

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

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

**DISABILITY LIVING ALLOWANCE**

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 25 May 2023

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. I grant leave to appeal and allow the appeal. I direct that the Appellant's appeal against the Department's decision of 4 December 2019 be remitted to the Appeal Tribunal to be considered entirely afresh by a wholly differently constituted panel.
2. The Appellant, born in August 2007, appeals by an Appointee, his mother, against the decision of the Appeal Tribunal dated 25 May 2023. That decision was against the Department's decision referenced above, which was taken when the Appellant was aged 12 and in his first year at secondary school. He was diagnosed with an Autism Spectrum Disorder (ASD) on 15 October 2019.
3. The Appointee's application to the Social Security Commissioner was late, but was accepted by Chief Commissioner Mullan in a Determination dated 10 September 2024. Her grounds of appeal were (to summarise) that evidence she had given had not been taken into account, that the Appeal Tribunal had unfairly relied on what it regarded as a lack of supportive evidence when no more evidence could reasonably be expected and that it failed to investigate the case adequately.
4. In the usual way, the Department's observations were invited on the application. In a submission dated 21 May 2024, David Clements expressed support for the application and indicated that the submission could be taken as the Department's submission on the appeal in the event that the Commissioner were to grant leave.

5. The ground on which he supports the appeal relates to the Tribunal's consideration of the lower rate of mobility component under section 73(1)(d) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992. It found that the Appellant did not satisfy that provision, saying:

“The Tribunal was not satisfied that [the Appellant] reasonably required guidance or supervision when walking outdoors on unfamiliar routes most of the time at a level that would be substantially in excess of that normally required by a child of a similar age without his illnesses or disabilities. The available medical evidence and input from the school did not support such a conclusion and the Tribunal attached more weight to this evidence in reaching its decision.”

6. The Appointee had given written evidence that the Appellant was unaware of danger and how it can affect others and that he would sometimes walk in front of moving cars. According to her evidence he had no road sense and sometimes tried to run away, something that was “particularly dangerous near traffic”. This evidence was corroborated to an extent by a report dated 17 June 2020 by Bronagh Hutchinson, a specialist occupational therapist in ASD, who found that the Appellant “will take risks in the movement he seeks and has little awareness of danger”.
7. In rejecting the case put forward on the Appellant's behalf, the Tribunal relied on “the available medical evidence” and the “input from the school”. The use of “medical” in the Tribunal's reasons must be understood in a broader rather than a narrower sense but even in that broader sense, as Mr Clements notes, none of the evidence other than Ms Hutchinson's report addresses the Appellant's awareness of danger or his ability to walk outdoors on unfamiliar routes (and so does not contradict the evidence given by the Appointee and Ms Hutchinson).
8. As to the input from the school, that took the form of the Appellant's “pupil passport”. Mr Clements submits, correctly in my view, that the mere fact that the pupil passport indicates that the Appellant did not need guidance or supervision during the school day does not mean that he did not need guidance or supervision to walk on unfamiliar routes out of doors. As Mr Clements notes, it may be that the panel thought that the pupil passport was inconsistent with the level of danger reported by the Appointee and Ms Hutchinson, but in that event they needed to state that view and explain it.
9. I therefore accept that the Tribunal's statement of reasons fails to indicate to an adequate standard why the Appellant and Appointee lost their case. I therefore give leave to appeal and allow the appeal, setting the decision of the Appeal Tribunal aside.

10. Mindful of the lengthy period which has elapsed since the date of the Department's original decision, I did consider whether I could substitute a decision.

11. Art.15(8) of the Social Security (Northern Ireland) Order 1998 provides:

“(8) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and—

(a) he shall have power—

(i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or

(ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and

(b) in any other case he shall refer the case to a tribunal with directions for its determination.”

12. In the present case I reluctantly consider that further findings of fact are required and that I am not in a position to make them without further evidence and thus I remit the case to the Appeal Tribunal. The Tribunal will need to consider afresh both the care and mobility components.



(Signed): C G WARD

DEPUTY COMMISSIONER (NI)

29 October 2024