the activities addressed in the SOR. While the Tribunal is entitled to prefer the evidence that it has, it must provide sufficient reasons to make it clear why. In this case the apparent discrepancies between the HP report and

the Psychologist's report have not been considered or addressed in the SOR. Therefore, I respectfully submit that the Tribunal have not sufficiently explained their reasons for disregarding the findings of Dr Nam's assessment and supporting letter.

4.5 Moving on to the claimant's ability to dress and undress, on considering the entirety of the evidence, I submit the Tribunal's explanation for their decision regarding daily living activity 6 to be inadequate. The claimant stated in their PIP2 questionnaire that they need prompting to dress and select appropriate clothing due to sensory issues, which leads to them wearing unsuitable clothing for the occasion or weather [page 25 of the Tribunal appeal bundle]. The HP report noted the claimant could dress and undress, but does not like how certain clothing feels so will wear clothing they like, and they will remove labels. The HP concluded the claimant could manage without aids, but did not expand on why they did not consider prompting to be required [pages 53 and 60 of the Tribunal appeal bundle]. The Chartered Counselling Psychologist's supporting letter dated 07/03/2023 highlighted the claimant's rigidity in clothing selection, leading to inappropriate clothing choices, and not wearing coats due to discomfort [page 90 of the Tribunal appeal bundle].

4.6 Schedule 1, Part 2 of The Social Security (Personal Independence Payment) Regulations 2013 describes daily living descriptor 6C ii as needing *"prompting or assistance to select appropriate clothing"*. The Tribunal provided their conclusions in paragraph 49 of the SOR, stating:

"49. In relation to dressing the Tribunal accepted that due to her sensory issues [the claimant] had issues where certain textures of clothes and labels in clothes however she was able to dress appropriately on the majority of days."

There is a problem with the Tribunal's conclusions as they have on the one hand accepted the claimant has issues with certain textures of clothing but then determine there is no issue with performing the activity. To the reader of the SOR this is a large gap between the two, particularly as the claimant has provided consistent evidence regarding the nature of her difficulties with dressing and undressing. At no point does the Tribunal engage in a meaningful manner with the evidence of not being able to dress in appropriate clothing. Therefore, I respectfully submit that the Tribunal's decision on activity 6 does not appear to have sufficiently established the claimant's needs, and has not adequately explained how they reached the conclusion that prompting was not required for daily living activity 6.

4.7 It also appears the Tribunal's reasons relating to daily living activity 9 are not adequate. In paragraphs 52 and 53 of the SOR, the Tribunal decided that as the claimant was seeing multiple patients in a week as part of her job and engage with colleagues that the claimant was able to engage without prompting or social support for the majority of

days. However, in paragraph 31 of the SOR the Tribunal stated that the claimant works 4 days per week, 3 of which were spent working from home, and the 4th was a clinic with 4 to 5 patients, which indicates the claimant is not engaging with others on the majority of days through work. Additionally, Dr. Nam's report indicated social interaction difficulties for the claimant, such as one-sided, domineering social interactions, and struggling to recognize subtle emotions. Dr. Nam concluded these challenges continue to cause significant impairment in the claimant's social and occupational life [pages 82 – 83 of the Tribunal appeal bundle], but this does not appear to have been considered in the SOR.

4.8 In the HP report dated 25/05/2022 the claimant reported working as a nurse, going to people's houses and doing assessments over the phone. The claimant reported they will book their own patients, but if they have a new patient in between, it will throw them, and although they know they need to see that person, this can overwhelm them [page 53 of the Tribunal appeal bundle]. The SofS supplementary response dated 14/02/2024 listed 5 periods of employment between 2017 to 2024 [page 1, addition T of the Tribunal appeal bundle]. Paragraph 11 of the claimant's representative's submission dated 05/03/2024 stated the claimant's *"skills are always in demand, hence being able to get another job when matters have gone wrong at work due to her condition"* [page 5, addition U of the Tribunal appeal bundle]. This indicates difficulties in maintaining stable employment.

4.9 I also note the Claimant's GP provided a letter supporting the claimant's reported anxiety, agreeing they would be unable to attend the hearing because of this [page 1, addition G of the Tribunal appeal bundle]. The Tribunal determined in paragraph 22 of the SOR, that the case could be heard without the claimant attending, and the claimant's representative attended the hearing on the claimant's behalf. The fact the claimant was too anxious to attend the hearing was not considered further in paragraphs 52 and 53 of the SOR. When reviewing the evidence in its entirety, it is not clear whether the Tribunal have adequately addressed regulation 7 of The Social Security (Personal Independence Payment) Regulations 2013, which considers whether a descriptor applies on the majority of days in the required period, in relation to daily living activity 9.

4.10 For the reasons above, I respectfully submit that the reasons provided in the Tribunal's SOR do not adequately support the decision the Tribunal has made. I submit that this amounts to an error of law on the basis that the Tribunal appears to have failed to address discrepancies between Dr Nam's evidence, the HP report and their own findings, and also that the Tribunal has not given adequate reasons to understand how they reached their decision in relation to daily activities 6 and 9. I consider this to be a material matter as an award of points for daily living activities 6 and 9 could increase the award above 8 point threshold required for the standard rate of the daily living component.

4.11 If the UT Judge accepts my submission that the Tribunal has erred in law on the points identified earlier in this submission, then I respectfully request that the appeal be remitted to a differently constituted First-tier Tribunal for further consideration, and to fully establish the claimant's functional ability in relation to daily living activities 6 and 9.

My decision

7. A Tribunal will err in law if it fails to give adequate reasons for its decisions. That means that the reasons must be sufficient to enable the parties to know why they have won or lost and the appellate tribunal/court to know that no error of law has been made: *R (Jones) v First-tier Tribunal (Social Entitlement Chamber)* [2013] UKSC 19, [2013] 2 AC 48 *per* Lord Hope at [25]. The June 2024 Practice Direction from the Senior President of Tribunals on Reasons for Decisions reinforces the minimum nature of these requirements.
8. Further, in scrutinising the judgment of a First-tier Tribunal, the Upper Tribunal is required to read the judgment fairly and as a whole, remembering that the First-tier Tribunal is not required to express every step of its reasoning or to refer to all the evidence, but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: *cf DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57] (a case dealing with the employment context, but equally applicable here). That case also makes the point (at [58]) that where the First-tier Tribunal has correctly stated the law, the Upper Tribunal should be slow to conclude that it has misapplied it.
9. Bearing those principles in mind, I am nonetheless satisfied that the Tribunal's reasons in this case did not meet the standard of adequacy in the respects identified in the grounds of appeal and in the Secretary of State's submissions.

Conclusion

10. I am therefore satisfied that the Tribunal's decision involved errors of law. I set the decision aside and remit the matter to a fresh Tribunal in accordance with the above directions.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 13 June 2025