



Neutral Citation Number: [2025] UKUT 267 (AAC)
Appeal No. UA-2025-000283-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

KW

Appellant

- v -

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: In person

Respondent: Helen Hawley, DMA Leeds

On appeal from:

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC246/24/00045

Digital Case No.: 1700922047321084

Tribunal Venue: Grimsby (on the papers)

Decision Date: 3 June 2024

SUMMARY OF DECISION

PERSONAL INDEPENDENCE PAYMENT - GENERAL (41)

The First-tier Tribunal made a number of errors of law in assessing the claimant's entitlement to Personal Independence Payment. The claimant has diagnoses of autistic spectrum disorder and schizotypal personality disorder and also experiences hyperacusis (noise sensitivity). The Tribunal failed to consider whether the claimant's use of ear plugs to reduce noise when cooking, washing and bathing constituted an 'aid' and also failed to consider whether he was able to carry out those activities to an acceptable standard for the purposes of reg 4(2A) given his evidence as to pain experienced when undertaking those activities as a result of noise. The Tribunal also erred in law in discounting the claimant's evidence as to his difficulties in engaging with others face-to-face and planning and following journeys on the basis that he had no diagnosed mental health condition, without explaining why it did not accept that his

difficulties were a result of his diagnoses of autism and schizotypal personality disorder.

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)(i) and (3) 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 3 June 2024.**
- 3. The appellant is reminded that the new First-tier Tribunal can only consider the appeal by reference to their health and other circumstances as they were at the date of the original decision by the Secretary of State under appeal (namely 23 August 2023).**
- 4. If the appellant has any further written evidence to put before the First-tier Tribunal relating to that period, including any further medical evidence, this should be sent to the relevant HMCTS regional tribunal office within one month of the issue of this decision.**
- 5. 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

Introduction

- 1. The appellant appeals against the First-tier Tribunal's decision of 3 June 2024 refusing the appellant's appeal against the decision of the Secretary of State of**

23 August 2023 that the appellant was not entitled to Personal Independence Payment (PIP) under Part 4 of the Welfare Reform Act 2012 (WRA 2012) and The Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) (the PIP Regulations).

2. The Secretary of State had awarded the appellant 2 points on daily living activity 9 (engaging with others face to face) and 0 points on the mobility activities. The First-tier Tribunal confirmed the Secretary of State's decision and dismissed the appeal.
3. The First-tier Tribunal's Statement of Reasons (SoR) was issued on 2 November 2024 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 28 January 2025. The appellant filed the notice of appeal to the Upper Tribunal on 27 February 2025 (in time). I granted permission to appeal in a decision issued on 23 April 2025.
4. The Secretary of State supports the appeal and both parties are content for me to issue a decision on the papers. I am satisfied that is appropriate given the lack of dispute and the nature of the issues.

Why I am allowing the appeal

5. The notice of appeal included a large number of complaints about the First-tier Tribunal's decision. I granted permission to appeal on an unlimited basis, but observed that it was in particular arguable that the First-tier Tribunal had erred in law in the following respects:-
 - a. *Daily living activity 1 (preparing food)* – As the appellant has to wear earplugs in order to carry out the activity of cooking, it is unclear to me why at least 2 points have not been awarded for requiring an aid. The First-tier Tribunal has not addressed this in its reasons. The First-tier Tribunal has also failed to make any findings about the level of pain that the appellant is in while cooking as a result of noise. The First-tier Tribunal arguably erred in law by failing specifically to address the requirements of regulation 4(2A) in relation to this activity.
 - b. *Daily living activity 2 (washing and bathing)* – As I read the evidence in the bundle, the appellant does have to wear earplugs for washing and bathing (that was my inference as he did not refer to removing them for this purpose). Further, the appellant confirms in his notice of appeal that this is indeed the case. As it is, it seems to me to be arguable that the First-tier Tribunal in this respect reached an irrational finding of fact and has arguably erred in law in failing to award the appellant at least 2 points for requiring an aid for this activity. Further (again), the First-tier Tribunal has also failed to make any findings about the level of pain that the appellant is in while carrying out the activity of washing and bathing as a result of noise. The First-tier Tribunal arguably erred in law by failing specifically to address the requirements of regulation 4(2A) in relation to this activity.

