IN THE UPPER TRIBUNAL **Appeal No. UA-2022-001411-PIP**
ADMINISTRATIVE APPEALS CHAMBER

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between:

G.T.

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wikeley

Decision date: 6 March 2023
Decided on consideration of the papers

Representation:

Appellant: Mr David Martinez, Harrow Law Centre
Respondent: Mr Atif Mohammed, Decision Making and Appeals, DWP

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 22 February 2021 under number SC312/20/00834 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with the following directions.

DIRECTIONS

1. **This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**

2. **The new First-tier Tribunal should not involve the tribunal judge, medical member or disability member previously involved in considering this appeal on 22 February 2021.**

3. **If the Appellant has any further written evidence to put before the tribunal and, in particular, further medical evidence, this should be sent to the HMCTS regional tribunal office in Sutton within one month of the issue of this decision.**

4. **The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.**

These Directions may be supplemented by later directions by a Tribunal Caseworker, Tribunal Registrar or Judge in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

The principal issue in this appeal to the Upper Tribunal

1. The primary issue in this appeal concerns the extent to which (if at all) a First-tier Tribunal can seek advice from another judge before deciding a case.

2. The First-tier Tribunal in this case was undoubtedly faced with some knotty factual and legal issues relating to identifying the correct start date for an award of personal independence payment. In the course of its statement of reasons, the First-tier Tribunal stated as follows:

> [24] The Duty District Judge (DDJ) was consulted by the Tribunal in order to ensure that the correct decision was made. The DDJ confirmed that the Tribunal could decide, on the balance of probabilities, at what point the symptoms of meningioma manifested and backdate the award accordingly.

3. As I observed when giving the Appellant permission to appeal, "Depending on quite what was involved in this 'consultation', this may amount to a breach of the Composition of Tribunals Practice Statement."

4. First of all, however, it is helpful to revisit the so-called "required period condition".

A reminder about the required period condition

5. It is a condition of entitlement to a personal independence payment (PIP) that the claimant "meets the required period condition". This applies to both the standard and the enhanced rates of the daily living component of PIP (see Welfare Reform Act 2012, section 78(1)(b) and (2)(b) respectively). The same also applies to both rates of the PIP mobility component (see Welfare Reform Act 2012, section 79(1)(c) and (2)(c) respectively).

6. Sections 80(2) and 81 of the Welfare Reform Act 2012 enable regulations to be made governing the required period condition. The relevant secondary legislation is to be found in Part 3 of the Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377). So far as the daily living component is concerned, regulation 12 provides as follows ("C" means the claimant – see regulation 2):

> **Required period condition: daily living component**
>
> **12.**—(1) C meets the required period condition for the purposes of section 78(1) of the Act (daily living component at standard rate) where —
>
> (a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had limited ability to carry out daily living activities; and
>
> (b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had limited ability to carry out daily living activities.

(2) C meets the required period condition for the purposes of section 78(2) of the Act (daily living component at enhanced rate) where —

(a) if C had been assessed at every time in the period of 3 months ending with the prescribed date, it is likely that the Secretary of State would have determined at that time that C had severely limited ability to carry out daily living activities; and

(b) if C were to be assessed at every time in the period of 9 months beginning with the day after the prescribed date, it is likely that the Secretary of State would determine at that time that C had severely limited ability to carry out daily living activities.

7. Regulation 13 makes parallel provision for the required period condition in relation to both rates of the PIP mobility component.

8. Regulation 14 then defines what is meant in this context by "the prescribed date":

The prescribed date

14. Except where paragraph (2) or (3) of regulation 15 or paragraph (2) or (3) of regulation 15A applies, the prescribed date is–

(a) where C has made a claim for personal independence payment which has not been determined, the date of that claim or, if later, the earliest date in relation to which, if C had been assessed in relation to C's ability to carry out daily living activities or, as the case may be, mobility activities, at every time in the previous 3 months, it is likely that the Secretary of State would have determined at that time that C had limited ability or, as the case may be, severely limited ability to carry out those activities; and

(b) where C has an award of either or both components, each day of that award.

