

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

INCOME SUPPORT

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 23 November 2021

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The first application is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference LD/1489/19/61/L. The second application is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference LD/8668/19/61/L. As these applications have related facts and were heard and decided together by the same tribunal, I consider that it is appropriate for me to determine them together.
2. An oral hearing of the two applications has been requested. However, the written submissions of the parties are comprehensive and clear, and I consider that the proceedings can properly be determined without an oral hearing.
3. For the reasons I give below, I grant leave to appeal. However, I disallow the appeals.

REASONS

Background

4. The appellant claimed income support (IS) from the Department for Communities (the Department) from 29 May 2001. From 15 August 2011 her entitlement to IS had been premised on being a carer for her son, who was in receipt of disability living allowance (DLA). She also received carer's allowance (CA) in respect of her son. Her award of IS included a disability premium, as she was also personally in receipt of DLA. However, her own entitlement to DLA ended on 26 December 2017. The entitlement of the appellant's son to DLA then ended on 27 February 2018. Her

entitlement to CA, which was dependent upon her son's DLA entitlement, ceased on 4 March 2018. She remained entitled to IS for a further 8 weeks to 30 April 2018.

5. By the decision on file A1/22-23(IS) dated 11 December 2018 the Department decided on the basis of all the evidence that the appellant did not satisfy the conditions of entitlement to IS from 2 May 2018. The appellant requested a reconsideration of the decision, which was reconsidered and revised to disallow entitlement from 1 May 2018 - one day earlier. The appellant appealed.
6. By the decision on file A2/22-23(IS) dated 26 September 2019 the Department revised the rate of IS payable to the appellant for the period from 26 December 2017 to 30 April 2018, removing entitlement to a disability premium. The appellant requested a reconsideration of the decision, which was reconsidered and revised due to a mistake in the rates of benefit applied. The appellant appealed. Her appeal was out of time, but the late appeal was admitted by the Department.
7. Therefore, the first appeal concerned the appellant's entitlement to IS from 1 May 2018 and the second appeal concerned the rate at which IS should have been paid to the appellant from 26 December 2017 to 30 April 2018.
8. The appeals were heard and considered together by a tribunal consisting of a legally qualified member (LQM) sitting alone. After a hearing on 23 November 2021 the tribunal disallowed the appeals. The appellant then requested statements of reasons for the tribunal's decisions, and these were issued on 1 September 2022. The appellant applied to the LQM for leave to appeal from the decisions of the appeal tribunal but leave to appeal was refused by a determination of the President of Appeal Tribunals issued on 11 January 2023. On 6 February 2023 the appellant applied to a Social Security Commissioner for leave to appeal in each case.

Grounds

9. The appellant, represented by Mr Thompson, submits that the tribunal has erred in law in each case on the basis of detailed submissions. The gist of the submissions is that the appellant's son was invited to claim Personal Independence Payment when reaching age 16, but that subsequent procedural errors by the Department meant that suspension and termination of his DLA award was invalid. It was submitted that this had the result that the disallowance of the appellant's CA claim and IS claim was also invalid. It was submitted that the tribunal erred in law by declining jurisdiction and by failing to address the matters raised before it in the context of the first appeal.
10. The grounds relied upon in the second appeal were that the appellant herself was invited to claim PIP, but that subsequent procedural errors by the Department meant that suspension and termination of the appellant's own DLA award was invalid. It was again submitted that the tribunal erred

in law by declining jurisdiction and by failing to address the matters raised before it in the second appeal.

11. The Department was invited to make observations on the appellant's grounds. Mr Finnerty of Decision Making Services (DMS) responded on behalf of the Department. Mr Finnerty submitted that the tribunal had not erred in law as alleged and indicated that the Department did not support the application.

