



**IN THE UPPER TRIBUNAL**

**Appeal No. UA 2024-000351-PIP**

**ADMINISTRATIVE APPEALS CHAMBER**

**[2024] UKUT 428 (AAC)**

On appeal from the First tier Tribunal  
Social Entitlement Chamber

**Between:**

**Secretary of State for Work and Pensions**

Appellant

-v-

**IR**

Respondent

**Before: Deputy Upper Tribunal Judge Hocking**

Decision date: 17 December 2024

Decided on consideration of the papers

**Representation:** written submissions only

**Appellant:** Uroosa Ali and Jessica Cowan DWP

**Respondent:** no submissions

## **DECISION**

**The decision of the Upper Tribunal is to allow the appeal.** The decision of the First-tier Tribunal (Social Entitlement Chamber) made on 15 May 2023 under number SC285/22/02547 was made in error of law.

Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remake the decision to the effect that IR is entitled to the Daily Living Component and the Mobility Component at the enhanced rates from 18 August 2021 in place of 02 September 2019. As IR has been entitled to the enhanced rate of the Daily Living Component since an FtT decision on 19 December 2018 (an award left unchanged by a mandatory reconsideration on 6 August 2020) this decision will only affect his entitlement to the Mobility Component.

## REASONS FOR DECISION

### Summary

1. The Appellant's appeal to the Upper Tribunal succeeds.

### Background

2. I take the history of IR's claim for a personal independent payment (PIP) from the documents in the FtT's bundle.
3. On 11 May 2017 IR made a claim for PIP. On 26 October 2017 that claim was refused, a decision upheld on mandator reconsideration on 21 December 2017.
4. IR appealed that refusal on 16 February 2018.
5. On 19 December 2018, (the Appellant says 19 July 2018 but that seems to be an error, the decision notice is at page 210 of the FtT bundle) the Tribunal awarded the claimant an award of enhanced Daily Living and standard Mobility, in both cases with effect from 22 November 2017 to 21 November 2020..
6. IR filled in a new claim form for PIP on 2 September 2019. The Appellant says that was in response to a review of his award by the Secretary of State. That is not obvious from the FtT papers but in the absence of any account to the contrary from IR I must accept the Appellant's account.
7. That form led to a decision on 15 June 2020 that IR was not entitled to PIP at all. On 6 August 2020 after mandatory reconsideration he was awarded PIP at the enhanced rate for Daily Living and standard rate for Mobility. This was an ongoing award from 16 June 2020.
8. On 21 January 2021 a further mandatory reconsideration notice was generated. This again awarded enhanced Daily Living and standard Mobility components of PIP and was an ongoing award from 16 June 2021.
9. On 13 September 2021 IR again filled out form AR1 UI "how your disability affects you" as part of an annual review of his award. That lead to a decision on 18 November 2021 that IR was entitled to the enhanced rate for Daily Living and standard rate for Mobility with effect from 18 November 2021 for an ongoing period. That decision was subject to a mandatory reconsideration decision dated 21 June 2022 that left the award unchanged in period and amount.

10. IR's award was subject to annual review, generating a decision on 23 August 2022 that, again, he was entitled to the enhanced rate for Daily Living and standard rate for Mobility, with effect from 23 August 2023 for an ongoing period.
11. IR had appealed the 18 November 2021 decision, and on 12 May 2023 the FtT awarded him the enhanced rate of the daily living component and the enhanced rate of the mobility component with effect from 2 September 2019 for an indefinite period. The FtT said this about the start date of its award:

*The Tribunal started the date of the award from 2 September 2019 because this is when the Respondent began the review process of the decision dated 19 December 2018. The subsequent decision dated 15 June 2020 was a revision of the decision dated 19 December 2018. The decision dated 6 August 2020 was a Mandatory Reconsideration of the decision date 15 June 2020 and the award commenced from the 16 June 2020. The Mandatory Reconsideration which the Respondent has set out as being the decision under appeal dated 18 November 2021 revised the decision dated 6 August 2020 which is a revision of the decision dated 15 June 2020. The Tribunal considered that at the time the Respondent began the review process, the Appellant was entitled to the enhanced rate of the mobility component and started the date of the award from this time. The Tribunal maintained the length of the award, this being an ongoing award.*

