Neutral Citation Number: [2024] UKUT 372 (AAC) **Appeal No. UA-2024-000328-ESA**

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

SB

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wikeley
Decided on consideration of the papers

Representation:

Appellant:	In person
Respondent:	Mr R J Whitaker, DMA, Department for Work and Pensions

On appeal from:

Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No:	SC233/21/00183
Digital Case No.:	1636815421180689
Tribunal Venue:	Leeds
Decision Date:	25 October 2023

Anonymity: The appellant in this case is anonymised in accordance with the practice of the Upper Tribunal approved in *Adams v Secretary of State for Work and Pensions and Green (CSM)* [2017] UKUT 9 (AAC), [2017] AACR 28.

SUMMARY OF DECISION

KEYWORD NAME (Keyword Number)

Employment and Support Allowance: 40.26 attending medical examination

Judicial summary

This case concerns the requirement under regulation 23 of the Employment and Support Allowance (ESA) Regulations 2008 that a claimant may be called to a medical examination. A claimant who fails without good cause to attend for, or to submit to, such an assessment is to be treated as not having limited capability for work and so will have their ESA claim disallowed. The appellant attended the assessment but answered every question to the effect that his circumstances had not changed. The FTT dismissed his appeal. The Upper Tribunal held that the FTT was entitled to find that the appellant had not submitted to an examination, as he had not meaningfully participated. However, the Upper Tribunal held that the FTT had erred by failing to satisfy itself that the notification letter had been sufficiently clear and unambiguous as to the nature of the obligation and the consequences of non-compliance. The appellant's appeal was allowed, the FTT's decision set aside and remade to the effect that the Secretary of State's disallowance decision was also set aside.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), b(ii) and (4) of the Tribunals, Courts and Enforcement Act 2007, I remake the decision of the First-tier Tribunal. The substituted decision is as follows:

> *The Appellant's appeal is allowed.*
> *The decision made by the Secretary of State on 25/10/2021, disallowing the ESA award from 29/06/2021, is set aside.*

REASONS FOR DECISION

Introduction

1. This appeal to the Upper Tribunal concerns a decision by the First-tier Tribunal (FTT) that the Appellant had not shown good cause for a failure to submit to a medical examination as part of the Work Capability Assessment (WCA). In consequence of that decision, the FTT confirmed the Secretary of State's decision to disallow the Appellant's award of Employment and Support Allowance (ESA). For present purposes the appeal raises two issues.

2. The first issue concerns what is meant by the requirement that a claimant "submit to an examination" by a health care professional (HCP).

3. The second issue involves consideration of whether the invitation on behalf of the Department for Work and Pensions (DWP) requiring a claimant to attend such an examination is sufficiently clear and unambiguous in stating what must be done to comply with it and the consequences of not doing so.

4. Upper Tribunal Judge Poynter summarised the essential principles on imposing a legal obligation in *PPE v Secretary of State for Work and Pensions (ESA)* [2020] UKUT 59 (AAC) as follows:

> 76. If the Secretary of State has the power to impose a legal obligation on claimants to do something, she can impose that obligation on a particular claimant simply by telling that claimant unambiguously that she must do it.

> 77. However, the Secretary of State must use “the language of clear and unambiguous mandatory requirement”. No legal obligation is imposed if either:
>
> (a) the Secretary of State merely invites, advises, or encourages the claimant to do the thing, as opposed to telling her she must do it; or
>
> (b) it is unclear whether the Secretary of State has told the claimant that she must do the thing, as opposed to merely inviting, advising, or encouraging her to do it.
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> 78. Moreover, the requirement to use “clear and unambiguous language” is to be applied strictly. The Secretary of State must be “crystal clear”.

The factual background

5. The essence of the DWP’s case before the FTT was captured in paragraphs 10 and 11 of its response to the Appellant’s appeal:

> 10. The claimant failed to participate in the examination on 28-Jun-2021 and has not shown good cause for the failure. I submit that notice of the time and place of the examination was sent to [the Appellant] in writing at least 7 days prior to the date arranged for the examination.
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> 11. On the call of 25-Dec-2021 [the Appellant] informed the Healthcare Professional that he was recording the call. No prior agreement to this had been sought and I submit the Healthcare Professional rightly and correctly ended the call. A second attempt to complete a work capability assessment on 28-Jun-2021 in which both parties would record the conversation was, I submit, rightly ended by the health care professional due to [the Appellant’s] aggressive manner and insistence on simply stating that his circumstances haven’t changed.