9. Regulations 15 and 15A are not material to the present discussion. The effect of regulation 14(a) is that where a new (and as yet undetermined) claim for PIP is made, the prescribed date for the purposes of regulations 12 and 13 will normally be the date of claim. However, by regulation 14(a) the prescribed date may be a later date in a case where the decision-maker can determine that the claimant has met the PIP qualifying criteria at a later date even if they were found to be not satisfied as at the date of claim.

10. These rules were authoritatively considered by Upper Tribunal Judge Jacobs in *AH v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 541 (AAC). As regards regulation 12 (and by extension regulation 13), Judge Jacobs ruled that "despite the language of section 78, there is not one period but two: one of three months (I call this the retrospective period) and one of nine months (I call this the prospective period), both fixed by reference to 'the prescribed date'. The terms I am using are for convenience only. The required period condition must be satisfied for both the retrospective period and the prospective period" (paragraph 9).

11. Turning to regulation 14 on the meaning of the prescribed date, Judge Jacobs held as follows:

> 15. Like regulation 12, this has to be applied to the component, here the daily living component. The starting point for applying this regulation is the date of claim. If the claimant does not satisfy the prescribed period condition at that date, the prescribed date may be later. This does not cause any problems if the decision is not made until after the claimant has satisfied the condition in respect of the retrospective period. But what if the retrospective period has not been satisfied at that date? The language of regulation 14 suggests that the full three months must have been satisfied by the date of decision if an award is to be made. That is the only way that the tenses make sense. However, the regulation has to be read in conjunction with regulation 33 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI No 380):
>
> > **33 Advance claim for and award of personal independence payment**
> >
> > (1) Where, although a person does not satisfy the requirements for entitlement to personal independence payment on the date on which the claim is made, the Secretary of State is of the opinion that unless there is a change of circumstances the person will satisfy those requirements for a period beginning on a day ('the relevant day') not more than 3 months after the date on which the decision on the claim is made, the Secretary of State may award personal independence payment from the relevant day subject to the condition that the person satisfies the requirements for entitlement on the relevant day.
>
> That allows for the possibility that the claimant may have satisfied only part of the retrospective period when the decision is made. But the circumstances must be such that the whole of the retrospective period (and the prospective period as well) will be satisfied unless there is a change of circumstances.

12. In a later passage in the same decision Judge Jacobs returned to explain the effect of regulation 33 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013:

> 22. … Regulation 33 only applies if two conditions are satisfied. One is that the conditions of entitlement will be satisfied no more than 3 months after the date of decision, which just happens to be the length of the retrospective period. The other is that the conditions of entitlement will be satisfied unless there is a change of circumstances. Putting those together has this effect: it will only apply if the tribunal has made findings of fact to show that, barring any change of circumstances, within three months the claimant will have satisfied the 50% of the time rule leading to sufficient points to allow an award. In other words, the tribunal must have been able to make those findings in respect of the date of the decision under appeal. …

13. I now turn to consider the background to the present appeal.

The background to the appeal to the First-tier Tribunal

14. The Appellant is evidently seriously unwell. His health conditions include meningioma (a brain tumour) and prostrate cancer. He claimed Personal Independence Payment (PIP) on 22 January 2019. The Appellant's poor health meant there were delays in arranging a report by a healthcare professional. Eventually a DWP decision-maker decided on 27 March 2020 that the Appellant scored 36 daily living points and 24 mobility points. As such, the Appellant obviously qualified for the enhanced rate of both PIP components. The decision-maker made an award at that level from 1 December 2019 (and so from a date nearly a year after the date of claim) to 24 August 2022.

15. The justification given by the decision-maker for the start date was as follows: "To get PIP you just have needed help with daily living or mobility needs for 3 months or more. As your needs started less than 3 months before the date you claimed PIP, I cannot award you PIP for help with your daily living or mobility needs from 22 January 2019 to 01 December 2019". The mandatory reconsideration notice, as well as confirming the period of the award, explained that "your severe restrictions began in September 2019 … As such, the earliest date I can award you PIP from is 01 December 2019".

16. The Appellant lodged an appeal against the effective date of the PIP award. He gave his reasons for disagreeing simply as follows: "I made an application for PIP January 2019. My symptoms began beginning of 2018. I disagree with the decision to award PIP from 1st December 2019."

