

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**PERSONAL INDEPENDENCE PAYMENT**

Appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 4 March 2019

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a claimant's appeal from the decision of an appeal tribunal sitting at Newtownards.
2. An oral hearing of the appeal has been requested. However, I consider that the proceedings can properly be determined without an oral hearing.
3. For the reasons I give below, I set aside the tribunal's decision under Article 15(7) of the Social Security (NI) Order 1998. I direct that the appeal shall be determined by a newly constituted tribunal.

**REASONS**

**Background**

4. The appellant had a previous award of disability living allowance (DLA). As his award of DLA was due to terminate, he was invited to claim personal independence payment (PIP) from the Department for Communities (the Department). He duly claimed PIP from 5 October 2016 on the basis of needs arising from profound deafness and eczema. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned it to the Department on 1 August 2016. The appellant was asked to attend a consultation with a healthcare professional (HCP) and an audited consultation report was received by the Department on 16 November 2016. On 20 December 2016 the Department decided that the appellant satisfied the conditions of entitlement to the standard rate of the daily living component from 18 January 2017 but did not satisfy the conditions of entitlement to the mobility

component of PIP from and including 5 October 2016. The appellant requested a reconsideration of the decision. He was notified that the decision had been reconsidered by the Department but not revised. He appealed.

5. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal disallowed the appeal. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 27 June 2019. The applicant applied to the LQM for leave to appeal from the decision of the appeal tribunal and leave to appeal was granted by a determination issued on 29 July 2019 on the ground of whether the tribunal's statement of reasons was adequate. On 2 August 2019 the appellant submitted his appeal to a Social Security Commissioner.

### **Grounds**

6. The appellant, represented by Mr McCloskey of Law Centre NI, submits that the tribunal has erred in law on the basis that it has not given adequate reasons for its decision, making specific reference to the activities of Washing/bathing, Reading, Engaging with others face to face and Planning and following a journey.
7. The Department was directed to make observations on the appellant's grounds. Mr Arthurs of Decision Making Services (DMS) responded on behalf of the Department. Mr Arthurs submitted that the tribunal had erred in law. He indicated that the Department supported the appeal.

### **The tribunal's decision**

8. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of the Department's submission, containing the PIP2 questionnaire completed by the applicant, an audiometry report, a PA4 V3 consultation report from the HCP and supplementary reports. The tribunal had sight of an AT16 completed by the appellant's GP and his medical records. It also had sight of previous adjournment papers and a representative's submission, with an attached academic article "Reading and Dyslexia in Deaf Children". The appellant attended to give evidence through a British sign language interpreter, and was represented at hearing by Mr McCloskey. Communication was not in dispute, and the appellant had sought further points for the activities of "Washing/bathing", "Reading" and "Engaging with others face to face". The tribunal accepted that the appellant was profoundly deaf with almost no use of speech. It accepted that he communicated by British sign language and by writing. He gave evidence of depression/anger/irritability due to frustrations around communication, and submitted a report from the Mental Health Service.
9. He submitted that he could not safely shower or bathe as he would be unable to use the vibrating pager that he normally used as a smoke or fire alarm (and doorbell). The tribunal took the view that the degree of risk of fire was such as

to be a real possibility, but that it was not increased due to the appellant's deafness. It was submitted that the appellant was restricted in his ability to understand complex written information, and a report was submitted on dyslexia in deaf children. He said that he had gone to a school for deaf children, where everyone signed and they had extra time for examinations. He found reading too complicated, saying that he understood newspapers headlines but not the articles below. He told the HCP that a social worker had completed his PIP2. However, the tribunal did not accept that there was evidence that the appellant was dyslexic and found that he was able to complete the PIP2 and has GCSEs. On "Engaging with others" the appellant confirmed that he could engage well using British sign language or an interpreter, and the tribunal felt that he was confusing this activity with "Communication", for which he had been awarded points.

### **Relevant legislation**

10. PIP was established by article 82 of the Welfare Reform (NI) Order 2015. It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily activities or mobility activities is limited, or severely limited, by their physical or mental condition. The Personal Independence Payment Regulations (NI) 2016 (the 2016 Regulations) set out the detailed requirements for satisfying the above conditions.
11. The 2016 Regulations provide for points to be awarded when a descriptor set out in Schedule 1, Part 2 (daily living activities table) or Schedule 1, Part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points will be awarded the enhanced rate of that component.

### **Assessment**

12. The principal ground of appeal is that the tribunal's statement of reasons is short and fails to adequately address the specific issues outlined in the oral and written evidence.
13. While rejecting the contention that brevity is necessarily an error of law, provided that the issues are addressed, Mr Arthurs agrees with a number of the appellant's grounds. He refers to the Upper Tribunal three-judge panel decision in *RJ, GMcL and CS v Secretary of State for Work and Pensions* [2017] AACR 32. The panel held at paragraph 56 that, in addressing whether a claimant could carry out a task "safely" for purposes of regulation 4 of the PIP regulations, it was necessary to consider both the likelihood of the harm occurring and the severity of the consequences. Mr Arthurs submitted that the tribunal had not addressed the severity of consequences in the present case. Whereas the tribunal correctly pointed to the fact that the appellant's deafness did not make the risk of a fire occurring more likely, his deafness was clearly relevant to potential consequences. The appellant CS, as pointed out by Mr

McCloskey was in a similar position to the present appellant. I accept the submissions of the parties that the tribunal has erred in law on this point.

14. Mr Arthurs further supports the appellant's grounds in relation to the activity of Reading. He observes that while the tribunal found that "he was able to read and complete the PIP2 ...", the HCP report indicates that "a social worker completed his CQ" (customer questionnaire – the term used by the Department's contractor for the PIP2). He notes that the tribunal found that the appellant had GCSE qualifications, but did not appeal to address the evidence of the appellant that he required considerable assistance to obtain these qualifications.
15. Mr Arthurs further submits that the tribunal did not fully address the appellant's submissions under the activity of "Engaging with other people" and the difficulties with mental health as opposed to deafness in that context. He further supports the appellant's case in relation to the aspect of Planning and following journeys".
16. It appears to me that the Department's support for the appeal makes it unnecessary for me to make a formal decision in this case. On the basis that each of the parties submits that the tribunal has erred in law, I set aside the tribunal's decision under Article 15(7) of the Social Security (NI) Order 1998. I direct that the appeal shall be determined by a newly constituted tribunal.

(signed): O Stockman

Commissioner

23 June 2020