6. The Appellant’s recollection of events, as stated on his Form SSCS1, was rather different:

> I disagree with this decision reasons being nothing has changed in my health apart from getting worse every day. My first telephone assessment was on the 25th January 2021 with [an HCP] who refused to continue with the assessment as I asked to record telephone conversation reasons being because of past mis justice in my appeals. On second telephone assessment dated the 28th of June 2021 again I asked to record the conversation he said this was fine I repeatedly told the advisor my circumstances had not changed in any way apart from getting worse each day through my chronic back pain rheumatoid arthritis and having a heart attack resulting in stents put in and leaving me constantly out of breath this did not matter to the advisor and my benefit was stopped completely on the 25th of October

2021 leaving me with nothing to live on at all. I myself have proof of both of these telephone conversations as evidence regarding this appeal I on both occasions did not terminate either of the calls they were both ended by the advisors.

The legal framework

7. Regulation 23 of the Employment and Support Allowance Regulations 2008 (SI 2008/794) (as amended) provides as follows:

> **Claimant may be called for a medical examination to determine whether the claimant has limited capability for work**
>
> **23.**—(1) Where it falls to be determined whether a claimant has limited capability for work, that claimant may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination in person, by telephone or by video.
>
> (2) Subject to paragraph (3), where a claimant fails without good cause to attend for or to submit to an examination mentioned in paragraph (1), the claimant is to be treated as not having limited capability for work.
>
> (3) Paragraph (2) does not apply unless—
>
> (a) written notice of the date, time and place for the examination was sent to the claimant at least seven days in advance; or
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> (b) that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.

8. Regulation 35 of the ESA Regulations 2013 is in the same terms as regulation 23 of the ESA Regulations 2008. A similar provision exists in the Universal Credit scheme (see regulation 44 of the Universal Credit Regulations 2013 (SI 2013/376), although the notice under regulation 44 need not be in writing).

9. Regulation 23 of the ESA Regulations 2008 is then supplemented by regulation 24:

> **Matters to be taken into account in determining good cause in relation to regulations 22 or 23**
>
> **24.** The matters to be taken into account in determining whether a claimant has good cause under regulations 22 (failure to provide information in relation to limited capability for work) or 23 (failure to attend a medical examination to determine limited capability for work) include—
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> (a) whether the claimant was outside Great Britain at the relevant time;

> (b) the claimant's state of health at the relevant time; and
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> (c) the nature of any disability the claimant has.

The First-tier Tribunal's decision

10. Following a telephone hearing, the First-tier Tribunal's decision notice (when suitably anonymised) read as follows:

> 1. The appeal is refused.
>
> 2. The decision made by the Secretary of State on 25/10/2021 is confirmed.
>
> 3. Mr B has not shown good cause for his failure to submit to a medical examination (as part of a Work Capability Assessment 'WCA') on 28 June 2021 and is, therefore, to be treated as not having limited capability for work. His Employment and Support Allowance award from and including 29 June 2021 is consequently disallowed.
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> 4. In reaching this decision, I am satisfied that the DWP have applied the principles of *PPE v Secretary of State for Work and Pensions (ESA)* [2020] UKUT 59 (AAC). Specifically, it has provided a copy of a specimen notification of the WCA and the consequences of his not participating in the same. Mr B does not dispute that he was notified of the WCA and indeed took part in a call before it was ended by the DWP.
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> 5. I am also satisfied that Mr B's behaviour on the above call amounted to his not submitting himself to a medical examination. I have placed considerable weight on the contemporaneous evidence provided by the DWP which was, to some extent, corroborated by Mr B's oral evidence. He accepted that he persistently answered questions to the effect that his circumstances had not changed.
>
> 6. On the substantive question as to the reason for this position, Mr B stated, in terms, that the DWP already had all the information in order to make a decision on his claim. I accept that he was a claimant who was thoroughly frustrated by his past experiences with the DWP and related appeals. However, this frustration manifested itself in such a way that it was not possible for the Healthcare Professional to carry out a WCA in any meaningful way. I find that it did not amount to a good cause for his refusing to submit himself to a medical examination as part of the WCA, His appeal was, accordingly, refused.