17. The Mary Ward Legal Centre, then acting as representative for the Appellant, provided a detailed and carefully argued written submission for the First-tier Tribunal. In summary, his representative argued that the Appellant was entitled to the enhanced rate of the daily living component and the standard rate of the mobility component with effect from 22 January 2019 (the date of claim) and then (as the DWP had found) to the enhanced rate of both components as from 1 December 2019.

The First-tier Tribunal's hearing and decision

18. In the absence of any objection from the parties, the First-tier Tribunal held a telephone hearing of the appeal on 22 February 2021. The record of proceedings cover sheet shows the panel as consisting of the judge, the disability/carer member and the medical member. The only other person noted as present in the tribunal room was the clerk.

19. The First-tier Tribunal allowed the appeal in part, revising the Secretary of State's decision of 27 March 2020. The Tribunal made an award of the enhanced rate of both PIP components for the period from 1 September 2019 to 24 August 2022. In other words, the Tribunal brought forward the start date for the award by a further three months. In summary, the Tribunal's decision notice explained that the Appellant's meningioma symptoms had worsened over the course of 2019 such that "the qualifying period therefore started from 01/06/2019, with benefit payable from 01/09/2019." The Tribunal's decision notice was both drafted and issued on 23 February 2021, the day after the telephone hearing. At a later date the First-tier Tribunal also issued a full statement of reasons.

20. Mr David Martinez of Harrow Law Centre, who was by now representing the Appellant, applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal. The First-tier Tribunal refused that application.

The proceedings before the Upper Tribunal

21. Mr Martinez, on behalf of the Appellant, renewed the permission application before the Upper Tribunal, submitting that the First-tier Tribunal's erroneous treatment of certain daily living activities meant that "the tribunal failed to properly assess whether [the Appellant] was entitled to any level of PIP between January and September 2019".

22. I granted permission to appeal, raising two further points. The first was whether the First-tier Tribunal needed to consider regulation 14 of the Social Security (Personal Independence Payment) Regulations 2013. The second was my query about the Tribunal's statement in paragraph [24] of the statement of reasons about consulting the Duty District Judge (see paragraph 2 above).

23. Mr Atif Mohammed, the Secretary of State's representative in these proceedings, supports the appeal to the Upper Tribunal on the basis of the paragraph [24] point. His argument runs as follows, based on both the First-tier Tribunal's composition practice statement and relevant case law.

24. First, he points out that the Senior President's Practice Statement on *Composition of Tribunals in Social Security and Child Support Cases in the Social Entitlement Chamber on or after 01 August 2013* provides that "the number of members of the Tribunal must not exceed three" (paragraph 3 of the Practice Statement). Given that there were already three First-tier Tribunal panel members present in this case, Mr Mohammed argues that "by consulting the DDJ the FTT have erred in law" by breaching the terms of the Practice Statement.

25. Second, Mr Mohammed helpfully refers me to the unreported decision of Mr Commissioner Williams in *CIB/2142/2007*. That was a case in which a District Tribunal Judge sat in on a hearing together with a three-person social security appeal tribunal. There was some confusion at the outset of the hearing as to whether the District Tribunal Judge in question was present as an additional member of the tribunal panel or simply as an observer (the rules governing the composition of tribunals were different in certain respects at that time before the advent of the Tribunals, Courts and Enforcement Act 2007). In the event the point was not necessary for the decision, but Mr Commissioner Williams held that fairness required there be complete clarity beforehand as to the status of all those present at the hearing (*CIB/2142/2007,* paragraph 23). Fairness also dictated that if there were an additional tribunal member, then he or she "should take part in the full proceedings, including the consideration before the hearing as well as after the hearing" (paragraph 24).

26. Mr Martinez, for the Appellant, gratefully adopts Mr Mohammed's submissions on the paragraph [24] point. Mr Martinez comments that "while making this consultation would on the face of it seem to be a prudent course of action, from our reading of both the practice statement and the main Tribunal Procedure rules, neither allow this to occur."

