



Appeal No. UA-2024-001454-PIP

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**AA**

**Appellant**

**- v -**

**The Secretary of State for Work and Pensions**

**Respondent**

**Before: Upper Tribunal Judge Butler**

Decided on consideration of the papers

**Representation:**

**Appellant:** Represented self

**Respondent:** Ms C. Keates, Decision Making and Appeals

*On appeal from:*

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC285/22/00331

Digital Case No.: 1642-5040-3275-0567

Tribunal Venue: Birmingham

Decision Date: 23 March 2023

**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. The First-tier Tribunal is to make appropriate**

arrangements for a Somali interpreter to take part in the hearing to interpret for AA.

- B. The new tribunal should not involve any of the panel members previously involved in considering this appeal on 23 March 2023.
- C. The new tribunal must not take account of circumstances that were not obtaining at the time the (then) Secretary of State made her decision about AA's entitlement to personal independence payment on 21 April 2021: 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 14 February 2025 and AA's reply dated 31 March 2025 and the medical letter from his social prescriber at his GP surgery, dated 21 December 2024, 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 Social Entitlement Chamber of the First-tier Tribunal.

## REASONS FOR DECISION

### Introduction

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

### Factual background

2. AA made a claim for PIP on 13 October 2014. The Department for Work and Pensions ("DWP") acting on behalf of the Secretary of State for Work and Pensions, asked AA to take part in a medical assessment on 26 January 2015.
3. As a result of that assessment, DWP decided to award AA PIP daily living descriptors of 1.c (2 points), 3.b (1 point), 9.c (4 points), and 10.b (2 points).

These scored him a total of 9 points for daily living activities. DWP did not award AA any points for PIP mobility activities. The outcome was that DWP awarded AA the daily living component of PIP at the standard rate, from 13 October 2014 to 21 January 2021. On 25 September 2020, DWP decided to extend AA's PIP award to 25 October 2021.

4. DWP started carrying out a planned review of AA's PIP award in early 2021. AA underwent a medical assessment by telephone on 12 April 2021. The healthcare professional who carried out the assessment recommended that AA should not score any points for either the PIP daily living activities or PIP mobility activities. As a result, DWP decided to supersede (meaning, change) AA's existing PIP award, bringing it to an end on 21 April 2021. AA lodged an appeal with the First-tier Tribunal on 19 January 2022.

### **The First-tier Tribunal's decision**

5. On 23 March 2023, a First-tier Tribunal ("FTT") decided AA's appeal at an oral hearing in the Birmingham Civil Justice Centre. AA had a representative and also a volunteer helper at the hearing. AA gave evidence via a Somali interpreter. A Presenting Officer took part in the hearing on behalf of DWP.
6. The FTT refused AA's appeal and confirmed DWP's decision that he scored no points for any of the PIP activities. The FTT issued a Statement of Reasons for its decision on 13 July 2023. On 14 May 2024, a salaried FTT Judge refused AA permission to appeal to the Upper Tribunal.
7. On 04 October 2024, the Upper Tribunal received AA's application for permission to appeal.

### **The grounds of appeal on which permission to appeal was granted**

8. On 06 January 2025, Upper Tribunal Judge Butler admitted AA's application for permission to appeal. It had been made more than a month after the FTT issued its decision refusing AA permission to appeal and was therefore late. However, AA explained the delay in his UT1 application form, and his explanation was confirmed by the FTT's online appeals system.
9. Having listened to the audio recording of the FTT hearing on 23 March 2023, and considering the appeal bundle and AA's grounds, Upper Tribunal Judge Butler granted AA permission to appeal on limited grounds. These limited grounds of appeal were:

"8. How the Tribunal dealt procedurally with the GP medical records entry dated 10 March 2022: Having listened to the audio recording of the hearing on 23 March 2023, I confirm the Tribunal did not raise with you, or invite you to comment on, its concerns about the GP medical entry dated 10 March 2022 (Addition E, page 7 of appeal bundle). It can be inferred from paragraphs 19, 20 and 30 of the Tribunal's Statement of Reasons dated 13 July 2023 that the Tribunal placed

reliance on this entry as part of its assessment that your evidence was not credible or reliable. In the circumstances, the Tribunal arguably should have put its observations about the entry to you, inviting your comments on what your GP had recorded, before drawing any conclusions about what the entry meant. It is arguable that failing to do so amounted to a procedural irregularity, capable of causing unfairness in determining your appeal.

9. Adequacy of the Tribunal's factual findings and / or reasons in support of its decision: The Tribunal set out what it described as factual findings at paragraphs 36 to 40 of its Statement of Reasons. These appear, however, to represent the conclusions the Tribunal reached about how you could carry out the PIP activities in issue. It is less clear which factual findings the Tribunal made about those activities, including which medical conditions you had and how they affected you in relation to the PIP activities around the date of DWP's decision on 21 April 2021. Alternatively, the Tribunal arguably failed to provide adequate reasons for this part of its decision."

