

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

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

**PERSONAL INDEPENDENCE PAYMENT**

Application by the claimant for leave to appeal  
and appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 24 February 2021

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference EK/3719/20/02/D.
2. For the reasons I give below, I grant leave to appeal. However, I disallow the appeal.

**REASONS**

**Background**

3. The appellant claimed personal independence payment (PIP) from the Department for Communities (the Department) from 11 February 2020 on the basis of needs arising from epilepsy, asthma, social anxiety, sciatica and vitamin B12 deficiency.
4. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 23 March 2020. The appellant took part in a telephone consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 11 May 2020. On 24 June 2020 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 11 February 2020. The appellant requested a reconsideration of the decision, submitting further evidence. The Department obtained a supplementary advice note. The appellant was notified that the decision had been reconsidered by the Department but not revised. She 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 on 24 February 2021 by way of an online video hearing. The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 28 April 2021. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 27 June 2021. On 26 July 2021 the appellant applied to a Social Security Commissioner for leave to appeal.

### **Grounds**

6. The appellant, represented by Ms Williams of Community Advice Fermanagh, submits that the tribunal has erred in law by not fully considering:
  - (i) the need for prompting to prepare and cook food;
  - (ii) the need to use an aid to manage medication;
  - (iii) the need for prompting in order to wash;
  - (iv) the appellant's difficulties with toileting;
  - (v) the appellant's difficulties following a journey.
7. The Department was invited to make observations on the appellant's grounds. Ms Patterson of Decision Making Services (DMS) responded on behalf of the Department. Ms Patterson submitted that the tribunal had not materially erred in law. She indicated that the Department did not support the application.

### **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 two Departmental submissions. The first of these contained the PIP2 questionnaire completed by the appellant; the consultation report from the HCP; further medical evidence; a supplementary response; and previous PIP papers. The second contained a further supplementary advice note and medical evidence provided by the appellant. The tribunal also had a written submission from the appellant's representative. The appellant gave evidence by remote video link, attended by her representative.
9. The tribunal heard that the appellant had experienced no epileptic seizures for 9 years, but had a facial twitch that was related to epilepsy, that she used two asthma inhalers daily and would experience breathlessness when walking, particularly in bad weather. She took 250mg of Sertraline daily for anxiety. She developed sciatica in 2020 which led to pain on

standing or walking short distances. She stated that anxiety was her main problem, and that she had lack of motivation and was forgetful. She described her daily activity to the tribunal, driving 10 minutes to her temporary work.

10. The tribunal considered that epilepsy was controlled and had no significant impact on scheduled activities. It noted a recent review that found that asthma did not limit activities. It did not identify difficulties arising from the facial twitch. It noted a description of leg pain in the medical records as being worse with prolonged driving or standing, but noted no diagnosis of sciatica and the prescription of a muscle relaxant. It found that the medical records did not indicate difficulties as severe as claimed at hearing. The tribunal found the appellant's evidence of physical problems to be exaggerated and suspected that her mental health issues may be at the root of her physical complaints. It considered that anxiety was the main issue and awarded 4 points for activity 9 (Engaging with other people). It did not accept the stated limitation in planning and following a journey. Accordingly the appeal was disallowed.

### **Relevant legislation**

11. 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.
12. 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.
13. Additionally, by regulation 4, certain other parameters for the assessment of daily living and mobility activities, as follows:
  - 4.—(1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C's physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.
  - (2) C's ability to carry out an activity is to be assessed—
    - (a) on the basis of C's ability whilst wearing or using any aid or appliance which C normally wears or uses; or

(b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C's ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—

(a) safely;

(b) to an acceptable standard;

(c) repeatedly; and

(d) within a reasonable time period.

(4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person's ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

### **Assessment**

14. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
15. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
16. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.

