

**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 19 May 2022

**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 BE/6206/21/02/D.
2. For the reasons I give below, I grant leave to appeal. Without a formal determination that the tribunal has erred in law, I set aside the decision of the appeal tribunal under Article 15(7) of the Social Security (NI) Order 1998. I refer the appeal to a newly constituted tribunal for determination.

**REASONS**

**Background**

3. The appellant claimed personal independence payment (PIP) from the Department for Communities (the Department) from 23 September 2020 on the basis of needs arising from her recovery from breast cancer, fibromyalgia, depression, and anxiety, lymphoedema in her left arm, allergies, incontinence, sinusitis and oedema in ankles and legs. She was asked to complete a PIP2 questionnaire to describe the effects of her disability and returned this to the Department on 22 October 2020 along with further evidence. She was asked to attend a consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 23 December 2020. On 4 January 2021, the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 23 September 2020. The appellant requested a reconsideration of the decision, submitting further evidence. The

Department obtained a supplementary advice note. She was notified that the decision had been reconsidered by the Department but not revised. She appealed out of time, but the appeal was admitted late by the Department.

4. The appeal was considered at a hearing on 19 May 2022 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 appellant then requested a statement of reasons for the tribunal's decision, and this was issued on 21 June 2022. 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 25 August 2022. On 21 October 2022, the appellant applied to a Social Security Commissioner for leave to appeal.
5. The application was received after the expiry of the relevant statutory time limit. However, on 23 January 2023 the Chief Social Security Commissioner admitted the late application for special reasons under regulation 9(3) of the Social Security Commissioners (Procedure) Regulations (NI) 1999.

### **Grounds**

6. The appellant submits that the tribunal has erred in law by a statement that asserts that she should have been awarded a different level of points under particular activity headings.
7. The Department was invited to make observations on the appellant's grounds. Mr Morrison of Decision Making Services (DMS) responded on behalf of the Department. Mr Morrison submitted that the tribunal had materially erred in law. He indicated that the Department supported 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 the Department's submission, containing the PIP2 questionnaire completed by the appellant, further evidence, a telephone consultation report from the HCP, Employment and Support Allowance (ESA) medical evidence, a general practitioner letter, supplementary medical advice, evidence from previous claims, GP records, diary entries from the appellant and a submission from the appellant's representative. The appellant attended and gave oral evidence, accompanied by her daughter.
9. The tribunal heard evidence from the appellant regarding the effects of her various conditions and treatment. It considered the medical evidence, declining to put weight on some aspects of the HCP report. It awarded points for daily living activity 3 (Managing therapy), 5 (Managing toilet

needs) and 6 (Dressing and undressing), arising from the appellant's use of aids, but for no other daily living or mobility component activities. The appeal was therefore disallowed.

### **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.
12. 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**

13. 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.
14. 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.
15. 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.
16. As indicated above, Mr Morrison has advanced some support for the application. He accepts that the tribunal was entitled to award the points that it has for the various daily living activities based on the evidence before it. However, while noting that it had based its decision on mobility activity 1 (Planning and following journeys) on evidence addressed to the appellant’s daily routines, he submits that the tribunal had not fully explored the issue of whether she was capable of following the route of an unfamiliar journey unaided. This would potentially score 10 points for mobility activity 1.d and is therefore material to the outcome of the appeal.
17. In light of the submissions of Mr Morrison given in support of the application, I grant leave to appeal. As each of the parties to the appeal submits that the tribunal has erred in law, I consider that this is a case in which it is appropriate to exercise the power under Article 15(7) of the Social Security (NI) Order 1998 to set aside the decision of the appeal tribunal without a finding that it has erred in law.

18. I direct that the appeal shall be determined by a newly constituted tribunal.

(signed): O Stockman

Commissioner

22 March 2023