### **The parties' submissions on the appeal**

10. Ms Keates represents the Secretary of State in this appeal. She supports AA's appeal and invites the Upper Tribunal to set aside the FTT's decision and remit AA's appeal to a new FTT to decide.
11. Ms Keates submits the FTT has not correctly reflected what AA's GP had written in his GP records on 10 March 2022. In that entry, the GP recorded that they declined to change the date on a letter back to 2021, recording this as: "...says *his solicitor wants to change the date on my letter back to 2021 – declined to do this*". The FTT had recorded this as: "Says *his solicitor wants to change the date on any letter back to 2021 – declined to do this*" (paragraph 19 of Statement of Reasons, my emphasis in underlining). Ms Keates submits that although the change was one word, it changes the context of the sentence, and this discrepancy may have altered the FTT's view of the GP's note.
12. Ms Keates argues that the wording of paragraph 20 of the Statement of Reasons indicates the FTT made a judgment about the GP entry and placed reliance on it. Paragraphs 24 and 25 of the Statement of Reasons confirm the FTT took this into account in deciding AA's evidence was unreliable.
13. Ms Keates acknowledges the audio recording confirms the FTT did not raise its concerns about the GP entry dated 10 March 2022 with AA at the hearing. She submits that the FTT did not invite AA to comment on the contents of the note or the concerns it had. Ms Keates submits the GP note is a small snapshot of a much longer conversation and the full context of that conversation is not known. Ms Keates argues that by not raising this with AA at the hearing, the FTT made a judgment without allowing him the opportunity to explain the full conversation and the reason for the GP's note entry. Ms Keates submits that had the FTT heard AA's explanation, it might have reached a different conclusion.

14. Ms Keates submits that the FTT failed to be fair and just by not allowing AA the opportunity to address concerns relating to his credibility. She argues this was an error of law.
15. Ms Keates also submits that reading the Statement of Reasons as a whole, it appears the FTT took a narrow view when making its findings of fact in relation to the activities where AA said he had functional difficulties. Ms Keates submits that while the FTT states at paragraphs 37 to 40 of the Statement of Reasons that AA did not meet the threshold to score any points for PIP daily living activities 3, 4, 9 and 10, it is unclear how the FTT came to that conclusion.
16. Ms Keates also argues that at paragraph 4 of the Statement of Reasons, the FTT described AA as: *"...a man who states on their claim form that they suffer from the effects of a head injury"*. Ms Keates observes that while the FTT wrote at paragraph 34 of the Statement of Reasons that they preferred the evidence of the UC85 report prepared on 15 October 2020, that report did confirm that AA had experienced a head injury (pages 106 to 107 of the FTT appeal bundle).
17. Ms Keates also submits there was evidence in AA's GP factual report dated 22 February 2021 to AA having had an acute right subdural haematoma in December 2011 with subsequent poor memory and concentration, and that AA had ongoing symptoms after the injury with a referral for neurorehabilitation in 2015 but could only be offered memory strategies. See pages 129 to 134 of FTT appeal bundle.
18. Ms Keates observes that the healthcare professional who carried out the PIP medical assessment on 12 April 2021 also referred to AA's GP providing a report dated 16 February 2020 about a head injury in 2011 with ongoing symptoms (page 136 of FTT appeal bundle). The PIP medical assessment also described ongoing symptoms from the head injury in the history of conditions section of the PA4 report (page 137 of FTT appeal bundle).
19. Ms Keates submits that the FTT did not engage with this evidence and made narrow and limited findings, leaving doubt about which factual findings the FTT made and its reasons for its decision. Ms Keates argues the FTT therefore made an error of law.
20. In his reply to Ms Keates' submissions, AA has written that he fell twice in October 2024, and had a head MRI on 06 February 2025 at Heartlands hospital and a brain MRI on 19 February 2025 where he is still waiting for the result. AA has also provided a letter dated 21 December 2024 from a social prescriber at his GP's surgery.

### **Why there was no oral hearing of this appeal**

21. Neither party asked for an oral hearing of this appeal. I took their preferences into account. Having considered the electronic file and the audio recording of the First-tier Tribunal hearing on 23 March 2023 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 an oral hearing of the appeal would simply delay the resolution of AA's appeal. I therefore decided to determine the appeal on the papers.

### **My decision**

22. I find that the FTT made material errors of law for the reasons described at paragraphs 10 to 19 above, which are set out more fully in Ms Keates' written submissions.

### **Disposal**

23. It is appropriate to exercise my discretion to set aside the Tribunal's decision dated 23 March 2023 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.
24. The First-tier Tribunal failed to make adequate factual findings about AA's medical conditions and how they affected him at the date of DWP's decision. It is therefore necessary for further 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.
25. I therefore remit the appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about whether AA remained entitled to PIP at 21 April 2021.
26. Although I have set aside the Tribunal's decision of 23 March 2023, I am not making any findings, or expressing any view, about whether AA should be entitled to PIP. The next tribunal will need to hear evidence and make its own findings of fact.

**Judith Butler**  
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 07 July 2025