



Appeal No. UA-2025-000035-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

PB

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: Mr A Malik, Central England Law Centre

Respondent: E. Sakpa, Decision Making and Appeals, DWP

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC222/23/00039

Tribunal Venue: Nuneaton

Decision Date: 09 June 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.**
- B. The new tribunal should not involve any of the panel members previously involved in considering this appeal on 09 June 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 on 11 April 2022 that PB was not entitled to personal independence payment (PIP): 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, and the submissions on behalf of the Secretary of State (dated 29 April 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 Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

Factual background

1. PB made a claim for PIP on 18 November 2021. The Department for Work and Pensions (“DWP”) acting on behalf of the Secretary of State for Work and Pensions, asked PB to take part in a medical assessment by telephone on 24 March 2022.
2. As a result of that assessment, on 11 April 2022, DWP decided to award PB no points for either the daily living activities or the mobility activities of PIP. As a result, DWP refused PB’s PIP claim.
3. PB appealed DWP’s decision. On 09 June 2023, a First-tier Tribunal (“FTT”) held a face-to-face hearing of PB’s appeal. PB attended alone and gave evidence. The FTT decided PB should score no points for either the daily living activities or the mobility activities of PIP. It refused PB’s appeal and confirmed DWP’s decision. On 10 January 2025, PB applied to the Upper Tribunal for permission to appeal against the FTT’s decision.

Permission to appeal

4. In a decision dated 23 February 2025, I granted PB permission to appeal against the FTT's decision. I granted permission to appeal on the basis that it was arguable the FTT had made one or more of the following errors of law:
- (a) Failing to make adequate factual findings and / or provide adequate reasons for its decision: the FTT did not address how frequently PB would carry out the PIP activities, which was needed to decide whether she was carrying them out on the majority of days during the required period. Nor had the FTT explained how PB was carrying out those activities and whether she was able to perform them safely, to an acceptable standard, repeatedly and within a reasonable time period. While the FTT had referred at paragraph 10 of its Statement of Reasons to the matters covered by regulation 4(2A) of the Social Security (Personal Independence Payment) Regulations 2013, it did not explain how PB satisfied those requirements;
 - (b) Failing to resolve conflicts in the evidence adequately: there was a potential conflict in the FTT's approach of accepting a UC85 (capability for work) report dated 10 May 2022 for the purpose of deciding PB carried out relevant PIP activities in the way the UC85 report indicated. The FTT appeared to have relied on the UC85 to infer PB could carry out PIP activities without triggering the award of point-scoring descriptors. However, some of what the healthcare professional recorded as PB's typical day in the UC85 report suggested PB might score points for certain PIP activities (e.g., washing and bathing). The FTT had not explained what it made of that evidence;
 - (c) There was also an apparent conflict in the FTT placing reliance on the UC85 as useful evidence of PB's typical day and also concluding it could place no reliance on the fact PB was found to have limited capability for work because the capability for work assessment was carried out after the date of DWP's entitlement decision on 11 April 2022, after PB's circumstances had changed. There might be ways to reconcile this potential conflict but the FTT had not provided an explanation that would allow it to do so. Even taking into account that the tests for capability for work and PIP entitlement are different, the UC85 report, completed one month after the PIP PA4 report, indicated difficulties in areas (going out unaccompanied and social engagement with unfamiliar persons) that overlap with PIP activities; and
 - (d) Disregarding inappropriately evidence created after DWP's decision dated 11 April 2022: the FTT may have excluded evidence created after DWP's entitlement decision on the basis of section 12(8)(b) of the Social Security Act 1998, when the evidence indicated how PB's conditions affected her at the date of DWP's decision (and therefore could be taken into account). This related, for example to the GP records on 10 May 2022 referring to PB experiencing insomnia, which was also indicated in GP consultations for 23 and 24 March 2022 (before the date of DWP's decision).

