



DECISION OF

The Hon. Lord Fairley

**ON AN APPEAL
IN THE CASE OF**

Social Security Scotland

Appellant

- and -

DM

Respondent

FTS Case reference: FTS/SSC/AE/23/00879

21 October 2024

Decision

The appeal by Social Security Scotland is refused.

Reasons for decision

Introduction

1. The respondent made an application for Adult Disability Payment (“ADP”) under the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54). He was initially assessed as being entitled to 6 points for assistance with daily living activities and 4 points for mobility activities. He applied for redetermination. The redetermination decision removed 2 of the points previously awarded for daily living activities, leaving him with 4 points for daily living, 4 points for mobility and a refusal of



his application for benefit. The points ultimately awarded for daily living were for descriptors 4(c) and 9(b) only.

2. The respondent appealed to the First-tier Tribunal (“FTS”). In its written response to that appeal, the appellant conceded that descriptors 1(d) and 6(c) of the daily living activities also applied. It accordingly invited the FTS to make an award in respect of daily living at the standard rate based upon a points total of 8. The appellant continued to oppose the appeal insofar as it related to the mobility component.
3. On 7 March 2024, the FTS allowed the appeal. In light of the concession by the appellant, it concluded that the respondent met the requirements of descriptors 1(d), 4(c), 6(c) and 9(b) in relation to daily living. That resulted in an award of 8 points, and an entitlement to the daily living component at the standard rate.
4. The FTS also concluded that the respondent met the requirements of the mobility descriptors 1(d) and 2(b). That resulted in an award of 14 points and an entitlement to the mobility component at the enhanced rate.

Grounds of appeal

5. The appellant does not seek to challenge the decision of the FTS in relation to the mobility component, nor does it seek to challenge the conclusions of the FTS about the applicability of daily living descriptors 1(d), 4(c), 6(c) and 9(b).
6. The single proposed ground of appeal is that, having reached the conclusions it did about mobility descriptor 1(d), the FTS ought also to have considered the possible applicability of daily living descriptors 8(d) or 8(e) and used its inquisitorial powers to request further evidence from parties about those descriptors. Had it done so, that may have resulted in an award in respect of the daily living component to the respondent at the enhanced rate.
7. In the submissions made to me on behalf of the appellant, it was not suggested that the FTS could have reached a decision on either daily living descriptor 8(d) or 8(e) on the evidence that had already been presented to it. The appellant’s position was that the case should be remitted to the FTS to hear further evidence.

The FTS decision

8. At paragraph 15 of its reasons, in the context of considering mobility descriptor 1(d), the FTS stated:

“It is clear from the information provided by [the respondent’s] GP that he had significant learning difficulties and that he has never been able to work as a



consequence of these. [The respondent] has very poor literacy and candidly concedes that he would not be able to use a map in any meaningful way to assist him to navigate unfamiliar territory. He has also gone on to indicate that his anxiety would be at a very high level were he to attempt to do so.”

Law

9. In *NB v. Social Security Scotland* 2023 UT 35, Lady Poole allowed an appeal in circumstances where there had been no hearing before the FTS. A clear factual issue arose on the papers as to the nature and extent of the claimant’s medical condition(s) and the extent to which the claimant was affected by those. The appeal was allowed on the basis that the claimant had not been given a proper opportunity by the FTS to participate in the process.
10. Subsequently, in *AK v Social Security Scotland* 2024 UT 05, Lady Poole stressed that *NB* was an unusual case which turned on its own particular facts and circumstances. Whilst mention had been made of the potential for the FTS to take an inquisitorial approach in appropriate circumstances, the principal basis for the decision in *NB* was that there had been no hearing.

Decision and reasons

11. In the circumstances of this case, there was an oral hearing before the FTS in which both parties fully participated. Neither in his initial application nor at the hearing did the claimant seek to argue that either of daily living descriptors 8(d) or 8(e) applied to him. The tests for awards of points under mobility descriptor 1(d) and daily living descriptors 8(d) and (e) are different. The fact that the claimant would have difficulty with reading maps in the context of being unable to follow the route of an unfamiliar journey does not, of itself, lead to the conclusion that points should also be awarded under daily living descriptors 8(d) or (e). As the appellant correctly conceded in this appeal, further evidence would be required were the case to be remitted to the FTS.
12. The FTS has the power to take an inquisitorial approach where that is necessary to ensure the fair resolution of the appeal before it. That approach may be appropriate where a clear conflict arises in the evidence on a matter which is the subject of the appeal. *NB* is not, however, authority for the proposition that the FTS is under any duty to open up new lines of inquiry, evidence and argument beyond those advanced by the parties.
13. I do not rule out the possibility that there might be cases where a factual conclusion about one descriptor might lead inevitably and without further inquiry to the conclusion that another descriptor was also met. This, however, is not such a case.



14. The appeal is therefore refused.

The Hon. Lord Fairley

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*