- c. *Daily living activity 9 (engaging with others face to face)* – The First-tier Tribunal awarded 2 points for requiring prompting as a result of his Asperger’s condition. The First-tier Tribunal decided to award no further points on the basis that he “*does not have a diagnosed mental health condition*” and there is “*no indication that he suffers from overwhelming psychological distress when engaging with other people*”. The Tribunal suggests that his problems with engaging may be “*due to his personality and the fact that he is a natural recluse*”. It is arguable that the First-tier Tribunal has erred by:
- i. Failing to deal with the appellant’s evidence about the effect of his hyperacusis on his ability to engage with people;
 - ii. Failing to consider whether what he describes could amount, at least on the majority of days (regulation 7(1)(a)) to overwhelming psychological distress. Even on his own account to the HCP, the appellant describes leaving the house and engaging with others to the minimal extent he does on only a minority of days in the week;
 - iii. Failing to consider the appellant’s ability to engage with others in social contexts; ability to engage with professionals when necessary is not sufficient. This activity is dealing with a person’s ability to meet and engage with others face to face in a social context. This means considering whether the individual can, to an acceptable standard, engage face to face in a social context with adults they do not know well, including whether they can (a) interact with others in a contextually and socially appropriate manner; (b) understand body language and (c) establish relationships. See, eg., *SF v SSWP (PIP)* [2016] UKUT 543 (AAC) at [9]-[10] and *HA v SSWP (PIP)* [2018] UKUT 56 (AAC) at [13]-[19].
- d. *Mobility activity 1 (planning and following journeys)* – Essentially the same points as I have identified above in relation to daily living activity 9 also apply in relation to mobility activity 1. The Tribunal has arguably erred in failing to consider whether the appellant is able to plan and follow journeys on the majority of days (regulation 7(1)(a)) or whether his sensitivity to noise means that he would suffer overwhelming psychological distress if he did so.

6. I added that:

....the First-tier Tribunal in this case decided to proceed on the papers for the reasons it gave at paragraph [6]. It also checked at the end of its deliberations that it was still satisfied it was fair to make a decision on the papers. It is not therefore in my judgment arguable that the First-tier Tribunal erred in law in proceeding on the papers (cf *DT v SSWP (UC)* [2019] UKUT 268 (AAC) at [8] per Judge Wright). However, I observe that many of the matters that I have identified above as giving rise to

arguable errors of law below would probably have been avoided if the First-tier Tribunal had adjourned to allow the appellant an opportunity to attend the hearing, or if the appellant had requested a hearing in the first place (as is his right). An appellant who opts to have their case dealt with on the papers always runs the risk that a Tribunal will make an adverse decision because they have not had the benefit of receiving fuller evidence from an appellant as they would if the appellant attended the hearing.

7. In response to the appeal, the Secretary of State has produced a full submission which in fact identifies further potential errors of law. At the permission stage, I was applying an arguability threshold. At this stage, I am making a final decision as to whether the First-tier Tribunal has actually erred in law in this case. In my judgment, it has erred in law in all the respects I identified in my grant of permission to appeal.
8. In addition, in the light of the Secretary of State's submissions, I am further persuaded that the First-tier Tribunal also erred in law in the following respects, which it seems to me I need to identify in order to ensure that the same errors are not committed by the Tribunal at the remitted hearing:
 - a. The Tribunal places weight in the decision in relation to daily living activity 9 on the fact that the appellant does not have a diagnosed mental health condition that might require social support. While it might be true in the narrow sense that the appellant does not have a diagnosed mental health condition, the Tribunal does not go on to deal with the fact that the appellant does have diagnoses of autistic spectrum disorder and schizotypal personality disorder, both of which are conditions that may cause significant social impairment and which it can readily be seen might be such as to result in a need for social support. The Tribunal's reasons were inadequate in stating that social support was not required simply because the appellant did not have a diagnosed mental health condition.
 - b. Further, the Tribunal appears to have left out of account that the HCP in their consultation report dated 05/08/2023 [p.55] records the claimant's evidence that he *"...feels depressed because of his hyperacusis...causes low mood...He is under GP care for his mental health - last spoke with GP January 2023"* and that the claimant stated in his letter requesting a mandatory reconsideration dated 22/09/2023 that he is *"...yet to receive an appointment for psychiatric services, so I can't provide any more evidence from a psychiatrist."* [p.150]. The HCP also recorded that the claimant has suicidal thoughts: *"...in last few months. No intention. GP is not aware. HP has tried multiple times to try and contact GP but unsuccessful. UE1 form has been filed in and sent to GP practice."* Again, the Tribunal's reasons were inadequate in simply stating that he did not have a diagnosed mental health condition without taking into account the evidence that he was seeking treatment for

significant mental health issues, albeit that he had not yet been successful in obtaining much treatment.

