



**THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

**UPPER TRIBUNAL CASE No: UA-2024-000552-PIP
[2025] UKUT 70 (AAC)**

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

Between:

WB

Appellant

-v-

Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Judith Butler

Decided without a hearing.

Representation:

Appellant: Not represented

Respondent: L. Ropel, DMA, Department for Work and Pensions

DECISION

As the decision of the First-tier Tribunal involved the making of an error of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 and the case is REMITTED to the First-tier Tribunal for rehearing by a fresh tribunal.

DIRECTIONS

- A. The case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.**
- B. The new tribunal should not involve any of the panel members previously involved in considering this appeal on 14 July 2023.**
- C. The new tribunal must not take account of circumstances that were not obtaining at the time the (then) Secretary of State made his decision about WB's entitlement to personal independence payment**

on 15 December 2022: see section 12(8)(b) of the Social Security Act 1998 and *R(IB) 2/04* at paragraph 188. Later evidence is admissible, provided it relates to the circumstances at the time of the decision: see *R(DLA) 2/01* and *R(DLA) 3/01*.

- D. If the parties have any further written evidence to put before the tribunal, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.**
- E. The tribunal hearing the remitted appeal is not bound in any way by the decision of the previous First-tier Tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome from the previous tribunal.**
- F. Copies of this decision, the permission to appeal decision, the Secretary of State's submission dated 09 September 2024 and WB's reply dated 03 October 2024 shall be added to the bundle to be placed before the First-tier Tribunal hearing the remitted appeal.**

These Directions may be supplemented by later directions by a tribunal judge, registrar, or case worker, in the Social Entitlement Chamber of the First-tier Tribunal.

REASONS FOR DECISION

What this appeal is about

1. WB made a claim for personal independence payment (PIP) on 14 February 2022. This was his third PIP claim. The Department for Work and Pensions ("DWP"), acting on behalf of the Secretary of State, asked WB to take part in a medical assessment by telephone on 08 December 2022. Having received a copy of the PA4 assessment report, DWP decided to award WB 11 points for PIP daily living activities and 8 points for PIP mobility activities. The effect of this was that DWP awarded WB the standard rate of both the daily living and mobility components of PIP.

2. On 14 July 2023, a First-tier Tribunal (the "**Tribunal**") determined WB's appeal at Sutton at a face-to-face hearing. The Tribunal confirmed DWP's decision and refused WB's appeal.

3. In a decision dated 29 July 2024, I gave WB permission to appeal against the Tribunal's decision, on the basis it was arguable with a realistic (as opposed to fanciful) prospect of success that the Tribunal made an error of law in one or more of the following ways:

- (a) Procedural irregularity relating to the hearing on 14 July 2023: the audio recording of the appeal hearing indicated it lasted for 16 minutes and 13 seconds. The Tribunal spent just over 4 minutes dealing with daily living activities, when it asked WB about managing his medication, engaging with

other people and making budgeting decisions. The Tribunal also refused WB's appeal in relation to the daily living activities of preparing food, managing toilet needs, washing and bathing, reading and dressing and undressing, but did not ask him questions about those activities during the hearing. The recording did not indicate the Tribunal asked WB whether he still wanted to pursue those activities. It appeared from the Statement of Reasons that the Tribunal treated them as still disputed;