The Upper Tribunal's analysis

27. I have come to the same conclusion as both Mr Mohammed and Mr Martinez – that the First-tier Tribunal's decision cannot stand in the light of paragraph [24] of its statement of reasons – albeit by a different route.

28. I start by recognising the important role that District Tribunal Judges play in the work of the Social Entitlement Chamber (SEC) of the First-tier Tribunal. I understand there are around 8-12 salaried District Tribunal Judges in each SEC region, each of whom has responsibility for an area (or district) within the wider region. They have a wide range of responsibilities, including dealing with interlocutory matters ('boxwork') and hearing substantive appeals as well as appraising and mentoring fee-paid judges and other judicial office holders (JOHs), with a general welfare oversight function over their judicial flock. Such part-time (or, strictly, fee-paid) judges and JOHs are encouraged within the Chamber to contact their relevant District Tribunal Judge for advice if needed, whether by telephone, e-mail or simply "popping one's head round the door" in judicial chambers. At bigger and busier tribunal venues, there may be a designated Duty District Judge each day or each week, whose role is to be a point of contact to deal with urgent matters that may arise and generally to 'fire-fight'.

29. I also recognise there is some uncertainty in this particular case as to precisely what happened, and when it happened, in terms of the consultation with the Duty District Judge.

30. In particular, as to the "what happened", the statement that "the Duty District Judge (DDJ) was consulted by the Tribunal" is less than clear. Does it mean that the Tribunal panel as a whole consulted the DDJ? Or does it mean that the Judge alone spoke to the DDJ and perhaps relayed the DDJ's views back to the panel, with or without attribution? Did the conversation (whoever was involved) take place in the Tribunal room or in the DDJ's chambers (either is a possibility, given the telephone hearing was held at the multi-room tribunal venue at Fox Court)?

31. As to the "when", and as Mr Martinez observes, it is not clear at what point during the proceedings that the Duty District Judge was "consulted". It may have been at the stage when the tribunal panel was previewing the case. However, Mr Martinez suggests that the assumption must be that the consultation occurred after the hearing itself had ended. That may well be a reasonable inference. It is even possible that the discussion took place during the First-tier Tribunal's deliberations (if so, so much for the sanctity of the jury room). However, given the date on the decision notice is the day after the telephone hearing, it is also possible that the consultation with the DDJ took place on the following day.

32. In an ideal world it would have been optimal to obtain statements from all those involved to clarify these issues. However, the Tribunal hearing took place on 22 February 2021 and the case file was first referred to me in the Upper Tribunal on 4 November 2022. I took the pragmatic view it was probably unrealistic with that passage of time (more than 18 months) to expect those involved to have a clear recollection (or indeed any recollection) of what had happened when. I will therefore have to proceed on the material that is available, including in particular paragraph [24] of the First-tier Tribunal's statement of reasons.

33. I recognise that both representatives in this appeal take the view that there was a breach of the Senior President's Practice Statement on the composition of tribunals in this case. However, there are three reasons why I am not persuaded I would go that far.

34. The first is because of the uncertainty as to precisely what happened when in this case. This is not a clear-cut case of the breach of the Practice Statement, in contrast with e.g. *GO and HO v Barnsley MBC (SEN)* [2015] UKUT 184. In that case a First-tier Tribunal (comprised of members A, B and C) heard evidence on one day and adjourned part-heard to a second day when the panel consisted of members A, B and D, who decided the appeal. As Upper Tribunal Judge Wright ruled, "the First-tier Tribunal must have the same, no more than three, person constitution *throughout* the appeal proceedings" (at paragraph 43, and see also *MB v SSWP (ESA and DLA)* [2013] UKUT 111 (AAC); [2014] AACR 1). In the present case it is certainly questionable whether the formal constitution of the Tribunal ever included the Duty District Judge.

35. The second is that as a matter of principle the Upper Tribunal should recognise the important advisory role that District Tribunal Judges can properly play in the day-to-day judicial work of the Social Entitlement Chamber.

36. The third (and connected) reason is that it is not intrinsically an error of law for one judge to ask another judge "for a view" in the process of deciding a case. This last point has been the subject of consideration in two recent Upper Tribunal decisions, not referred to by the representatives in this appeal (and I have not sought their comments on either authority, given that in the end we all arrive at the same agreed eventual outcome).

