Neutral Citation Number: [2025] UKUT 131 (AAC)
Appeal No. UA-2024-000168-PIP

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

CJ

Appellant

- v -

THE SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

Before:	**Upper Tribunal Judge Church**
Hearing date:	17 March 2025
Mode of hearing:	Oral hearing at Field House, London

Representation:

Appellant:	Mr Matthew Ahluwalia of counsel, instructed by Osbornes Solicitors LLP
Respondent:	Mr Jack Anderson of counsel, instructed by the GLD

On appeal from:

Tribunal:	The First-tier Tribunal (Social Entitlement Chamber)
Tribunal Case No:	SC154/23/01552
Tribunal Venue:	Fox Court
Decision Date:	17 October 2023

SUMMARY OF DECISION

REVIEWS, REVISIONS AND SUPERSESSIONS (30); Revision: general (30.7); Supersession: general (30.9)
TRIBUNAL PROCEDURE AND PRACTICE (34); Tribunal jurisdiction (34.10)

In this decision the Upper Tribunal decides that the First-tier Tribunal was entitled to find that a letter the Appellant received which purported to communicate a decision on her entitlement to Personal Independence Payment was not itself a decision, and it did not establish that the decision it described had been made.
The judge was entitled to conclude that there was therefore no decision under section 8 or 10 of the Social Security Act 1998 for the Appellant to appeal, and he was therefore bound to strike out the proceedings for lack of jurisdiction.

Further, even had the Secretary of State made the decision that the letter purported to communicate, that decision would not have carried a right of appeal because it amounted to a decision not to revise or supersede the previous decision, and the only appealable decision was the decision she had decided neither to revise nor supersede. Appeal dismissed.

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 dismiss the appeal.

REASONS FOR DECISION

Factual background

1. The claimant, who had previously been in receipt of Disability Living Allowance, made a claim to Personal Independence Payment (**"PIP"**) as a transfer claimant in 2018. By a decision dated 2 July 2018, which was revised on 18 October 2018, the Secretary of State awarded the claimant a PIP with both components at the standard rate from 18 July 2018 (being the day after the termination of her Disability Living Allowance award) to 16 September 2021 (as revised, the **"original decision"**). The claimant was unhappy with the level of her award and requested a mandatory reconsideration. The original decision was confirmed on mandatory reconsideration on 6 November 2018. The claimant appealed the original decision to the First-tier Tribunal, but on 16 August 2019 the First-tier Tribunal dismissed her appeal and confirmed the original decision. The claimant sought permission to appeal the First-tier Tribunal's decision, but permission was refused.
2. On 7 November 2020, the Secretary of State decided to extend the claimant's PIP award until 16 June 2022 due to the Covid-19 pandemic. This change must have been by way of a supersession of the original decision, presumably on the grounds of a relevant change of circumstances, so it amounted to a new decision to award the claimant a PIP with both components at the standard rate from 18 July 2018 until 16 June 2022. I will call this new decision the **"extension decision"**. The claimant did not challenge the extension decision.
3. On 16 July 2021 the Department for Work and Pensions notified the claimant that it had commenced a 'planned review' of her PIP entitlement. The ultimate outcome of that review was a decision made on 18 May 2022 (and revised on 11 July 2022) to supersede the extension decision, replacing it with a new decision to award her a PIP with both components at the enhanced rate from 16 July 2021 until 17 May 2025 (the **"enhanced rate decision"**).
4. However, on 22 July 2021 the Department for Work and Pensions sent the claimant a letter (the **"22 July letter"**) which stated:

   "Thank you for asking us to look at your Personal Independence Payment (PIP) again… I've looked at your PIP and decided:

> I can award you the standard rate of £60 a week to help with your daily living needs. You can get this from 18 July 2018 to 16 June 2022.
> I can award you the standard rate of £23.70 a week to help with your mobility needs. You can get this from 18 July 2018 to 16 June 2022."

