



**Appeal No. UA-2024-001548-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**DS**

**Appellant**

**- v -**

**Secretary of State for Work and Pensions**

**Respondent**

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

*On appeal from:*

Tribunal: First-tier Tribunal (Social Entitlement Chamber)  
Tribunal Case No: SC288/23/00287  
Digital Case No.: 186650069421257  
Tribunal Venue: Barnsley  
Decision Date: 16 April 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) and b(i) 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 First-tier Tribunal hearing the remitted appeal shall not involve any members of the panel whose decision the Upper Tribunal has set aside.**

- 3. If any party has any further evidence to put before the First-tier Tribunal this should be sent to the regional office of Her Majesty's Courts and Tribunals Service within one month of the date on which this decision is issued. Any such further evidence must relate to the circumstances as they were at the date of the decision of the Secretary of State under appeal.**
- 4. The panel 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 panel may reach the same or a different outcome from the previous panel.**
- 5. Copies of this decision shall be added to the bundle to be placed before the panel of the First-tier Tribunal hearing the remitted appeal.**
- 6. 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. This appeal relates to a decision of the First-tier Tribunal dated 16 April 2024. In that decision the Tribunal confirmed the Secretary of State's decision to award the daily living component of personal independence payment (PIP) at the standard rate and make no award for the mobility component.

### **Factual background**

2. The Appellant suffers from anxiety, depression, panic attacks, dermatitis, high blood pressure, hemiplegic migraine, non-epileptic attack disorder (NEAD), gout, labyrinthitis, coeliac disease, back ache, long covid, pre-diabetes, high cholesterol and prolapsed vaginal wall and bowel.
3. The Appellant is prescribed a number of medications for her various conditions, which are set out in detail by her on page 9 of the First-tier Tribunal bundle.
4. The Appellant originally made a claim for PIP on 2 October 2019. The Appellant had a face to face assessment with a Health Professional on 6 December 2019. In a decision dated 13 January 2020 the Appellant was awarded 11 points for the daily living activities and no points for the mobility component. The Appellant was entitled to the daily living component at the standard rate. This award was maintained in a review on 11 February 2020.
5. The Appellant made a further claim for PIP on 4 November 2021. The Appellant had a telephone consultation with a Health Care Professional (HCP) on 8 March 2023.

6. A decision maker determined on 25 March 2023 that the Appellant should be awarded 8 points for the daily living activities and no points for the mobility descriptors. The Appellant was entitled to the daily living component of PIP at the standard rate. Following a mandatory reconsideration the decision remained unchanged. The Appellant appealed to the First-tier Tribunal.
7. The First-tier Tribunal in a decision dated 16 April 2024 awarded the Appellant 2 points for daily living activity 1 (preparing food), 2 points for daily living activity 4 (washing and bathing), 2 points for daily living activity 5 (managing toilet needs or incontinence) and 2 points for daily living activity 6 (dressing and undressing). The Appellant was awarded no points for the mobility component. The Appellant was entitled to the daily living component at the standard rate from 25 March 2023 to 7 September 2025. She was not entitled to any award for the mobility component.
8. The Appellant applied for a statement of reasons, which was provided.
9. The First-tier Tribunal made the following findings of fact in relation to the Appellant's hemiplegic migraines and non-epileptic attack disorder (NEAD):
  - '24. [The Appellant] has hemiplegic migraines and non-epileptic attack disorder. Anxiety is a trigger for the migraines which occur once or twice a month. In a non - epileptic attack, she has a loss of consciousness for two minutes, urine incontinence, does not have any shaking and then is confused and drowsy for 20 minutes and cannot recall what has happened. It causes tiredness which can then lead to a migraine. She last had a non-epileptic attack 2 weeks before the assessment. She has no prescribed medication as it is related to stress. She has warning signs a few hours before an attack and is able to notify her family what they need to do. She has had no reported injuries during these attacks. She has no status epilepticus nor specialist input for these conditions which are managed by the GP.'
10. The First-tier tribunal recorded the following at paragraph 67:
  - 'The appeal submission says that [the Appellant] does not go out unless she must go, and if she is going out, then she was always with someone for support. She won't travel alone, her anxiety increases, she feels vulnerable on her own and would not be able to plan or follow an unfamiliar journey. She does not have the confidence to travel on her own and would simply not turn up at an appointment if no one was there to go with her, she would cancel it.'
11. At paragraph 69 the First-tier Tribunal recorded that the Appellant has a 2 hour warning of her NEAD attacks which, it held, gives her time to get to safety if she is out of the house.
12. At paragraph 70 and 71 the First-tier Tribunal concluded as follows:

- '70. Whilst we accept that [the Appellant] will have some anxiety, we do not consider that it meets the high threshold of overwhelming psychological distress which would prevent her from functioning.
71. In the absence of any specialist input for anxiety, and having regard to [the Appellant]'s statement at the assessment, the mental state examination and her oral evidence, we find that, for 50% or more of the time, [the Appellant] can plan and follow the route of a journey unaided and does not need prompting to be able to undertake any journey to avoid overwhelming psychological distress. We award no points.'

13. The Appellant applied for permission to appeal to the Upper Tribunal.

**The decision to give the claimant permission to appeal**

14. Tribunal Judge Barber refused permission to appeal 14 October 2024 on the basis that the main challenged in the grounds of appeal was to the adequacy of the Tribunal's findings of fact and that, taken as a whole, the findings of fact and reasons for the decision were sufficient.
15. The Appellant renewed his application to the Upper Tribunal. Upper Tribunal Judge Citron gave permission to appeal on 22 July 2024 for the following reasons:
- '4. In my view the FTT decision arguably erred in not considering the following matters (or, if it did consider them, not adequately explaining its reasoning for not awarding points under mobility descriptors 1d, 1e or 1f):
- a. whether the symptoms of non epileptic attack disorder ("NEAD") from which [the Appellant] suffered (see the FTT's findings at [24]) amounted to "psychological distress" (defined to include distress related to an enduring mental health condition), and, if they did, whether that distress was "overwhelming"; the findings at [24] arguably suggest that NEAD as suffered by [the Appellant] may well be an enduring mental health condition (the FTT found that it was related to stress); and the symptoms described at [24] arguably amount to "distress" (loss of consciousness for 2 minutes; confusion and drowsiness for 20 minutes; inability to recall what has happened; tiredness; migraine); the "overwhelming" aspect is arguably satisfied by the loss of consciousness;

- b. if [the Appellant]'s symptoms of NEAD did amount to overwhelming psychological distress – whether there was any causal relationship between it and [the Appellant]'s evidence (recorded at [67]) of marked reluctance to go out on her own; and
  - c. whether the FTT's finding, at [24], that when [the Appellant] had warning signs of a NEAD attack she was "able to notify her family what they need to do", logically led to the inference that any journey of a door-to-door duration of two hours or more (two hours being the "warning time" – see [69]) (which may, for example, encompass longer journeys, as well as medium-length journeys on public transport where time for waiting, changing and delay needs to be factored in) required accompaniment in order to be undertaken safely (so that a family member could assist in the event of a NEAD attack).
- 5. The reason that the matters above are relevant to mobility descriptors 1d, 1e and 1f (each of which scores sufficient points to give an award of the mobility component) is that the incidence of overwhelming psychological distress in the course of a journey is relevant to each of them; it was therefore arguably important for the FTT to make clear findings as to whether or not [the Appellant]'s NEAD symptoms amounted to overwhelming psychological distress; the FTT decision found at [70] that [the Appellant]'s anxiety did not amount to overwhelming psychological distress; however, this finding arguably did not extend to [the Appellant]'s NEAD symptoms. The FTT decision found at [70] that, if [the Appellant] had a NEAD attack out of the house, she could get to safety during the preceding two hour "warning" period; however, it appears not to have considered the impact of this on her ability to undertake longer journeys without accompaniment. The FTT decision also appears, at [68], to have based its decision not to award points for mobility activity 1 on the fact that [the Appellant] had not reported any abandoned journeys, reports of being lost or incidents outside; in relation to descriptors 1d and 1f, this is arguably materially flawed reasoning, if [the Appellant]'s evidence as recorded at [67] (that, in practice, she did not travel unaccompanied) was accepted. In this context, it was arguably an error of law for the FTT decision to have failed to make its own findings on the evidential matters recorded at [67] – for example, did it accept that, in practice, [the Appellant] did not go out unaccompanied?
- 6. The foregoing is sufficient to grant permission to appeal. For completeness, I add that I did not, at this stage, find other