- (b) Adequacy of factual findings and / or reasons regarding Preparing food: At the medical assessment on 08 December 2022, WB told the healthcare professional that he was not cooking at present. The healthcare professional recording hearing WB scream in pain when moving during the telephone call and that he struggled to stand / sit during it and was in a lot of pain reaching for his medications. In **SSWP v GM (PIP) [2017] UKUT 268 (AAC)**, the Upper Tribunal confirmed descriptor 1.e (needs assistance or supervision when preparing food) is not appropriate for a situation in which another person carries out the entire process of preparing a meal. The Tribunal awarded WB descriptor 1.e (confirming DWP's award of it) but did not address which parts of preparing a simple meal WB could carry out and the parts where he would require assistance from another person;
 - (c) Adequacy of factual findings and / or reasons regarding Engaging with other people face to face: The Tribunal did not address whether WB could establish relationships with other people. This is one part of the three-part definition of "engage socially" in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 ("the 2013 regulations"). The examples used by the Tribunal in its Statement of Reasons appeared either to involve existing relationships or what might count as reciprocal exchanges with people; and
 - (d) Adequacy of factual findings and / or reasons regarding Moving around: WB gave oral evidence that he was in pain and every step he took would cause him to experience it. When asked, WB agreed that the distance he had walked from a bus stop to the Tribunal venue was something like 30-40 metres. Paragraph 14 of **PS v SSWP (PIP) [2016] UKUT 0326 (AAC)** confirms a Tribunal should consider the effect of pain when moving around. Although the Tribunal wrote that it had taken account of regulation 4(2A) of the 2013 regulations in making its decision, it did not address WB's evidence that he experienced pain whenever he walked, and what impact that had on his ability to move around (i.e., walk) to an acceptable standard.
4. L. Ropel is the Secretary of State's representative in these proceedings and I refer to them below as "SSWP's representative". They support the appeal to the Upper Tribunal in a helpful written submission dated 09 September 2024.
5. The SSWP's representative invites the Upper Tribunal to set aside the decision of the First-tier Tribunal as containing material errors of law and to remit (which means,

send back) the appeal for rehearing by a different First-tier Tribunal panel, with appropriate directions for deciding it afresh.

6. In summary, the SSWP's representative supports the appeal on all four of the grounds set out at paragraph 3 above. They submit that the Tribunal failed to make adequate findings of fact or provide adequate reasoning about WB's ability to engage with other people face to face, and the Tribunal failed to make adequate findings of fact or provide adequate reasoning about the effects of WB's pain on his ability to prepare food and to move around. The SSWP's representative also submits the Tribunal failed to make adequate findings of fact for the other activities of daily living they addressed in the Statement of Reasons and did not achieve its inquisitorial duty.

7. Having seen the Secretary of State's representations, WB makes representations about the fact that he has subsequently been awarded the daily living and mobility components of PIP at the enhanced rate (from 2023 to 2029), and considers he should have been awarded it for the earlier time period covered by his appeal. WB also argues that he has been disabled since 2021, and was in pain from 2019 to 2021, but did not claim benefits. WB describes the impact of his medical conditions on him, in particular the nature of the pain he experiences. He also refers to concerns about the medical care he has received.

Why there was no oral hearing of this appeal

8. Neither party asked for an oral hearing of this appeal. I took their preferences into account. Having considered the electronic file and the audio recording of the First-tier Tribunal hearing on 14 July 2023 and given the parties agree the Tribunal made errors of law in its decision, I decided the interests of justice did not require an oral hearing. Ordering an oral hearing of the appeal will simply delay the resolution of WB's appeal and it is clear from his representations that WB wants it resolved quickly. I therefore decided to determine the appeal on the papers.

My decision

9. At the permission stage, I only needed to be persuaded that it was arguable with a realistic (as opposed to fanciful) prospect of success that the tribunal had made an error of law in a way that was material.

10. At this substantive stage, I need to be satisfied on the balance of probabilities that the tribunal did make an error or errors of law that were material.

11. I find that the tribunal made material errors of law for the reasons summarised in paragraphs 3 and 6 above and as set out more fully in the submissions from the SSWP's representative.

12. It is appropriate to set aside the Tribunal's decision and I direct this at paragraphs 21 to 23 below. However, I also wish to make some observations about the hearing on 14 July 2023, reflecting the matter summarised at paragraph 3(a) above.

The hearing on 14 July 2023

13. The audio recording confirms the appeal hearing on 14 July 2023 lasted for 16 minutes and 13 seconds. The recording starts while the Tribunal Judge was speaking and offering WB adjustments to manage his conditions during the hearing. It is not possible to know what was said before that point. It is, however, clear that the recording started before the Tribunal introduced itself or took evidence from WB.

14. Listening to the hearing recording, it is also apparent WB was experiencing pain during the hearing. Once the Medically Qualified Tribunal Member had finished asking WB about his medical conditions and the PIP mobility activities (about 7 and a half minutes after the hearing had started), the Judge stated she knew WB was in pain and the Tribunal would just ask him a few questions about daily living activities. WB asked to move around during the Disability Qualified Tribunal Member's questions, and, without hesitation, the Tribunal confirmed he could do so.