11. The FTT made the following detailed findings in its subsequent statement of reasons (in this extract the Appellant's name has again been anonymised to Mr B and that of his friend to Miss D):

6. Turning to notification under Regulations 28(3) first, it is not in dispute that Mr B was notified on 10 June 2021 of the requirement for him to attend a WCA on 28 June 2021. Indeed, he joined the call. The Tribunal was satisfied that Mr B was given notification both of its time and date together with the consequences of his not attending the WCA. The Tribunal found find that the DWP had applied the principles of *PPE v Secretary of State for Work and Pensions (ESA)* [2020] UKUT 59 (AAC). Specifically, it provided a copy of a specimen notification of the WCA and the consequences of a claimant not participating in the same.

7. In relation to the call itself, Mr B stated in his appeal notice that he repeatedly told the assessor that his circumstances had not changed. He said the same at the hearing. Within the bundle of evidence there is a contemporaneous note about the call on 28 June 2021. That records, amongst other matters, that Mr B was displaying a somewhat aggressive manner [34] but was subsequently described as very hostile [36] in a typed record. Whilst reassurance was offered, Mr B would only answer ‘my circumstances have not changed’ to every question.

8. Mr B disputed that he spoke in an aggressive manner. Miss D who was also present with Mr B at the time, told the hearing that he was not aggressive, although she acknowledged, in terms, that he could be direct on the phone.

9. The Tribunal found that was more likely than not that Mr B would have been direct and abrasive in his dealings with the assessor.

10. However, the Tribunal determined that the issue upon which the appeal turned, was not Mr B’s tone on the call. Rather, it was whether his participation on the call amounted to his submitting himself to medical examination.

11. In repeatedly answering questions to the effect that his circumstances had not changed, the Tribunal found that it did not. Consequently, the Tribunal found that Mr B had not submitted himself to an examination as required by Regulation 23(1). In failing to fulfil this obligation, the Tribunal accepted [the presenting officer’s] position that submitting oneself to a medical examination necessitated some meaningful participation.

12. It is not in dispute that the call on 28 June 2021 was ended by the DWP. However, the Tribunal did not regard that as significant. The call was ended because, by that stage, the assessor had concluded that Mr B was not going to answer the specific questions relating to his WCA. The Tribunal considered that, what had been important, was Mr B’s willingness to answer the questions he was asked when the assessor sought to carry out the WCA.

> 13. The Tribunal went onto consider whether Mr B showed good cause. Mr B considered that the DWP had all the information that it needed to determine his ESA application. He did not feel that he should have been required to answer the questions relating to the WCA. He also referred to a separate and successful appeal that he had made to the Upper Tribunal relating to a previous Tribunal decision of 6 March 2018 [Addition D3 onwards].
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> 14. The Tribunal determined that this decision did not advance his appeal. This is because the Upper Tribunal judgment related to specific matters about the circumstances of a previous ESA award not being renewed and errors about how an earlier Tribunal had dealt with his then appeal. The Tribunal found that it had no bearing on the obligations imposed on him in relation to his WCA, as described above.
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> 15. The Tribunal went onto consider whether Regulations 24(b) or (c) applied. The Tribunal accepted that Mr B suffered from a mental health condition. However, relying upon its medical expertise, the Tribunal found that Mr B's behaviour on the call of 28 June 2021 neither arose from his mental health nor any other disability. Rather, the Tribunal found that Mr B was extremely frustrated about his dealings with the DWP. It found that it was intransigence on his part which caused him to behave the way in which he did.
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> 16. The Tribunal found that Mr B had not shown good cause for failing to attend or submit himself to a medical examination on 28 June 2021. His appeal was, accordingly, refused.

12. The reference to an earlier Upper Tribunal decision was to CE/2221/2018, an unpublished and unreported decision by Deputy Upper Tribunal Judge Najib, allowing an appeal from a previous FTT held on 6 March 2018. The issue in that case was the substantive question as to whether the same Appellant scored sufficient points on the WCA and whether that earlier FTT had before it the relevant documentation. It was not an appeal about a failure to attend or to submit to a medical examination.