The tribunal's decisions

12. The LQM has prepared a statement of reasons for each of the tribunal's decisions. From the first statement of reasons (in LD/1489/19/61/L), I can see that the tribunal had documentary material before it consisting of an initial Departmental submission - containing among other things screen prints relating to IS and CA entitlement - and a series of submissions from the appellant, each of which received a supplementary response from the Department. The various submissions attached case law and evidence relating to the appeal. The core issue in the appeal was whether the appellant was entitled to IS from 1 May 2018. The appellant attended the hearing at which the linked appeals were considered, along with her representative, Mr Thompson. The Department was represented by Mr Chapman. The tribunal heard oral evidence and submissions.
13. The tribunal found that the appellant had been receiving IS as the carer of her son under paragraph 4 of Schedule 1B of the IS Regulations. His DLA entitlement ended on 27 February 2018 in the context of the transfer to PIP, as he did not make a PIP claim at the relevant time. Consequently, the appellant's entitlement to CA under paragraph 4 ended on 4 March 2018. Under paragraph 5 her entitlement would have continued for a further 8 weeks, ending on 30 April 2018. On 11 December 2018 the Department made a decision superseding the entitlement to IS. The appellant submitted that the tribunal should look behind the circumstances of her son's DLA and PIP entitlement, but it considered that it had no jurisdiction to do so. It found that she had not been entitled to IS from 1 May 2018 as she did not meet a condition of entitlement, her entitlement to CA having ended.
14. From the second statement of reasons in the separate but linked appeal (in LD/8668/19/61/L), I can see that the tribunal had been provided with a Departmental submission containing records of IS and DLA awards, A2 review forms from 2015 and 2018 and various decisions. It had written submissions from the appellant's representative and supplementary responses from the Department. The various submissions attached case law and evidence relating to the appeal. The core issue was whether the appellant was entitled to a disability premium in her IS award from 26 December 2017 to 30 April 2018. The tribunal found that the appellant claimed IS from 29 May 2001 and that a disability premium was included in her award as she was then in receipt of DLA. The appellant submitted that the tribunal should look behind the circumstances of her DLA and PIP

entitlement, but it considered that it had no jurisdiction to do so. It found that her DLA entitlement ended on 26 December 2017. As a result, she was not entitled to have the disability premium included in her IS from 26 December 2017 to 30 April 2018.

15. Whereas a third appeal was heard at the same time as the above two appeals (under reference LD/7937/19/61/L), I have ascertained that no application has been made to me in relation to that appeal. This would appear to have been an overpayment appeal, whereas the matters before me are entitlement appeals.

Relevant legislation

16. By section 123 of the Social Security Contributions and Benefits Act (NI) 1992 and regulation 4ZA of the Income Support (General) Regulations (NI) 1987 (the IS Regulations), a person must fall into a prescribed category to have entitlement to IS. By regulation 4ZA.

“(1) Subject to paragraphs (2) and (3), a person to whom any paragraph of Schedule 1B applies falls within a prescribed category of person for the purposes of section 123(1)(e) of the Contributions and Benefits Act (entitlement to income support).

...

(4) A person who falls within a prescribed category in Schedule 1B for the purposes of this regulation for any day in a benefit week, shall fall within that category for the whole of that week”.

Schedule 1B sets out the “Prescribed Categories of Person”. These include:

“4. A person (the carer)—

(a) who is regularly and substantially engaged in caring for another person if—

(i) the person being cared for is in receipt of ... the care component of disability living allowance at the highest or middle rate prescribed in accordance with section 72(3) of the Contributions and Benefits Act, ... the daily living component of personal independence payment at the standard or enhanced rate in accordance with Article 83(3) of the 2015 Order ...;

(ii) ...

(iv) the person being cared for has claimed entitlement to the daily living component of personal independence payment in accordance with regulation 32 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 (advance claim for and award of personal independence payment), an award at the standard or enhanced rate has been made in respect of that claim and, where the period for which the award is payable has begun, that person is in receipt of the payment,"

...

(b) who is engaged in caring for another person and who is both entitled to, and in receipt of, a carer's allowance or would be in receipt of that allowance but for the application of a restriction under section 5B or 6 of the Fraud Act (loss of benefit provisions).

5. A person to whom paragraph 4 applied, but only for a period of 8 weeks from the date on which that paragraph ceased to apply to him."