5. The claimant appealed to the First-tier Tribunal in relation to the 22 July letter. The Secretary of State made an application to strike out the claimant's appeal. On 17 October 2023 District Tribunal Judge Ly held a preliminary hearing at Fox Court, which the claimant attended by telephone and Mr Hammond attended in person as a presenting officer for the Secretary of State. That hearing was to consider the strike-out application.

The parties' positions before the First-tier Tribunal

6. Both parties found the 22 July letter puzzling.
7. The claimant said she didn't take any steps to appeal the extension decision, she made no request for her PIP to be looked at again (whether by way of a request for revision or supersession), and the 22 July letter was unsolicited. However, she maintained that "whatever the reason" for the 22 July letter, it either amounted to, or evidenced, a decision made on behalf of the Secretary of State, and it gave rise to a fresh right of appeal to the First-tier Tribunal. The claimant said she applied for a mandatory reconsideration of the decision comprised in or evidenced by, the 22 July letter. She said her representative had received verbal confirmation from someone at the Department for Work and Pensions that a mandatory reconsideration decision had been issued, but no mandatory reconsideration decision letter had been received.
8. Mr Hammond said a "thorough" search of the Department for Work and Pensions' system had disclosed no decision made on 22 July 2021 in relation to the claimant's PIP entitlement, or indeed any evidence of any mandatory reconsideration exercise. The only explanation he could think of was that the 22 July letter might have been prompted by the claimant challenging the extension decision. However, the claimant denied having made such a challenge.
9. The significance that the parties accord to the 22 July Letter is very different.
10. The claimant said that either the 22 July letter is itself a decision, or it evidences that a decision has been made in the terms recorded in it. The Secretary of State says that the 22 July letter must have been generated in error, and neither constitutes nor evidences any decision giving rise to any right of appeal to the First-tier Tribunal.

The First-tier Tribunal's decision

11. District Tribunal Judge Ly found that the 22 July letter was issued in error. There was no decision made on 22 July 2021 in respect of the claimant's entitlement, whether under either section 8 or section 10 of the Social Security Act 1998. There was, therefore, no right of appeal to the First-tier Tribunal. District Tribunal Judge Ly struck the proceedings out for lack of jurisdiction (the **"strike out decision"**).

The ground of appeal, the permission stage and the parties' submissions

12. The claimant applied to the First-tier Tribunal for permission to appeal to the Upper Tribunal. Her case essentially repeated what she had argued at the 17 October hearing: on 22 July 2021 a decision maker for the Secretary of State made a decision on her entitlement to a PIP and that was an appealable decision.
13. On 19 December 2023 District Tribunal Judge Ly granted permission to appeal on the basis that he was persuaded that the claimant's single ground of appeal was arguable with a realistic prospect of success, and it was therefore arguable with a realistic prospect of success that the strike out decision was in material error of law.
14. The matter came before me and I ordered an oral hearing of the substantive appeal, which took place on 17 March 2025 at Field House, London. I am grateful to Mr Ahluwalia and Mr Anderson for their clear submissions and for their helpful and co-operative approach at the hearing before me.

Legal framework

15. Section 8 of the Social Security 1998 Act provides:
"(1) Subject to the provisions of this Chapter, it shall be for the Secretary of State-
(a) to decide any claim for a relevant benefit
[…]
(3) In this Chapter "relevant benefit" […] means any of the following, namely-
[…]
(baa) personal independence payment."
16. Section 9 provides:
"(1) Any decision of the Secretary of State under section 8 above or section 10 below may be revised by the Secretary of State-
(a) either within the prescribed period or in prescribed cases or circumstances; and
(b) either on an application made for the purpose or on his own initiative;
and regulations may prescribe the procedure by which a decision of the Secretary of State may be so revised."
17. Section 10 provides:
"(1) Subject to [subsection (3) […] below, the following, namely-
(a) any decision of the Secretary of State under section 8 above or this section, whether as originally made or as revised under section 9 above; […]
(aa) any decision under this Chapter of the First-tier Tribunal or any decision of the Upper Tribunal which relates to any such decision,
may be superseded by a decision made by the Secretary of State, either on an application made for the purpose or on his own initiative."
18. Section 12 provides:
"(1) This section applies to any decision of the Secretary of State under section 8 or 10 above (whether as originally made or as revised under section 9 above) which –
(a) is made on a claim for, or on an award of, a relevant benefit, and does not fall within Schedule 2 to this Act; or
(b) is made otherwise than on such a claim or award, and falls within Schedule 3 to this Act."

