



DECISION OF

Lady Poole

IN THE APPEAL

by

EC

Appellant

- and -

Social Security Scotland

Respondent

FTS Case Reference: FTS/SSC/AE/23/01196

Representation

Appellant: Gemma Stewart-Cowie, Welfare Rights Officer, Money Matters

Respondent: Samuel Bingham, Solicitor, Scottish Government Legal Directorate

17 December 2024

DECISION

The appeal is allowed. The decision of the First-tier Tribunal for Scotland (“FTS”) dated 13 May 2024 is quashed, because the FTS failed to give proper and adequate reasons. The case is remitted to a differently constituted FTS for redetermination in accordance with the directions at the end of this decision.



REASONS

1. This is a case about Adult Disability Payment (“ADP”). It finds that the FTS failed to give proper and adequate reasons for its decision issued on 13 May 2024. The appeal is not opposed by Social Security Scotland (“SSS”), and neither party has requested a hearing before the Upper Tribunal for Scotland (“UTS”). The appeal is accordingly dealt with on the papers with short reasons.
2. The classic test for adequacy of reasons in Scotland is found in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. The tribunal must "give proper and adequate reasons for [its] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader ... in no real and substantial doubt as to what the reasons for it were and what were the material 5 considerations which were taken into account in reaching it". The decision of the FTS has to be read as a whole, in a straightforward manner, and recognising it is addressed to parties well aware of the issues involved (*AK v Social Security Scotland* 2024 UT 5 para 8). Reasons, to be adequate, do not have to involve consideration of every issue raised by the parties, or deal with every piece of material in evidence.
3. The appeal concerns mental health conditions and ADP. Mental health conditions have effects that vary according to the individual, and may be amenable to treatment. The effect of any identified mental health condition on functioning within the descriptors in the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the “**ADP Regulations**”) during the required period is a matter for careful inquiry and fact finding. It does not necessarily follow from the fact that a person has at some time in their life suffered from anxiety and depression that they score points on daily living or mobility descriptors in Schedule 1 of the ADP Regulations. Nor does it necessarily follow that, if a person qualifies for points under mobility activity 1 due to mental health issues, they qualify for prompting points for daily living activities. A person may, for example, have qualifying difficulties planning and following journeys unaccompanied, but be able to do everything in their home. It all depends on the circumstances of a particular case. Where the effect on functioning of mental health conditions is put in issue in relation to a particular activity within schedule 1 of the ADP Regulations, the reasons given by the FTS should be proper and adequate to explain the decision it has made about that activity.
4. In this case, the reasons of the FTS failed to meet that standard. First, there is no explicit finding in fact about mental health conditions during the required period. The FTS decision narrates only that “the appellant **set out** that she suffered from anxiety and depression ...[and it had] worsened” (bold added). There is nothing to indicate whether or not the FTS accepted or rejected that evidence, and whether it found as a fact that she did suffer from anxiety and depression during the required period, and if so, what effect any such condition had on functioning - particularly given that she was taking



medication which might be capable of alleviating any symptoms she had when diagnosed (findings in fact 6 and 7, and paragraphs 18, 19, 29 and 36).

5. Second, even if it were to be inferred that the FTS accepted that the appellant suffered from mental health conditions, the reasons are inadequate to explain why the FTS awarded points for mobility activity 1, and did not award points in respect of daily living activities 1, 3, 4, 6, 9 and 10, given its apparent findings in fact in paragraphs 12, 17, 26, 32, 33, or in respect of an aid given its apparent finding in fact in paragraph 31. In determining whether points were scored for mobility activity 1, the FTS failed to provide an adequate basis to explain its finding that overwhelming psychological distress was present, having regard to *MH v SSWP (PIP)* [2016] UKUT 0531 (AAC). It made no clear finding how many points were scored for the daily living component, and some of its findings appeared to contradict other findings made (for example in relation to daily living activity 3). It has failed to give proper and adequate reasons for its decision.
6. There has therefore been an error of law. Section 47 of the Tribunals (Scotland) Act 2014 provides that in an appeal, the UTS may uphold or quash the decision in question. The decision of the FTS is quashed. There are inadequate factual findings for the UTS to be able to remake the decision. It is therefore be remitted to the FTS for reconsideration, in accordance with the directions below.

DIRECTIONS

1. The case must be reconsidered by a differently constituted panel of the FTS.
2. The FTS should treat all matters in the appeal at large, given that the guidance on mobility activity 1 in *Social Security Scotland v AH and AS* 2024 UT 63 post dated the original decision of the FTS.
3. The FTS may issue directions inviting parties to submit any further evidence they wish to rely on in advance of the hearing. It may also ask the appellant to identify the descriptors in respect of which points are claimed by the appellant, and the respondent's position in response.
4. When deciding the case, the FTS should have regard to the guidance in paragraphs 2-5 (particularly paragraph 3) above.

Lady Poole



*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.*