Regulation 17 of the IS Regulations makes provision for the applicable amount of income support payable to claimants. The basis on which the disability premium is payable is governed by Schedule 2, paragraphs 11 and 12. To the extent that is relevant, these provide:

Disability Premium

11(1) Subject to sub-paragraph (2), the condition for the disability premium is that—

(a) where the claimant is a single claimant or a lone parent, the additional condition specified in paragraph 12 is satisfied; ...

Additional condition for the Higher Pensioner and Disability Premiums

12.— (1) Subject to sub-paragraph (2) and paragraph 7, the additional condition referred to in paragraphs 10 and 11 is that—

(a) the claimant or, as the case may be, his partner—

(i) is in receipt of one or more of the following benefits: armed forces independence payment, attendance allowance, disability living allowance, personal independence payment, adult disability payment, the disability element or the severe disability

element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002, mobility supplement, long-term incapacity benefit under Part II of the Contributions and Benefits Act or severe disablement allowance under Part III of that Act but, in the case of long-term incapacity benefit or severe disablement allowance only where it is paid in respect of him, ...

Submissions

17. The factual circumstances relevant to the first appeal are not in dispute. In brief, the appellant's son had been in receipt of DLA on the basis of needs arising from autistic spectrum disorder and a presentation consistent with Asperger's Syndrome. The appellant was in receipt of CA in respect of caring for him. The appellant's son's DLA award was due to terminate under the legislative changes resulting from the Welfare Reform (NI) Order 2015, and he was invited to claim PIP. It appears that the appellant's son, despite having been invited to make a claim for PIP, had not done so, either personally or through his appointee, who was the appellant. The fact that the appellant's son failed to pursue a claim to PIP led to termination of his DLA award. This led to the ending of the appellant's CA award. This in turn was a change of circumstances that ended the appellant's basis for appearing within the prescribed group of persons who could have entitlement to IS under regulation 4ZA (above).
18. The appellant submitted that, in the steps it took which resulted in the termination of her son's DLA award, the Department's failed to comply with procedural requirements of the Personal Independence Payment (Transitional Provisions) Regulations (NI) 2016 (the Transitional Regulations). She submitted that the Department had not complied with the law and that its decision to disallow her son's DLA was therefore unlawful. I will refer to the basis of the argument below, but the grounds submitted to me by the appellant all arise from the fact that the tribunal declined to engage with this argument on the basis that it lacked the jurisdiction to do so.
19. Arising from the approach adopted by the tribunal, the appellant firstly took issue with the fairness of the tribunal proceedings. She submitted that the record of proceedings of 23 November 2021 shows no oral testimony, oral submission, oral evidence, or oral enquiry in connection with the appeal with reference LD/1489/19/61/L and submitted that this was wrong in law. While there was clearly a significant amount of submission and evidence before the tribunal, as can be seen from the record of proceedings, I understand this ground to refer to a lack of evidence and submission around the specific procedural issues around DLA and PIP claims that the appellant had wished to raise.
20. The appellant submitted that the tribunal did not identify what jurisdiction it was referring to, when saying it did not have jurisdiction to make decisions with respect to the DLA and PIP claims, and that it did not explain how

such jurisdiction prevented examination of her son's DLA entitlement and her CA entitlement. She submitted that the decision that it did not have jurisdiction was given without warning and time to prepare a response.

