



Appeal No. UA-2024-001532-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MT

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Butler

Decided on consideration of the papers

Representation:

Appellant: RT, daughter of MT

Respondent: Mr R. Naeem, Decision Making and Appeals

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC240/23/01404

Tribunal Venue: Bradford

Decision Date: 07 June 2024

DECISION

As the decision of the First-tier Tribunal involved the making of an error 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 First-tier Tribunal for rehearing by a fresh tribunal.

DIRECTIONS

- A. The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- B. The new tribunal should not involve any of the panel members previously involved in considering this appeal on 07 June 2024.**

- C. The new tribunal must not take account of circumstances that were not obtaining at the time the (then) Secretary of State made his decision that MT was not entitled to personal independence payment on 24 June 2023: see section 12(8)(b) of the Social Security Act 1998 and *R(IB) 2/04* at paragraph 188. Later evidence is admissible, provided it relates to the circumstances at the time of the decision: see *R(DLA) 2/01* and *R(DLA) 3/01*.
- D. If the parties have any further written evidence to put before the tribunal, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.
- E. The tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome from the previous tribunal.
- F. Copies of this decision, the permission to appeal decision, the Secretary of State's submission dated 07 February 2025 and RT's reply on behalf of MT, dated 20 March 2025, shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.

These Directions may be supplemented by later directions by a tribunal judge, registrar, or case worker, in the First-tier Tribunal (Social Entitlement Chamber).

REASONS FOR DECISION

Introduction

1. This appeal is about MT's entitlement to personal independence payment ("PIP").

Factual background

2. MT claimed PIP in 2016 and was awarded the standard rate of the PIP mobility component from 24 March 2016 to 29 June 2020. This reflected her being awarded mobility descriptors 1.b (4 points) and 2.b (4 points). This gave MT a total of 8 points, which met the threshold for a standard award of PIP. DWP also awarded MT 6 points for daily living activities. However, as the threshold for an award is 8 points, she did not score enough points to be awarded the daily living component.
3. On 30 August 2019, DWP decided MT's PIP award should end on that date, because it had received medical evidence from a healthcare professional who assessed MT on 20 August 2019. This is called a supersession decision, which means a decision that changes an existing PIP award. DWP decided MT scored no points for any PIP activity. MT appealed that decision. Following a telephone hearing of her PIP appeal, a First-tier Tribunal refused MT's appeal, although it awarded MT 4 points for mobility descriptor 2.b.

4. On 05 July 2021, MT claimed PIP again, but DWP decided on 21 January 2022 that she scored 2 points (activity 4.b) for daily living activities and 4 points (mobility activity 2.b) for mobility activities. As explained above, the threshold for an award of either component is 8 points, so DWP did not award MT PIP.
5. On 16 February 2023, MT claimed PIP a final time. DWP obtained a PA3 medical report about MT (dated 21 June 2023). A PA3 medical report is produced on the basis of paper evidence, rather than a claimant taking part in a medical assessment with a healthcare professional. On 24 June 2023, relying on the PA3 report, DWP decided to award MT descriptor 4.b (2 points) for daily living activities and mobility descriptor 2.b (4 points). However, these were too low for MT to be entitled to an award of either component.
6. On 06 October 2023, MT appealed DWP's decision to the First-tier Tribunal.

The First-tier Tribunal's decision

7. On 07 June 2024, a First-tier Tribunal ("FTT") decided MT's appeal at a telephone hearing at Bradford. A Presenting Officer took part in the hearing on behalf of DWP.
8. The FTT decided that MT should be awarded descriptors 1.b (2 points), 4.b (2 points) and 5.b (2 points) for daily living activities and mobility descriptor 2.b (4 points). As a result, MT scored 6 points for daily living activities and 4 points for mobility activities. These were insufficient for an award of either component. The FTT therefore confirmed DWP's decision that MT was not entitled to PIP and refused her appeal.
9. The FTT issued a Statement of Reasons for its decision on 08 July 2024. On 17 September 2024, a salaried FTT Judge refused MT permission to appeal to the Upper Tribunal.
10. On 21 October 2024, the Upper Tribunal received MT's application for permission to appeal.