12. Permission to appeal was granted by tribunal Judge Beale on 18 January 2024. A form UT2 giving the grounds for appeal was filed dated 13 March 2024.
13. On 26 April 2024 IR was directed to file a response to the appeal within one month of the date on which the directions were sent to him. No submissions were received and on 2 July 2024 a chasing letter was sent requiring submissions within 14 days. A further chasing letter as sent on 2 September 2024. No submissions being received, direction were made on 25 September 2024 for the Appellant to file submissions on what it says is the correct date from which the FtT should have made its award, and on the issue of remaking the decision or remitting it. Submission dated 10 October 2024 were received stating that the correct date would have been 18 August 2021, and inviting the Upper Tribunal to remake the decision.

Proceeding in the absence of submissions from the Respondent

14. No party has suggested that a hearing would be necessary or desirable in this case, and I am satisfied that it is appropriate to deal with the case on the papers. I am also satisfied that the Respondent has been made aware of the case and has been given ample opportunity to make submissions. Fairness requires that he is given that opportunity but it does not require that he takes it. Bearing in mind the overriding objective and in particular the need to avoid delay, so far as is compatible with proper consideration of the issues, and mindful of the

Respondent's learning and other disabilities, I am satisfied that it is fair and appropriate to deal with the matter today.

The appeal

15. The issue on appeal is the date from which IR was entitled to the enhanced level of Mobility payment. That in turn depends on the date of supercession for that decision. S10(5) of the Social Security Act 1998 provides (as a general rule and subject to regulations) that supercession takes effect from the date on which "the application" was made. By virtue of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013/381, where supercession takes place because of a change of circumstances, and it is advantageous to the claimant, it takes effect on the date on which the relevant change of circumstances occurs or is expected to occur. (schedule 1 paragraph 12). However if the change of circumstances is notified more than one month after it occurred then the superceding decision takes effect from the date of notification (schedule 1 paragraph 14)
16. I note from IR's form SSCS1 that the decision that he identified as being under appeal was the decision dated 21 June 2022. That decision was the mandatory reconsideration of a decision dated 18 November 2021, which was itself informed by IR's form dated 13 September 2021. According to the Appellant's submission that form was prompted by a contact from IR on 18 August 2021.
17. On that basis then the date on which "the application" was made would be 18 August 2021 (there being no evidence before me to suggest that the one month grace period allowed under the 2013 regulations would apply). This is the date for which the Appellant argues.
18. For the date taken by the FtT to be correct, it would have had to be adjudicating on a dispute on entitlement going back to 2 September 2019. One problem with that analysis is that any evidence post dating 2 September 2019 would have been irrelevant (unless it goes to establish the state of affairs at 2 September 2019.) But the FtT themselves refer at a number of points to evidence or events post dating 2 September 2019, and it is not at all obvious that this was done only for the purpose of establishing the situation on 2 September 2019.
19. Nor can I agree with the FtT's characterisation of the application form of 2 September 2019 "commencing the review process" which then continued, as one unbroken process, through all of the steps set out above. Why, if so, was another "how your disability affects you" form filled out in September 2021? And why does the decision letter of 18 November 2021 make no reference to an application on 2 September 2019, or any earlier decision?
20. Finally some significance has to be given to the fact that IR himself identified the decision under challenge as being one that related back to the September 2021 form.

21. The only tenable reading of the documentation is that any application begun by the form dated 2 September 2019 had been concluded by, at the latest, the submission of the new form in September 2021. That later submission was clearly an invitation to the Appellant to determine entitlement to PIP based on what was being said in that new form, and not the continuation of revision, supersession, or any other process that might look back to an application two years previously.
  
22. Because there is only one available conclusion on the date of supersession, it is right that I remake the decision rather than remit it for a hearing which, on my analysis could serve no useful purpose.
  
23. I therefore remake the FtT decision of 12 May 2023, (issued on 15 May 2023) by substituting 18 August 2021 in place of 02 September 2019 as the date from which IR was entitled to the Daily Living Component and the Mobility Component at the enhanced rates. As IR has been entitled to the enhanced rate of the Daily Living Component since an FtT decision on 19 December 2018 (an award left unchanged by a mandatory reconsideration on 6 August 2020) this decision will only affect his entitlement to the Mobility Component.

**Judge Hocking**  
**Deputy Judge of the Upper Tribunal**  
authorised for issue on 17 December 2024