21. She submitted that, contrary to decisions of Chief Commissioner Mullan that emphasise the tribunal's duty to adduce evidence and to give a rigorous assessment of all the evidence before it, the tribunal did not engage with her evidence about the disallowance of her son's DLA. She further referred to the tribunal's failure to determine whether he had received a decision notice informing her that she was no longer entitled to CA. She submitted that there was a conflict before the tribunal as to whether CA disallowance notices were issued manually or automatically.
22. She submitted that there were conflicting versions of evidence from the Department on the issue of whether she would have been manually sent an IS disallowance notice. She submitted that the tribunal had not resolved this conflict of evidence.
23. She submitted that the Department's decisions ending her son's entitlement to DLA and her own entitlement to CA were instances of the Department acting as a "judge in its own cause" and submitted that the tribunal should have addressed this issue.
24. The factual circumstances relating to the second appeal are also not in dispute. These are that the appellant was receiving DLA in her own right, but that she was disallowed from 26 December 2017. This had the effect that she ceased to be entitled to disability premium as part of her IS applicable amount. However, the appellant further submitted that the decision to disallow her DLA was invalid and *ultra vires*.
25. Similarly to the first application, the appellant wished to argue that there were procedural failings on the part of the Department in the management of the transition from DLA to PIP. Some of the grounds of challenge to the tribunal's decision are essentially the same as those relied upon in relation to the first application and I will amplify these below.
26. Mr Finnerty made observations on the first application on behalf of the Department. He submitted that the appellant had not appealed the decision to disallow her son's DLA or PIP, or to disallow her CA. He submitted that the tribunal had not failed to take into account material matters but had adopted the correct approach to the hearing and made the correct decision on the evidence before it.
27. In relation to the second application, he similarly submitted that the appellant had not appealed against the decision determining her entitlement to DLA or PIP. He submitted that it had not failed to take into account material matters. The evidence before the tribunal was that the appellant was not entitled to DLA from 26 December 2017 and therefore, he submitted, the tribunal had correctly applied the law.

28. The appellant duly responded to the submissions of Mr Finnerty, essentially reiterating the points made in the initial submissions.

Assessment

29. 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.
30. 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.
31. 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.

The appellant's submissions relating to the Transitional Provisions Regulations

32. DLA was abolished by Article 95 of the Welfare Reform (NI) Order 2015 (the Order). Provision was made under Article 98 and Schedule 10 to the Order for transition from DLA to PIP. Paragraph 1 of Schedule 10 permitted the making of regulations for the purposes of, or in connection with, replacing DLA with PIP. By paragraph 4 of Schedule 10, provision made under such regulations included:
- (a) provision for terminating an award of DLA;
 - (b) provision for making an award of PIP, with or without application, to a person whose award of DLA is terminated.
 - (c) provision imposing requirements as to the procedure to be followed, information to be supplied or assessments to be undergone in relation to an award by virtue of that sub-paragraph or an application for such an award;
 - (d) provision as to the consequences of failure to comply with any such requirement.
33. The Transitional Provisions Regulations were made under Schedule 10. Regulation 3 provided for a written notification to be issued to a person entitled to DLA inviting them to claim PIP. By regulation 7, such a notice was required to explain that their entitlement to DLA will end if they do not claim PIP; to state the date of the last day of the period within which the person should claim PIP, being a period of 28 days starting with the day

which is the stated date of notification; and tell the person how to claim PIP.

34. By regulation 8, the method of making a claim is specified. By Regulation 8(4), (5) and (6) the Department is empowered to extend the claim period. By Regulation 9 where a notified person makes no claim for PIP before the end of the period, or where that period has been extended under regulation 8(4) or (6) before the end of that period, the person's entitlement to DLA shall be suspended. By regulation 10, where entitlement to DLA has been suspended, the Department is required to send a notice that the person's award of DLA will be terminated unless a PIP claim is made by the person before the end of a further period of 28 days. By regulation 11, where the person makes no claim before the end of the further period, the person's entitlement to DLA shall terminate.
35. In the circumstances relevant to the first application, the appellant had been appointed by the Department to act for her son in social security matters. Therefore, all his correspondence was addressed to her. Her representative relates that an invitation to claim PIP on behalf of her son was issued on 22 December 2017, advising that a claim should be made by 19 January 2018. The claim period was subsequently extended to 31 January 2018. As no claim was received, DLA was suspended from 7 February 2018. Notice was given of prospective termination of the DLA award if a PIP claim was not received by 7 March 2018. It appears that a further extension of the claim period was made to facilitate a home visit (which did not take place) to 9 April 2018. It appears that on 24 April 2018 a decision was taken to terminate the DLA claim with effect from 28 February 2018.
36. In the circumstances relevant to the second application, it is submitted that the appellant was sent a letter in relation to her own DLA claim on 12 August 2017 inviting her to make a PIP claim, advising that a claim should be made by 9 September 2017. It appears that her DLA was suspended on 13 September 2017 with a notification of a prospective termination of DLA from 11 October 2017. However, she made a claim to PIP on 21 September 2017, which was subsequently disallowed.
37. In relation to both applications, the appellant submits that the Department acted unlawfully and made decisions that were *ultra vires*. She submits that the Department's initial invitation to claim PIP on behalf of her son – being made on 22 December 2017 – should have stated the last day of the period for claiming as 18 January 2018 rather than 19 January 2018. In her own case, she submits that the initial invitation to claim PIP – being made on 12 August 2017 - should have stated the last day of the period for claiming as 8 September 2017, rather than 9 September 2017. For what it is worth, I consider that this submission is probably correct. By regulation 2(4) of the Transitional Regulations, "notwithstanding section 39(2) of the Interpretation Act (NI) 1954 (time), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day