The Secretary of State's submissions

5. E. Sakpa is the Secretary of State's representative in these proceedings and I refer to them in this decision as "the SSWP's representative". They support the appeal to the Upper Tribunal in a helpful written submission dated 29 April 2025.
6. The SSWP's representative invites the Upper Tribunal to set aside the FTT's decision dated 09 June 2023 for containing material errors of law. They invite the Upper Tribunal to remit the appeal for hearing by a differently constituted tribunal, with appropriate directions for its redetermination. The SSWP's representative supports the appeal for the reasons set out below, which they submit represent material errors of law by the FTT.
7. Adequacy of factual findings and / or reasons for its decision: the SSWP's representative submits the FTT did not deal adequately with PB's medical conditions in the factual findings it made at paragraph 10 of its Statement of Reasons. The SSWP's representative also submits the FTT may have failed to address how PB carried out the PIP activities within regulation 4(2A).
8. The SSWP's representative submits that in addressing PB's ability to engage with other people face to face, the FTT placed undue weight on her engagement with the FTT at the appeal hearing, her acknowledged completion of the PIP claim and appeal paperwork, meeting her parents regularly, hosting her sister from Portsmouth, seeing a friend for coffee and re-engaging with work that placed her in a direct support role with others. The SSWP's representative submits the examples given by the FTT were isolated and specific, which did not on their own confirm that PB could engage with people generally, including being able to establish relationships on the majority of days in the relevant period.
9. The SSWP's representative argues that the FTT did not address the evidence about this activity by reference to the test of "engage socially" in Schedule 1 to the PIP regulations 2013. The Upper Tribunal confirmed in **HA v SSWP (PIP) [2018] UKUT 56 (AAC)** that a FTT needs to examine an appellant's ability to satisfy all three parts of this definition, which includes establishing relationships. The SSWP's representative submits it is unclear from the Statement of Reasons whether the FTT was considering PB's existing relationships or ones she was capable of establishing.
10. In terms of PIP mobility activity 2 (moving around), the SSWP's representative submits that while the FTT relied on the fact that PB acknowledged she could regularly walk 500 to 600 metres with no walking aid, it left out or disregarded material evidence in the FTT bundle about pain and distress PB experienced when doing so (see PIP claim form at pages 38-9 of FTT bundle). Nor did the FTT address how long it took PB to walk the 500 to 600 metre distance, to form an assessment of how far she could walk and whether it was within a reasonable time period (regulation 4(2A)(d) of the PIP regulations 2013).
11. Resolving conflicts in the evidence adequately: the SSWP's representative submits the FTT failed to resolve conflicts in the evidence adequately, in the ways

set out at paragraph 4(b) and (c) above. The SSWP's representative submits it is settled law that to reach a supportable conclusion, the FTT has to test the strengths and weaknesses of the evidence and compare it with other evidence after it has been similarly tested. This includes considering the reliability of the evidence, for example, in terms of source, internal consistency and its relationship with other evidence. The SSWP's representative submits the FTT failed to provide adequate reasons to do so.

12. Disregarding evidence completed after 11 April 2022: the SSWP's representative submits that the FTT's Statement of Reasons confirms it suggested the UC85 report reflected a deterioration in PB's mental health. The GP records for 10 May 2022 referred to PB's GP undertaking her annual check (required because she was on the mental health register). At that time PB stated medication was no longer helping with her anxiety, she was irritable and had insomnia. The FTT assessed this represented a deterioration in the effects of PB's conditions.
13. The SSWP's representative submits this assessment arguably called for an explanation because it did not appear to be a consultation where PB had asked to see her GP because her conditions were worsening, but a routine annual check where PB reported her medication was not treating her symptoms effectively. There were also indications PB was experiencing sleep difficulties in her GP consultations on 23 and 24 March 2022, before the date of DWP's entitlement decision (Addition B, pages 6-7 of FTT bundle).
14. The SSWP's representative explains that PB made a new PIP claim on 12 January 2024, and was awarded 13 points for daily living activities and 10 points for mobility descriptors. DWP awarded PB the enhanced rate of the daily living component and the standard rate of the mobility component from 12 January 2024 to 08 July 2027. This information will be relevant to the period of time covered by the next First-tier Tribunal's decision, since the new award will end its jurisdiction from 12 January 2024 onwards.
15. In light of the submissions provided by the SSWP's representative, PB's representatives have, unsurprisingly, confirmed they do not have any further submissions to make.

Why there was no oral hearing of this appeal

16. Neither party requested an oral hearing of the appeal. I took these preferences into account and considered the appeal file. I decided the interests of justice did not require an oral hearing. The parties agree there were material errors of law by the FTT. I therefore determined the appeal on the papers. It was proportionate to do so.

My decision

17. At the permission stage, I only needed to be persuaded that it was arguable with a realistic (as opposed to fanciful) prospect of success that the FTT had made an error of law in a way that was material.
18. At this substantive stage, I need to be satisfied on the balance of probabilities that the FTT did make an error or errors of law that were material.
19. I am satisfied, on the balance of probabilities, that the FTT made a material error of law in relation to the appeal grounds addressed by the Secretary of State at paragraphs 7 to 13 above and dealt with in more detail by the submission of the SSWP's representative dated 29 April 2025.

Conclusion, including disposal

20. Having decided the FTT's decision involved material errors of law, it is appropriate to exercise my discretion to set aside the Tribunal's decision dated 09 June 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 their reconsideration or remake the decision.
21. Neither party has asked me to remake the FTT's decision. In any event, it is 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.
22. I therefore remit PB's appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about whether she was entitled to PIP at the date of DWP's decision on 11 April 2022.
23. Although I have set aside the FTT's decision dated 09 June 2023, I am not making any findings, or expressing any view, about whether PB should be awarded PIP. The next tribunal will need to hear evidence and make its own findings of fact and provide its reasoning for the decision it reaches.

Judith Butler
Judge of the Upper Tribunal

Authorised by the Judge for issue: 18 August 2025