realistically arguable grounds in [the Appellant]’s “reasons for appealing”. However, I do not formally limit the grounds on which appeal is granted, as it is not, in the circumstances, necessary for me to reach a concluded view on [the Appellant]’s other arguments.’

### **Submissions**

16. The Secretary of State’s representative made thoughtful submissions on the appeal and indicated that the Secretary of State supported the appeal. She asked that the First-tier Tribunal decision be set aside and the matter remitted to a freshly constituted panel of the First-tier Tribunal for redetermination.
17. The Appellant made no substantive submissions in reply save for agreeing with the Secretary of State’s submissions that the tribunal erred in law and that the decision should be set-aside and remitted to a different panel.

### **Why there was no oral hearing**

18. Neither party asked for an oral hearing. In exercising my discretion I took account of the fact that the Secretary of State supports the appeal and has provided detailed written submissions. I decided that I could fairly determine the appeal on the papers and that it was proportionate and in the interests of justice to do so.

### **Analysis**

19. I conclude that the First-tier Tribunal erred in its decision relating to mobility descriptor 1 by either not considering the matters identified by Judge Citron or not adequately explaining its reasoning for not awarding points under that descriptor. In addition I conclude that the First-tier Tribunal erred in failing to make sufficient findings of fact or to explain what it made of the evidence of the Appellant as set out by Judge Citron in paragraph 5 of his grant of permission. I also agree broadly with the analysis of the Secretary of State’s representative set out in her submissions.
20. In particular I find:
  - a. that the First-tier Tribunal erred in failing to make its own findings in relation to the evidential matters recorded at paragraph 67;
  - b. that the First-tier Tribunal failed to consider, or adequately explain its reasoning, on whether its finding that when the Appellant had warning signs of a NEAD attack she was “able to notify her family what they need to do”, logically led to the inference that any journey of a door-to-door duration of two hours or more required accompaniment in order to be undertaken safely (so that a family member could assist in the event of a NEAD attack;

- c. that the First-tier Tribunal failed to provide adequate reasons for its conclusion that the claimant did not suffer overwhelming psychological distress, particularly in the light of its failure to consider or make findings on the interplay between the claimant's anxiety and stress and the symptoms of migraine and NEAD.

21. It is not necessary for me to consider the other grounds of appeal.

### **Conclusion**

22. I find that the First-tier Tribunal erred in law as set out above. I find that these errors are material because the First-tier Tribunal might have concluded that the Appellant was entitled to points which might have resulted in an award of the mobility component of PIP .
23. For those reasons the appeal is allowed and the decision is set-aside. Because further facts need to be found and because the First-tier Tribunal is best placed to find those facts, I am not able to re-decide the appeal and I remit the matter to be re-heard by a newly constituted First-tier Tribunal.
24. The Appellant's success on this appeal to the Upper Tribunal on error of law says nothing one way or the other about whether his appeal will succeed on the facts before the First-tier Tribunal, as that will be for that tribunal to assess in accordance with the law on the basis of its findings of fact.

**Sophie Buckley**  
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 12 May 2025

**Anonymity: The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.**