The grounds of appeal on which permission to appeal was granted

11. On 07 January 2025, Upper Tribunal Judge Butler admitted MT's application for permission to appeal, which had been made four days late.
12. Upper Tribunal Judge Butler granted MT permission to appeal on the following grounds:
 - (a) It was arguable the FTT failed to adequately evaluate MT's medical evidence;
 - (b) It was arguable the FTT made an error of law with what it said in reference to the PA3 assessment report when considering MT's ability to mobilise;

- (c) It was arguable the FTT made an error of law in the approach it had taken towards MT's ability to engage with other people face to face;
- (d) It was arguable the FTT made an error of law in the approach it had taken towards assessing MT's ability to manage budgeting decisions; and
- (e) It was arguable the FTT made an error of law in relation to the approach it had taken towards assessing MT's ability to plan and follow journeys.

The parties' submissions on the appeal

- 13. Mr Naeem represents the Secretary of State in this appeal. He supports MT's appeal and invites the Upper Tribunal to set aside the FTT's decision and remit MT's appeal to a new FTT to decide.
- 14. In relation to the ground at paragraph 12(a) above, Mr Naeem submits that at paragraphs 6 to 7 of its Statement of Reasons, the FTT dismissed the content of the report from MT's GP. The FTT wrote that the GP may not have been aware of the detail of the PIP activities in question and that there was more persuasive evidence that ran contrary to the GP's opinions. Mr Naeem submits that while the FTT is entitled to prefer any evidence it chooses, it must provide reasons for doing so. Mr Naeem argues that in MT's case, the FTT did not explain what this persuasive evidence was and why the FTT preferred it.
- 15. Mr Naeem also submits that there was a note from MT's GP dated 12 October 2023 recording her as having severe fatigue and breathlessness on exertion. He argues that while this note post-dated the decision under appeal, the contents of it are linked to MT's longstanding difficulties and problems, which would likely have been present when she made her PIP claim in February 2023. Mr Naeem argues the FTT did not engage with this evidence or provide any reasons explaining what it found to be persuasive, and that this was an error of law.
- 16. In relation to the ground at paragraph 12(b) above, Mr Naeem submits that the FTT based its assessment of MT's evidence as inconsistent, at least partly on a perceived inconsistency in her evidence about walking her dog. The FTT referred to the evidence of dog walking as a contemporaneous record. See paragraph 34 of the Statement of Reasons, which cross-refers to page 1 of the PA3 report.
- 17. However, the FTT failed to take into account that the 2023 PA3 report was paper-based and relied on the contents of the previous medical reports for earlier PIP claims, in particular, the 2022 report conducted by telephone. Mr Naeem submits there are questions about how updated and relevant the 2022 evidence would have been for the time the FTT needed to consider. Mr Naeem argues that the FTT's failure to notice that it was relying on evidence from 2022 that it was treating as contemporaneous in 2023, was an error of law.
- 18. In relation to the ground at paragraph 12(c) above, Mr Naeem submits that while the FTT recorded finding it puzzling that MT struggled to engage with people sometimes, when she worked as a cashier, the FTT should have addressed the

variability of her ability to engage (and if so, whether it satisfied the test of being on the majority of days in the required period). Mr Naeem submits the FTT made an error of law by failing to address this.