The grounds of appeal and the parties' submissions in outline

13. The Appellant drafted his own reasons for appealing to the Upper Tribunal. He argued that the medical member of the panel had not asked any questions about his mental health and that the FTT as a whole had not taken into consideration the evidence he had provided. He also expressed the view that one of the FTT judge's comments in the course of the hearing had been inappropriate.

14. I granted permission to appeal, and in doing so made the following observations:

> 1. The Appellant was asked to attend a telephone WCA. The Appellant answered all questions to the effect that his circumstances had not changed. The DWP took the view that he had not submitted himself to the assessment and so disallowed his ESA claim. I notice the MRN asserts that the Appellant *failed to attend/participate in* a medical examination, whereas the regulations refer to *failing to attend for or submit to* a medical examination. It may be nothing turns on this choice of words.
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> 2. I am not sure there is much mileage in the grounds of appeal cited by the Appellant. However, this is an inquisitorial jurisdiction, meaning that I can identify potential points of my own initiative. There are two reasons why I consider it right in this case to grant permission to appeal.
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> 3. The first is whether the WCA 'invitation notice' is sufficiently clear and unambiguous. As Upper Tribunal Judge Poynter noted in *PPE v SSWP (ESA)* [2020] UKUT 59 (AAC) in the context of imposing a legal obligation:
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>> 57. There is a clear line of authority in the case law of the Social Security Commissioners, the Upper Tribunal and the higher courts that, before the Secretary of State can subject a claimant to adverse consequences for failing to do something—whether that something is to provide information, notify a change of circumstances, or to attend a specified place and undertake a specified activity—she must tell the claimant in the most unambiguous terms: (a) that it must be done; and (b) what it is that must be done. In short, there needs to be "the language of clear and unambiguous mandatory requirement" and there needs to be "crystal" clarity.
>
> 4. It may well be the notice is sufficiently clear about the consequences of <u>failing to attend</u>, e.g. "You must attend your assessment. If you do not attend your benefit may be stopped". However, is the notice sufficiently clear about what is meant by <u>subjecting oneself to a medical assessment</u> and the consequences of not doing so?
>
> 5. Second, did the First-tier Tribunal direct itself properly as to what is meant by subjecting oneself to a medical assessment? The FTT said this necessarily involves "some meaningful participation". On the face of it the Appellant did not refuse to answer any questions – arguably he just repeated that there had been no change in his circumstances.

15. Mr Whitaker, the Secretary of State's representative in these Upper Tribunal proceedings, has filed a helpful written submission supporting the appeal on one of these two grounds. He takes the two points that I identified in reverse order by

way of response. As to the latter, he argues that the FTT did make sufficient findings of fact and provide adequate reasons for its conclusion that the Appellant did not "submit to an examination". However, as to the former point, Mr Whitaker submits that the FTT erred in law by failing adequately to consider whether a proper warning had been given for any failure to submit to an examination. Mr Whitaker further contends that the decision to remove the Appellant's entitlement to benefit on the basis of his failure to submit to an examination cannot be justified, given the absence of evidence of a clear and unambiguous warning. Mr Whitaker invites the Upper Tribunal to set aside the FTT's decision and to remake the decision originally under appeal in the terms that the Secretary of State's decision of 25 October 2021 (disallowing entitlement to ESA from 29 June 2021) is also set aside.

16. The Appellant has not made any further substantive comments by way of reply. I recognise that he may not agree with all of Mr Whitaker's reasoning, but he is presumably content with the overall outcome of his appeal to the Upper Tribunal.

Analysis

Did the Appellant "submit to an examination"?

17. In granting permission to appeal, I asked whether the FTT had properly directed itself as to what was meant by the requirement under regulation 23(2) that a claimant must "submit to an examination". Mr Whitaker submitted that the FTT had correctly directed itself on this issue and was entitled to find that the Appellant had not complied with that requirement. His reasoning was as follows:

> 2. .... I submit that the Tribunal did make sufficient findings and give adequate reasoning as to why they felt the claimant did not 'submit to an examination'. To every question that the HCP asked, the claimant answered "*my circumstances have not changed*". This was not an attempt to be helpful or succinct, but rather, as the Tribunal found, it was an attempt to obstruct the process, due to his "*intransigence*", (SOR, paragraph 15). That was apparent not just from the HCP call which led to this decision, but also from a previous one where he was "*aggressive*", "*spoke loudly over [the HCP]*" and told the HCP they were all "*liars*" (p31, 32). The appellant may have had frustrating experiences with the DWP in the past but this does not allow them to derail a proper process of information gathering. Whilst to certain questions an answer of "*my circumstances have not changed*" might be satisfactory, a HCP will generally need to delve into much greater detail about the relevant activities, asking for specifics about how a condition affects the claimant, how often and in what circumstances. Indeed, it may be that a claimant believes themselves to be unchanged since a previous

assessment, but they have materially improved or worsened. What is required from the HCP is a detailed examination of the current health condition of the claimant, sufficient to give the decision maker as much pertinent information as possible to make their decision, and this was prevented by the responses of the claimant. As stated in [2007] NISSCSC C1/07-08(IB), paragraph 12:

"*The nature and extent of the examination is a matter for the examining doctor. Neither a claimant, nor a tribunal, nor a Commissioner can dictate the nature of that examination. It is fundamentally a medical matter and for the judgment of the clinician in each individual case. The tenor of the legislation is that the claimant must submit or undergo the examination. This indicates that control is not with the claimant. It would be strange indeed were it otherwise as a claimant does not necessarily have any medical knowledge to enable him to say what is appropriate of otherwise*".

3. Regulation 23(2) states that good cause must be considered when looking at a 'failure to submit'. The Tribunal did consider the good cause question and I submit was justified in its conclusion that the behaviour of the claimant did not originate from a mental health condition, but was rather a result of the claimant's attitude to the process:

"The Tribunal accepted that Mr B suffered from a mental health condition. However, relying on its medical expertise, the Tribunal found that Mr B's behaviour on the call of 28 June 2021 neither arose from his mental health or any other disability". (SOR, paragraph 15).

4. Judge Mitchell, in *PH v SSWP (ESA)* [2016] UKUT 119 (AAC), described the 'failure to submit' as referring to "*a person who fails to co-operate with the examination so as to thwart its purpose*" (paragraph 22). As the Tribunal stated, what was important was "*meaningful participation*" (SOR, paragraph 11), and the behaviour of the claimant meant that "*it was not possible for the Healthcare Professional to carry out a WCA in any meaningful way*" (decision notice, paragraph 6). I submit the Tribunal made adequate findings and gave sufficient reasoning on this point and did not err in law.

18. I agree with Mr Whitaker's analysis. The FTT correctly directed itself in the terms identified by Upper Tribunal Judge Mitchell in *PH v Secretary of State for Work and Pensions (ESA)* [2016] UKUT 119 (AAC), namely that failing to "submit to" a medical examination refers to "a person who fails to co-operate with the examination so as to thwart its purpose" (paragraph 22). This understanding is also consistent with the approach taken by Commissioner Turnbull in the incapacity benefit appeal *CIB/849/2001* (at paragraph 11):

> … The purpose of the medical examination was of course to enable the adjudication officer, with the benefit of the doctor's report, to determine whether the Claimant passed the all work test. The condition which the Claimant wished to impose on his submitting to an examination – i.e. that the doctor's report should not be passed to any layman, including an adjudication officer - rendered an examination useless for the purpose for which it was required. I have no doubt that, by imposing such a condition, the Claimant was failing to submit himself to a medical examination within the meaning of Reg. 8(2). A person "fails" to submit himself to an examination not only if he absolutely refuses to be examined, but also if he seeks to impose as a condition of being examined a term which would render the examination useless for the purpose for which it is required.

19. This approach is also consistent with the underlying policy intention. As Commissioner Rowland observed in *CIB/2011/2001*, "the integrity of the social security system depends on there being appropriate tests in place" (at paragraph 16).

20. Having correctly identified itself as to the relevant law, the FTT then found sufficient facts and gave adequate reasons for its decision on this point. It follows that this ground of appeal does not succeed.

Was the invitation notice sufficiently clear and unambiguous?