17. The grounds of application are stated in terms that the tribunal has erred in law by not fully considering:
  - (i) the need for prompting to prepare and cook food;
  - (ii) the need to use an aid to manage medication;
  - (iii) the need for prompting in order to wash;
  - (iv) the appellant's difficulties with toileting;
  - (v) the appellant's difficulties following a journey.
18. In a written submission to the tribunal prepared by her representative, the appellant had submitted that she was unable to stand for prolonged periods to cook a meal due to sciatica and that she lacked motivation to cook partly due to an inability to eat and chew because of her facial twitch. The appellant had submitted to the tribunal that she used a dosette box to manage medication and that her family would supervise her medication due to thoughts of taking an overdose. She had submitted that she had no interest in personal hygiene and that family members would prompt her daily to take a shower. The appellant had submitted that she used pads due to urinary incontinence and had a referral to Urology. The appellant had further submitted that she rarely leaves her home and worries about getting lost.
19. Ms Patterson for the Department had responded to the application by way of observations. She noted that the tribunal had not given remarks specific to each activity, but submitted that it had demonstrated that it had considered the issues raised. She observed that it had addressed the issue of motivation in the context of her ongoing employment, finding that she would not need prompting or motivation in relation to any of the daily living activities. She submitted therefore that it had dealt adequately with the issue of motivation to prepare and cook food.
20. Ms Patterson noted that the appellant contended that she need to use aids in taking medication as her memory was poor. She submitted that it was implicit that the tribunal found that she did not require an aid and that this finding was consistent with the evidence of working full-time. She made similar submissions in relation to washing/bathing as in the case of cooking, submitting that the tribunal made it clear that it did not accept the stated limitations in washing.
21. Ms Patterson accepted that the issue of using pads was not explored by the tribunal in the context of the appellant's Urology referral. She accepted that it might be arguable that 2 points should have been awarded for activity 5.b, but that this would not be a material error as it would not take the appellant near the relevant threshold for entitlement.

22. She finally addressed the issue of planning and following a journey. She noted that the tribunal placed weight on the appellant's ability to drive to and from work – a familiar journey. In the light of what it considered to be exaggerations in other evidence, the tribunal did not accept that she had relevant limitations on unfamiliar journeys. Ms Patterson fairly accepted that the tribunal's reasons were insufficient in the context of the appellant's evidence of anxiety. However, she noted that in order to score sufficient points to achieve an award of mobility component on the basis of activity 2 alone, she would need to satisfy descriptor 1.d or above. She submitted that this was not likely on the evidence, which did not support inability to follow a unfamiliar route, or establish that she could meet the condition of experiencing "overwhelming psychological distress".
23. The appellant's representative uses the expression "did not fully consider" to challenge the tribunal's approach to the evidence. An error of law may include a failure to address relevant evidence or to fail to articulate reasons for a particular determination. I do not find the expression used particularly helpful in articulating a ground of appeal. However, the particular tribunal has not addressed itself to the daily living activities singly, but has made general findings based on the overall credibility of the appellant. I assume that that is what the applicant means to challenge by the submission that the tribunal did not fully consider the evidence.
24. From the record of proceedings and the statement of reasons, it appears to me that the tribunal clearly has considered certain matters such as cooking, washing and undertaking a journey. In doing so, it has rejected the appellant's evidence on credibility grounds. On the basis that it has adduced evidence and given reasons on those issues I cannot accept that it can be validly submitted that it did not "fully consider" them.
25. Nevertheless, I consider that it is arguable that the tribunal has not dealt with particular other issues, such as using an aid in the form of a dosette box for taking medication and using pads for incontinence that were raised by the appellant in her written submissions, but were not addressed by the tribunal directly in oral evidence. I grant leave to appeal on that basis.
26. Ms Patterson observes that the tribunal has not given any reasons specific to the issue of requiring an aid to manage her medication. She further accepted that it had not made any enquiry into the nature of her incontinence problems, and that it had made no finding on whether she required to wear pads.
27. To the extent that the tribunal has not addressed the need to use a dosette box or continence pads, despite these being raised in submissions before it, I consider that it has erred in law. The question I then have to address is whether it is a material error of law. The award of points for the two daily living descriptors in question (3.b(i) + 5.b) could total 3. Along with 4 points previously awarded for activity 9 (Engaging with others), this would still remain below the threshold for entitlement to the daily living component.

28. While the margin is slim, on balance I do not accept that the tribunal has materially erred in law. I can see no basis for an award of additional points on the evidence, and the relevant threshold would not be reached.

29. For this reason, I disallow the appeal.

(signed): O Stockman

Commissioner

27 October 2021