shall be included in the period". The period of 28 days includes the date of notification by regulation 7(2)(b).

38. In relation to the first application, the appellant submits that her son's period for claiming was extended to 31 January 2018. She submits that his DLA was suspended on the same day. Such a suspension would only have been legally possible, she submits, after the end of the claim period, as it would otherwise be contrary to regulation 9(1). Again, there is some merit in the basic submission.
39. Also, in the circumstances of the first application, the appellant submits that a further notice period of prospective termination of the DLA award, given during the period of suspension under regulation 10, was wrong in law. This was for the reason that it did not comply with the requirement under regulation 10(1)(c) to refer to a period of 28 days beginning on the day on which the suspension takes or took effect. As suspension took effect from 7 February 2018, the period for claiming would end on 6 March 2018, whereas the notice stated a date of 7 March 2018. Again, there is merit in the appellant's submission. Moreover, the appellant submits, the Department had no power to further extend the period for claiming PIP once the suspension period had commenced. It appears to me that there is no express power to extend a notice period given under regulation 10(1) and, again, I acknowledge that there is some merit in this submission.
40. What is more, the appellant submits that a decision was made on 24 April 2018 to terminate her son's DLA claim from 28 February 2018. She submits that by regulation 11(1) the date on which a DLA award should terminate is the day on which suspension took effect. In other words, her son's DLA should have terminated on 7 February 2018, and not on 28 February 2018.
41. Her core argument, stemming from all this, is that the Department did not lawfully terminate her son's DLA award and therefore should not have terminated her own CA award. This would have invalidated the Department's decision to disallow her IS award.
42. Turning back to the second application, the appellant challenges aspects of the adjudication of her PIP claim. She observes that regulation 4 of the Personal Independence Payment (NI) Regulations 2016 provides that:

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.
43. She submits that an assessment was carried out by an assessor on 14 November 2017, but that no relevant medical evidence was taken into account. This, she submits, was an invalid decision as it failed to observe the requirements of regulation 4. She further relied upon extracts from a

report of the Northern Ireland Public Service Ombudsman (June 2021) and the report of the Personal Independence payment - Second Independent Review of the Assessment Process (2020), to make general points about the availability of medical evidence in PIP assessments. I understand that the appellant's PIP claim was disallowed on 25 November 2017, and she did not appeal.

The implications of the procedural failings

44. As indicated above, I do consider that there is some merit in the submissions of the appellant relating to the observance by the Department of the procedural requirements of the Transitional Regulations. However, I have not heard argument from the Department in response to the points made and I do not reach a concluded position on these submissions. The reason for this is that, even if I accept that all the appellant's points about the procedural requirements of the Transitional Regulations are well made, I do not accept the legal consequences that she claims should result from that. The appellant essentially submits that a failure to comply with the statutory procedural framework set out in the Transitional Regulations renders the Department's decisions *ultra vires* and void. However, she advances no legal authority to support this rather sweeping submission. She essentially asserts that a failure to comply with a procedural requirement renders any Departmental decision a nullity.
45. The consequences of failure of a public body to observe the procedural requirements of legislation have naturally been addressed by courts before now. Where the will of Parliament has been expressed in legislation in a mandatory way, but an authority has not complied with the requirements of the legislation, a problem clearly arises. However, the courts in modern times have tended to adopt a flexible approach of focusing on the consequences of non-compliance, and posing the question, taking into account those consequences, whether Parliament intended the outcome to be total invalidity.
46. A key statement of those principles was made in *London & Clydeside Estates Ltd v Aberdeen District Council* [1980] 1 WLR 182, by Lord Hailsham, who said:

"When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another. At one end of this spectrum there may be cases in which a fundamental obligation may have been so outrageously and flagrantly

ignored or defied that the subject may safely ignore what has been done and treat it as having no legal consequences upon himself. In such a case if the defaulting authority seeks to rely on its action, it may be that the subject is entitled to use the defect in procedure simply as a shield or defence without having taken any positive action of his own. At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the courts will decline to listen to his complaint... I do not wish to be understood in the field of administrative law and in the domain where the courts apply a supervisory jurisdiction over the acts of subordinate authority purporting to exercise statutory powers, to encourage the use of rigid legal classifications. The jurisdiction is inherently discretionary, and the court is frequently in the presence of differences of degree which merge almost imperceptibly into differences of kind."

47. Therefore, a failure to comply with a legislative requirement does not automatically result in a decision becoming a nullity. Rather, failures of compliance have to be seen on a spectrum and the courts have a discretion as to what the consequences that should flow from such failure should be. This approach can further be seen to have been adopted in cases such as *R v Soneji* [2005] UKHL 49 and *Public Prosecution Service v McKee* [2013] UKSC 32.
48. As indicated, I acknowledge that there is some merit in the submissions of the appellant to the extent that she identified procedural failings on the part of the Department. However, whether or not a procedural failure may be fatal to the actions of a public body entirely depends on context. Thus, it may be necessary to require strict compliance with statutory requirements placed on the Department where there is a particularly punitive consequence for a claimant (see, for example, *RS -v- Department of Communities* [2021] NI Com 4).
49. However, the particular context of the first application is that the Department has permitted some extra time in circumstances where claimants are being transferred from an older repealed benefit to a new one. The appellant in this case is essentially criticising the fact that the Department gave too much time for permitting a claim for PIP to be made, extended a time limit in a claimant's interests when it did not have power to do so, and terminated her son's DLA award from a later date that it should have, thereby paying DLA for three weeks longer than it should have. These failures of compliance were entirely favourable to the appellant's son.
50. The only potentially unfavourable consequence relied upon is that the DLA award of the appellant's son was suspended on 31 January 2018 within,

and on the last day of, a claim period. However, the suspension did not take effect until 7 February 2018. Had he made a subsequent claim, his DLA would have been reinstated and the suspension action would have had no negative consequence for him. Any negative consequence stemmed from the choice made by the appellant's son, or the appellant as his appointee, not to claim PIP.

51. Adopting an approach of focusing on the consequences of the Department's non-compliance with the Transitional Regulations, I could not say that the Department erred in law and acted unlawfully and *ultra vires*. However, what I say on this matter and what I might also have had to say about the second application, where the appellant engages with the adjudication of her PIP claim, is entirely immaterial and *obiter*, for the further reasons I will give below.

The jurisdiction of the tribunal

52. The above submissions are addressed to the respective claims of the appellant's son and the appellant herself to DLA and PIP. The appellant was her son's appointee. In both cases the Department made a decision terminating DLA and, in the case of the appellant, subsequently disallowing her PIP claim. Neither decision was appealed within the statutory time limit. Had they been appealed, a tribunal seized of those appeals would have had jurisdiction to address the issues raised in the submissions now made. A consequence of the decision terminating the entitlement of the appellant's son to DLA was that the appellant ceased to be entitled to CA. It would also appear that she did not appeal that decision.
53. Tribunals have an entirely statutory jurisdiction. This derives from the right of appeal given by Article 13 of the Social Security (NI) Order 1998 and the regulations made under it. The right of appeal relates to prescribed decisions of the Department. In these cases, the decisions under appeal were that of 11 December 2018 (as revised) disallowing IS from 1 May 2018 and that of 26 September 2019 superseding entitlement to IS and removing disability premium from 26 December 2017 to 30 April 2018.
54. The issue in the first appeal was the appellant's entitlement to IS. By Schedule 1B, paragraph 4 (above), this required her to fall into a prescribed category of person. Her entitlement to IS had been based on being a person who is regularly and substantially engaged in caring for another person. A further condition of this route to entitlement was either that the person being cared for is in receipt of the care component of DLA at the highest or middle rate or is in receipt of the daily living component of PIP at the standard or enhanced rate. An alternative route to this limb of entitlement would be to meet the condition that the carer is in receipt of CA or was in a period of 8 weeks from the date on which she ceased to be in receipt of CA.