- c. The fact that the Tribunal had failed to understand the potential significance of the appellant's autism and personality disorder is further underscored by its assessment of him (in relation to daily living activity 9) as being a "natural recluse and prefers his own company". That reasoning is in my judgment perverse in the absence of any reasons explaining why the Tribunal considers the claimant's social difficulties are a matter of choice rather than the result of his obviously relevant diagnosed conditions of autism and schizotypal personality disorder. The Tribunal needed to consider whether the claimant can engage to an acceptable standard in a social context with other people he does not know well, including whether he can engage with others in a contextually and socially appropriate manner; understand body language and establish relationships, as per the guidance provided in the decisions *SF v SSWP (PIP) [2016] UK UT 543 (AAC)* (paragraphs 6-8) and *HA v SSWP (PIP) [2018] UKUT 56 (AAC)* (paragraphs 13-19). There was ample evidence before the Tribunal about the impact of these conditions on the appellant. The Secretary of State's response to the appeal identified the following:

"...there was evidence before the FtT that the claimant finds engaging with other people face-to-face difficult due to cognitive difficulties relating to his ASD and Aspergers syndrome. I note that the HP records in the consultation report dated 02/08/2023 [p.57] following a telephone assessment with the claimant that he reports that *"...he finds it hard to engage because of his Asperger's – would avoid eye contact."* In a previous consultation report dated 12/09/2017 [pp.75-104], which was conducted face-to-face with the HP they record the following information from the claimant with regards to daily living activity 9:

"He does not go out to socialise as a result of his conditions which stops him wanting to mix with others. He has difficulty engaging with others." [p.82]

The HP records the following observations of the claimant during the face to face examination:

"...long pauses between communication...Information was extremely difficult to obtain...He had difficulty engaging...withdrawn...reduced facial expression. Some difficulty coping at interview...Poor rapport...Poor eye contact...Needed prompting." [p.84]

4.15 It is noteworthy, that there appears to be no evidence within the appeal bundle before the FtT that would indicate there has been any improvement in the claimant's ability to engage with

other people face-to-face since 2017. It is notable that the consultation report 02/08/2023 recording the claimant's evidence appears to suggest that he is leaving home and engaging other people to a minimal extent and certainly not on majority of days. In light of this evidence ... should not the FtT have used their inquisitorial duty to determine whether on the majority of days the claimant may experience overwhelming psychological distress whilst engaging with other people face-to-face?"

- d. The Tribunal also stated in connection with daily living activity 1 and mobility activity 1 that he did not have any problems with cognition, memory or concentration. In each case, the Tribunal bases this assessment on the absence of specific medical evidence to that effect, but that is not by itself a sufficient basis for rejecting the appellant's own evidence of difficulties in these respects. In the PIP2 questionnaire form dated 01/05/2023 [pp.6-52] the claimant reports that his hyperacusis makes cooking food difficult as he tries to avoid making any noise and that *"Occasionally, I leave things cooking and they burn."* [p.15]. The claimant also reports at p.51 problems with his: *"...working memory, time management, and sleep hygiene. For example, I have occasionally left gas hobs running until alerted by a smoke alarms and I have left doors unlooked, in spite of trying to implement strategies that avoid doing those things."* The HCP recorded in the consultation report dated 02/08/2023 [pp.54-74] that the claimant reports having a *"poor memory"* [p.55] and that *"He makes things like jacket potatoes – simple things. He does not cook from scratch. He wears ear defenders over filters – he does not like noise."* [p.56] The Secretary of State further comments: *"It is noteworthy that the FtT in reaching this conclusion has failed to address or comment upon the claimant's evidence at pp.51 and 55 where he reports having a poor working memory and difficulties with time management due to his ASD or the Planned Care Assessment Summary dated 31/03/2016 [pp.105-108] in which the claimant was diagnosed with ASD and also with a differential diagnosis of Schizotypal Personality Disorder and Simple Schizophrenia."*

Conclusion

9. The First-tier Tribunal's decision thus involved multiple errors of law. I set the decision aside and remit it for fresh determination by a new Tribunal in accordance with the directions above.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 22 June 2025