21. However, the other ground of appeal succeeds for the reasons advanced by Mr Whitaker. In short, while the invitation letter included a clear and unambiguous warning as to the consequences of failing to attend the assessment, the same could not be said as to the consequences of failing to submit to an examination, a matter on which the notification letter was effectively silent. The absence of any clear and unambiguous warning about the consequences of failing to submit to an examination was compounded by the lack of clarity in the verbal warning given on the day of the assessment. Accordingly, I agree with Mr Whitaker's following analysis of these various communications:

> 5. On the first ground of appeal, I note that the appointment letter does not contain a statement explaining that a 'failure to submit' to the assessment could result in a disallowance of an ESA award. The warning in the letter is attached to the failure to attend assessment ("*You must attend your assessment. If you do not attend your benefit may be stopped*", p47). The Tribunal did consider the decision of *PPE v SSWP (ESA)* [2020] UKUT 59 (AAC), that Judge Wikeley cited when granting permission to appeal:

> *"The Tribunal found that the DWP had applied the principles of PPE…Specifically, it provided a copy of the specimen notification of the WCA and the consequences of a claimant not participating in the same". (*SOR, paragraph 6*)*
>
> The decision of PPE says "*there needs to be the language of clear and unambiguous mandatory requirement" and there needs to be "crystal clarity*"" (paragraph 57. Therefore, I submit the Tribunal erred in law in failing to adequately examine whether there was a proper warning given for a failure to submit to an examination.
>
> 7. The evidence in the bundle demonstrates does a verbal warning was given to the claimant about his failure to participate on the day of the assessment itself by the HCP. The decision maker spoke to CHDA (the assessment provider) and was informed by CHDA that (based on notes taken from the assessment) the claimant "*was informed that failure to participate may affect his assessment entitlement*" (p37).
>
> 8. I submit that the verbal statement given, in these circumstances, was not clear and unambiguous (i.e. the claimant must meaningfully participate in the assessment otherwise it may affect their entitlement). The notes in the bundle recorded by the HCP indicate a warning it would be an incomplete assessment and the process that may follow in terms of DWP – "*client informed I need to obtain information in order to produce report for DWP and unable to state what DWP will do now with case*" (p34) and "*Advised I would not be able to complete an assessment if unable to ascertain any information. Advised assessment would be abandoned and case returned to DWP*" (p36). These do not provide evidence of a statement of 'crystal clarity' that if he did not answer the questions meaningfully his entitlement could end.
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> 9. In the absence of evidence of a clear and unambiguous warning given to the claimant I submit that the decision to remove the claimant's entitlement for the failure to submit cannot be justified.

22. This ground of appeal accordingly succeeds.

Conclusion

23. 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 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Under section 12(2)(b)(ii) I re-make the original decision under appeal as follows:

The Appellant's appeal is allowed.

The decision made by the Secretary of State on 25/10/2021, disallowing the ESA award from 29/06/2021, is set aside.

Coda

24. There is a separate difficulty with the FTT's decision in this case which has only recently come to my attention. There is some doubt as to the composition of the FTT panel. The fact that the FTT's decision notice is written in the first person singular suggests that the judge was sitting alone. However, the heading to both the decision notice and the statement of reasons refers to both the judge and a medical member. The statement of reasons also expressly relies on its "medical expertise" (paragraph 15). In addition, the judge's refusal of permission to appeal stated that the doctor was present: "She was referred to in my introduction at the hearing but did not feel that it was necessary to ask you any questions in relation to your mental health" (paragraph 3). On balance, therefore, it seems more likely that the FTT that heard this appeal consisted of a judge and a medical member.

25. However, Judge Gray held in *CH v Secretary of State for Work and Pensions (ESA)* [2017] UKUT 6 (AAC) that an appeal against a decision that a claimant has failed to attend or to submit to a medical examination does not fall within the category of cases requiring a doctor to be on the tribunal panel – see the (then) *Practice Statement: Composition of Tribunals in Social Security an Child Support Cases in the Social Entitlement Chamber on or after 01 August 2013,* paragraphs 5(b) and 6. On the face of it, the FTT in this case was therefore not properly constituted. As noted, this possibility has only just come to light. Given the FTT's decision is in effect being set aside by agreement on other grounds, there seems little point in now delaying matters further by inviting the parties' submissions on this jurisdictional question.

Nicholas Wikeley
Judge of the Upper Tribunal

Authorised by the Judge for issue on 19 November 2024