15. It is clear the Tribunal was aware that WB was experiencing pain during the hearing. The Tribunal members may have thought that limiting their questions was the best way to avoid exacerbating his pain. However, the Tribunal did not address several (namely five) of the activities where WB disputed DWP's assessment. This meant the Tribunal did not give itself the time and opportunity to carry out its inquisitorial duty effectively. It could not explore and resolve the conflicts in the evidence it went on to identify in its Statement of Reasons (for example, why WB's PIP2 questionnaire and appeal form described different needs to those recorded in the PA4 report).

16. WB had been awarded 11 points for daily living activities. He was on the cusp of an enhanced rate award (for which the threshold is 12 points). He challenged DWP's decision about eight of the daily living activities. The Tribunal only covered three of them, and did so in a period of 4 minutes. As an observation, given the issues WB had raised and having listened to the hearing recording, I consider 4 minutes was, in itself, too brief a time period to address those three activities adequately.

17. The SSWP's representative makes the following submissions about the approach the Tribunal took:

"4.12. Additional to the points discussed above, the Tribunal have failed in their inquisitorial duty to make adequate findings of fact for descriptors they refused as part of the appellants appeal (preparing food, managing toilet needs, washing and bathing, reading and dressing).

4.13. The Tribunal ought to have further investigated the grounds in which the claimant was appealing. As noted by UT Judge Butler, the Tribunal only spent 4 minutes of the 16-minute hearing speaking to the appellant about their daily living activities (Para 5, page 30, UT Bundle). The Tribunal could have benefitted from using their inquisitorial duty to resolve discrepancies between the appellants SSCS1 form and the evidence they provided in the bundle in the hearing (highlighted at paragraphs 21, 25 of the SOR).

4.14. Although, the SOR does explain why the Tribunal determined that the appellant did not satisfy the requirements for the descriptors above, it is

clear that they have solely relied on the evidence submitted in the physical evidence bundle. If they had properly investigated these descriptors at the hearing, the Tribunal may have been provided with further evidence from the appellant that may have changed the award of benefit awarded to the appellant.

4.15. By failing to obtain further evidence and relying on the evidence already provided in the bundle I submit that the Tribunal have failed in their inquisitorial function, this amounts to an error of law.”

18. I agree with these observations by the SSWP’s representative. Furthermore, the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (SEC) Rules 2008 requires a Tribunal to deal with cases fairly and justly. Delay is to be avoided but only so far as compatible with proper consideration of the issues. The Tribunal must ensure, so far as practicable that parties are able to participate fully in the proceedings.

19. In WB’s appeal, proper consideration of the issues meant addressing at the appeal hearing all the activities where he had challenged DWP’s decision. This does not mean those activities needed to be addressed at length. It may take only a few questions to explore certain activities where the surrounding evidence is clear and the Tribunal understands an appellant’s position effectively.

20. In WB’s appeal, the Tribunal needed to hear evidence from him, and explore whether (and if so, how) he could carry out all the PIP activities in dispute, at the relevant time. The Tribunal should also have invited him to comment on what the PA4 report stated. Failing to take those steps meant WB did not receive a fair hearing. It made the Tribunal’s proceedings procedurally irregular in a way that affected their fairness and it was capable of making a material difference to the appeal outcome.

Disposal

21. It is appropriate to exercise my discretion to set aside the Tribunal’s decision dated 16 February 2024 under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. Having done so, section 12(2)(b) of that Act provides that I must either remit the case to the First-tier Tribunal with directions for its reconsideration or remake the decision.

22. The Tribunal failed to hear evidence and make adequate factual findings about a number of the PIP daily living activities and the PIP mobility activity of moving around. It is therefore necessary for further facts to be found. The First-tier Tribunal is best placed to evaluate the evidence, including using its medical and disability expertise, and to make appropriate findings of fact.

23. I therefore remit the appeal for rehearing before a new First-tier Tribunal. It will make a fresh decision about WB’s entitlement to PIP.

24. Although I have set aside the Tribunal's decision of 14 July 2023, I am not making any findings, or expressing any view, about the level of WB's entitlement to PIP. The next tribunal will need to hear evidence and make its own findings of fact.

Authorised for issue on: 20 February 2025

Judith Butler
Judge of the Upper Tribunal