55. Therefore, in the first case, the appellant's entitlement depended entirely on her son being in receipt of DLA or PIP at the prescribed rates, or herself being in receipt of CA.
56. The issue in the second appeal was the appellant's entitlement to the disability premium of IS. By paragraph 12 of Schedule 2 to the IS Regulations in order to be entitled to disability premium, she was required to be in receipt of one or more of the benefits listed in the paragraph. The list included DLA and PIP.
57. Therefore, in the second case, the appellant's entitlement depended on being able to establish that she was in receipt of DLA or PIP.
58. There is a difference between the concept of being entitled to benefit and being in receipt of benefit. Whether someone is entitled to benefit is a question of law. Whether they are in receipt of benefit is a question of fact. What the tribunal had jurisdiction to decide in the present cases were entirely questions of fact. This was whether the appellant or her son were in receipt of particular benefits at particular dates. As a plain matter of fact, they were not.
59. The appellant's representative essentially submits that the tribunal was obliged to address the procedural questions that I have set out above which were raised on the appellant's behalf, and which sought to engage the tribunal with the question of whether the appellant and her son were entitled to particular benefits at particular dates and submitted that it erred in law by failing to do so. The tribunal was not concerned with the issue of whether the appellant and her son were entitled to DLA or PIP, but the entirely different question of whether they were in receipt of them.
60. I observe further that there is a principle of finality in social security decision making, arising from Article 17 of the Social Security (NI) Order 1998. This reads:

17.— (1) Subject to the provisions of this Chapter, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulations under Article 12, any decision made in accordance with those regulations shall be final.
61. The principle that decisions are final is subject to the right of appeal from those decisions. However, where that remedy is not pursued, the finality of decisions has to be respected. A consequence of the failure of the appellant to appeal the decisions of the Department relating to entitlement to DLA or PIP – and subsequently CA - is that those decisions achieved a status of finality.
62. The tribunal whose decision is challenged in the present proceedings decided that it did not have jurisdiction to consider whether the appellant's son had entitlement to DLA or PIP in the first appeal. It was correct in its analysis. It found that she did not fall within paragraph 4 or 5 of Schedule

1B to the IS Regulations after 30 April 2018 on the basis that she or her son was not in receipt of DLA or PIP at the required rate, and she was not in receipt of CA. That was the sole question that it had jurisdiction to determine.

63. The tribunal decided in the second case that it had no jurisdiction to consider whether the appellant was or should have been entitled to DLA or PIP after 26 December 2017. Again, it was correct. It found that the appellant did not satisfy the conditions of paragraphs 11 and 12 of Schedule 2 to the IS Regulations from 26 December 2017 to 30 April 2018, as she was not in receipt of DLA or PIP at those dates. Again, that was the sole question that it had jurisdiction to determine.
64. The appellant's grounds relate to the tribunal's refusal to engage with the questions she had raised around issues of entitlement to DLA and PIP. However, even if the tribunal had jurisdiction to address those questions, and to engage with the question of whether she or her son were entitled to DLA or PIP at particular dates, that could not alter the factual position. The appellant and her son were not in receipt of DLA or PIP at the material dates, and her submissions on entitlement would not alter that fact.
65. Although I consider that there is no merit in the appellant's grounds, I will grant leave to appeal in recognition that serious effort has been expended in bringing these applications. However, for the reasons I have given, I do not consider that the tribunal has erred in law, and I disallow the appeals.

(signed): O Stockman

Commissioner

30 April 2024