19. Section 17 provides:
"(1) Subject to the provisions of this Chapter and to any provision made by or under Chapter 2 of Part 1 of the Tribunals, Courts and Enforcement Act 2007, any decision made in accordance with the foregoing provisions of this Chapter shall be final; and subject to the provisions of any regulations under section 11 above, any decision made in accordance with those regulations shall be final.
(2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of-
(a) further such decisions […]"
20. Rule 8 of the Tribunal procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the **"FtT Rules"**) provides:
"**8.-**
[…]
(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal-
(a) does not have jurisdiction in relation to the proceedings or that part of them; and
(b) does not exercise its power under rule 5(3)(k)(i)(transfer to another court or tribunal) in relation to the proceedings or that part of them."

Analysis

21. The genesis of the 22 July letter remains something of a mystery. On the face of it, it appears to be a decision letter reporting a decision made on behalf of the Secretary of State under section 10 of the Social Security Act 1998 to supersede an earlier decision of the Secretary of State, but District Tribunal Judge Ly didn't have to take the 22 July letter at face value. He had to evaluate the evidence for himself and make findings based on the evidence as he assessed it. That is precisely what he did. He explained his thinking in this regard in §18 of the decision notice:
"[…] Given [the claimant] had not asked for a review (whether that be a request for revision or supersession) of her PIP award, and there was no record, or obvious reason why the Secretary of State would have taken such action on her own initiative, the Tribunal's view was that the only rational conclusion, based on the evidence before it, was that the 22/07/21 letter was issued in error."
22. The finding that the letter was issued in error was open to the judge on the evidence before him. There is no basis for the Upper Tribunal to interfere with that element of his decision making.
23. Having made that finding of fact, the judge decided that there was not, therefore, any decision made under section 8 or section 10 of the Social Security Act 1998. That finding follows inexorably from his first finding, and it too was clearly open to him.
24. Having found that there was no decision made under section 8 or section 10 of the Social Security Act 1998, the judge was then bound to conclude that he lacked jurisdiction to consider the appeal and to strike the proceedings out under rule 8(2)(a) of the FtT Rules.
25. Further, even had the judge found that the 22 July letter evidenced a decision made on behalf of the Secretary of State on the claimant's entitlement, he would still have been bound to strike out the proceedings.

26. CIS/4/2003 concerned a refusal by the Secretary of State to revise a previous decision under regulation 3(5)(a) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999), which provides for revision of a decision of the Secretary of State which was made under section 8 or 10 of the Social Security Act 1998 and which arose from an official error. In that appeal the panel of Social Security Commissioners decided that there was no right of appeal against such a decision not to revise, and the decision which the Secretary of State had refused to revise was, under section 17 of the Social Security Act 1998, "final".
27. In R (CS) 5/09, a case which concerned a refusal by the Secretary of State to vary the calculation of a non-resident parent's liability to child support, Judge Jacobs rejected the argument that it was necessary to infer a right to appeal against a decision not to revise under the Child Support Act 1991, because the legislation provides for an appeal against the original decision, "and that is sufficient to include the original decision when a decision has been made not to revise it" (see §16). The same principal applies here.
28. Turning again to the facts of this case, even were it accepted that a decision maker had reached a decision in the terms described in the 22 July letter, that decision simply confirms every element of the extension decision made on 7 November 2020. It is a decision neither to revise nor to supersede the extension decision. In other words, to leave the extension decision in place exactly as it was. As such, the only decision against which a right of appeal lay was the extension decision, and that was not the decision under appeal in the proceedings before the Tribunal.

Conclusion

29. For these reasons, I conclude that the strike out decision involved no material error of law.
30. The appeal is dismissed.

Thomas Church
Judge of the Upper Tribunal

Authorised by the Judge for issue on 17 April 2025