37. The first case is *Midland Container Logistics Ltd* [2020] UKUT 5 (AAC), which concerned three appeals from decisions of the Traffic Commissioners in relation to new regulatory exhaust emissions standards governing heavy goods vehicles. The subject matter was thus a very long way removed from entitlement to PIP. However, there was some procedural common ground in that one of the reasons why the hauliers ('MCL') submitted they had not had a fair hearing before the Traffic Commissioner ('TC') was as follows (at paragraph 45(d), italics as in the original):

> At the conclusion of the public inquiry in MCL, [the TC for the West Midlands] informed the Appellants that prior to coming to his decision, he was going to "*have a word with my colleague in Bristol first of all because .. this is a relatively new type of offence .. of which there is little case law and the Traffic Commissioners, only in the last two or three months, have started to deal with it. .. And we are all anxious, or keen, that operators are treated consistently around the country …* [the Bristol TC] *has dealt with a case which is outwardly similar, in fact the same number of vehicles had AdBlue fitted. But there are some differences .. now I know more about this case I think I am better able to chat over with him the differences between the two cases*". Mr Dixey of Counsel, did not object to the TC's proposal. The Appellants asserted that nevertheless, any information that the TC obtained during such a discussion which had influenced his decision should have been conveyed to the operators to allow them to respond.

38. The Upper Tribunal robustly rejected the submission that there had been any unfairness in this respect (emphasis added):

> 50. Turning now to the criticism made of [the TC for the West Midlands]'s stated intention to consult with [the Bristol TC] prior to coming to a final decision in the case of MCL and without informing MCL of the content of that discussion, we first of all repeat that this was not objected to when it was raised at the end of the public inquiry. *But in any event, there is no procedural unfairness or lack of transparency in two or more judicial office holders considering together how to approach a particular issue so as to ensure consistency*, particularly when, as in these cases, the issues to be determined are new ones (i.e. the use of emulators). Neither are TCs required to inform operators of the content of such discussions. The real issue is whether the ultimate decisions were either wrong in law or on the facts or disproportionate or whether there has been some other procedural unfairness. …

39. The second case is *PD v Secretary of State for Work and Pensions (PIP)* [2021] UKUT 172 (AAC), in which one of the issues was the proper composition of the First-tier Tribunal for a series of appeals against different PIP decisions relating to the same claimant. The Upper Tribunal's decision includes a citation from Volume III of *Social Security Legislation 2020/21* (eds. Rowland and Ward, Sweet & Maxwell, London) at pp.1591-1592 (now p.1121 of the 2022/23 edition) to the effect that "it is no more unfair for a judge to discuss a case with a colleague than it is for a judge to carry out legal research in a text book, provided that, if a new point occurs to the judge as a result of the discussions, the parties are given an opportunity to comment on it." Reference was also made to *R(U) 3/88*, which deals with the proper composition of a panel after an adjournment. Upper Tribunal Judge Poynter then observed as follows:

> 59. In my judgment, whether it is "unfair for a judge to discuss a case with a colleague" will depend on what is said.
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> 60. If the discussion is of a purely legal point, then I agree that it is "no more unfair … than it is … to carry out legal research in a text book".
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> 61. If however, the conversation involves one member of the judiciary alerting another to the existence of relevant evidence of which the former has knowledge that was not gained in the current proceedings, then there is a risk of unfairness that brings the case within the spirit of *R(U) 3/88* and should, in my judgment, lead to the appeal being heard by a differently constituted tribunal.

40. I respectfully agree with that analysis.

41. Accordingly, if the conversation in the present case was confined to considering the proper basis for identifying the start date of a PIP award, then there was in principle nothing irregular in the First-tier Tribunal discussing the matter with the Duty District Judge. Such discussion would be with a view to ensuring consistency of approach across different tribunals.