19. In relation to the ground at paragraph 12(d) above, Mr Naeem submits that the FTT's reasoning at paragraph 21 of its Statement of Reasons demonstrates it focused on MT's ability to manage simple budgeting decisions. He argues that the FTT failed, however, to assess whether MT had difficulties managing complex budgeting decisions, which require planning for, and managing, bills. MT gave evidence that she had difficulties with these, but the FTT did not address it as part of its decision. Mr Naeem submits this was an error of law.
20. In relation to the ground at paragraph 12(e) above, Mr Naeem submits that the FTT considered MT's ability to follow the route of unfamiliar journeys (addressed at paragraph 32 of the Statement of Reasons). Mr Naeem submits that the FTT based its decision on this issue on MT being able to drive a familiar journey from Todmorden to Burnley several times a week. From this, the FTT concluded MT could plan and follow journeys without difficulty. Mr Naeem submits the FTT used a limited approach and made an error of law in not considering the activity in a holistic manner as indicated by paragraphs 9 to 11 of **SB v SSWP (PIP) [2019] UKUT 274 (AAC)**.
21. RT has replied to these submissions on behalf of MT. RT refers to difficulties MT has experienced with chest infections since November 2024, leading to a diagnosis of pneumonia. RT refers to MT being referred by her lung consultant for immunotherapy injections as her treatment is not working. RT submits that MT is having to work but has barely any immune system due to her conditions, which puts her health at risk. RT makes submissions about MT's ability to engage with other people face to face, arguing that her interaction as a cashier is brief, perfunctory and transactional. Finally, RT submits that while Mr Naeem has referred correctly to the fact that MT has not made a new PIP claim, this is because doing so would invalidate the appeal, but does not help MT's current situation.

Why there was no oral hearing of this appeal

22. Neither party asked expressly for an oral hearing of this appeal. RT indicated she was happy either way based on whichever sped the process up. I took the parties' preferences into account. Having considered the electronic file and given the parties agree the Tribunal made errors of law in its decision, I decided the interests of justice did not require an oral hearing. Ordering one would simply delay resolving MT's appeal. I therefore determined the appeal on the papers.

My decision

23. I find that the FTT made material errors of law for the reasons summarised at paragraphs 14 to 20 above and dealt with in more detail in Mr Naeem's submissions.

Disposal

24. It is appropriate to exercise my discretion to set aside the Tribunal's decision dated 07 June 2024 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Having done so, section 12(2)(b) of that Act provides that I must either remit the case to the First-tier Tribunal with directions for its reconsideration or remake the decision.
25. The First-tier Tribunal failed to adequately address the medical evidence about MT or to address the fact that DWP's PA3 report was paper-based and not based on any evidence MT had given in 2023. It is therefore necessary to have an oral hearing for facts to be found. The First-tier Tribunal is best placed to evaluate the evidence, including using its medical and disability expertise, and to make appropriate findings of fact.
26. I therefore remit the appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about whether MT should be entitled to PIP, taking into account how her medical conditions affected her at the date of DWP's decision on 24 June 2023.
27. Although I have set aside the Tribunal's decision of 07 June 2024, I am not making any findings, or expressing any view, about whether MT should be entitled to PIP. The next tribunal will need to hear evidence and make its own findings of fact.
28. Finally, RT and MT may wish to note that the FTT could only consider how MT's medical conditions affected her around the date of DWP's decision on 24 June 2023. If the effects of MT's medical conditions have got worse since that date, the FTT will not be able to take into account any worsening in those conditions. This is the effect of section 12(8)(b) of the Social Security Act 1998, which states a FTT cannot take into account changes of circumstances occurring *after* DWP has made an entitlement decision.
29. If MT's conditions have changed (i.e., got worse) and she wants DWP to consider how her medical conditions affect her now (as opposed to in June 2023), she would need to make a new claim for PIP, at the same time as pursuing her existing appeal to the FTT.
30. If MT makes a new PIP claim and DWP decides it, that decision will close the period of entitlement covered by MT existing appeal. This means MT's existing appeal would cover the period from her most recent PIP claim on 16 February 2023 and the period will end the day before the date when DWP makes its next entitlement decision. However, it will not invalidate MT's existing appeal. RT and MT may find it helpful to seek advice about the process from Citizens Advice (who previously represented MT).

Judith Butler
Judge of the Upper Tribunal

Authorised by the Judge for issue on 07 July 2025