42. However, this is not to say that I regard paragraph [24] of the First-tier Tribunal's statement of reasons as unproblematic. Indeed, I consider that it demonstrates an error of law in any event. The language of paragraph [24] gives the clear impression that the First-tier Tribunal was in effect abdicating

responsibility for deciding a key issue in the case and contracting out the determination of that issue to the Duty District Judge. Reliance on a third party "in order to ensure that the correct decision was made" as it was put in the statement of reasons is hardly consistent with the concept of judicial independence. The further implication that the Duty District Judge had the final word ("the DDJ confirmed that the Tribunal could decide…") may also be characterised as a breach of natural justice, in that it suggests that the real decision-maker was one who did not hear (or read) all the evidence and submissions in the case. So, although I consider that there was no clear breach of the Practice Statement on the composition of tribunals, I do conclude there was a breach of natural justice.

43. There is one final matter I should mention. Mr Martinez suggests that the determination of a legal matter (such as the correct way under the legislation to determine the start date of a claimant's PIP award) "rests solely with the legally qualified member of the panel". I must disagree. As a matter of general principle, and once the hearing is under way, each member of the First-tier Tribunal has an equal voice on all matters falling within their jurisdiction (e.g. as to whether to adjourn). It is therefore entirely possible for the two non-legal members in a three-person First-tier Tribunal to 'out-vote' the judge on a matter of the proper interpretation of the legislation. In practice, of course, the reality is that non-lawyer panel members may well defer to the judge, in the same way as the non-medics may defer to the doctor member on a medical question (or the non-disability/carer members may, where appropriate, defer to the disability/carer member). In principle, however, the starting point is that they all speak with equal authority on every matter they have to decide.

44. I am satisfied that the First-tier Tribunal erred in law for the natural justice reason set out above. I therefore allow the Appellant's appeal to the Upper Tribunal, set aside (or cancel) the Tribunal's decision and remit (or send back) the original appeal for re-hearing to a new tribunal, which must make a fresh decision. I formally find that the Tribunal's decision involves an error of law on the natural justice ground as outlined above.

45. In determining the point at which the Appellant's entitlement to PIP commenced, the new First-tier Tribunal will need to consider the legislative provisions governing the required period condition for PIP and apply the principles of interpretation and guidance laid down by Judge Jacobs in *AH v SSWP (PIP)*, as discussed above. The new Tribunal should first consider whether all the statutory requirements for entitlement to PIP were made out as at the date of claim. It should then go on to consider whether those conditions continued to be satisfied to the same extent throughout the period up to the date of decision. Where the Appellant is found to score 8-11 points, obviously the required period condition for the standard rate of either component will need to be satisfied before the start date for any award can be identified. A parallel assessment about the required period condition will need to be made as regards the enhanced rate of either component where the Appellant scores 12 points or more.

46. Accordingly, by analogy with *MB v CMEC (CSM)* [2009] UKUT 29, the Tribunal may make a single award of both PIP components which involves a stepped assessment for the two different rates. Purely by way of example – and this is subject to the Tribunal's fact-finding function, not least as regards the required

period condition – the Tribunal might decide that the Appellant was entitled to the standard rate of both components as from the date of claim and then to the enhanced rate of both components from some later date. Alternatively, the new Tribunal might agree with the previous Tribunal as to when the Appellant's entitlement to the enhanced rates commenced, but find that he qualified for the standard rates at some intermediate date after the date of claim. Furthermore, there is no requirement that the awards for each PIP component start on the same date – see by analogy *KN v SSWP (DLA)* [2008] UKUT 2 (AAC), reinforced by the fact there is no equivalent in the PIP legislation to section 71(3) of the Social Security Contributions and Benefits Act 1992 (which precludes payment of both components of DLA for "different fixed periods", meaning different end dates). In effect, it follows that the permutations of possible entitlements may be endless, and depend on rigorous and focussed fact-finding as to the required period condition.

47. On that note, and for completeness, I would add that if necessary I would have found the Appellant's main grounds of appeal made out for the reasons advanced by Mr Martinez, namely that the First-tier Tribunal failed to make sufficient findings of fact as to the effects of the Appellant's disabling conditions as at the date of claim.

Conclusion

48. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision of the tribunal (Tribunals, Courts and Enforcement Act 2007, section 12(2)(a)). The case must be remitted for re-hearing by a new tribunal subject to the directions above (section 12(2)(b)(i)). My decision is also as set out above.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised for issue on 6 March 2023