



**Neutral Citation Number: [2025] UKUT 288 (AAC)**

**Appeal No. UA-2024-001779-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**MA**

**Appellant**

**-v-**

**Secretary of State for Work and Pensions**

**Respondent**

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

**Representation:**

**Appellant:**

Ms Claire Messenger, Oxfordshire Welfare Rights

**Respondent:**

Ms Lauren Foody, Decision Making and Appeals (DMA)  
Leeds

**On appeal from:**

**Tribunal:**

First-tier Tribunal (Social Entitlement Chamber)

**Tribunal Case No.:**

SC302/23/00219

**Digital Case No.:**

1674040630298049

**Tribunal Venue:**

High Wycombe

**Decision Date:**

24 June 2024

**SUMMARY OF DECISION**

**6.10 Claims and Payments: other; 41.1 Personal Independence Payment:  
general**

The Secretary of State refused to award a personal independence payment on the basis that the claimant did not satisfy the conditions related to presence in Great Britain, having taken an extended trip to India. However, between the date he made his claim and the date of the Secretary of State's decision, the claimant returned to

Great Britain. The Upper Tribunal allowed the claimant's appeal because the Secretary of State and the Tribunal failed to consider the circumstances up to the date of the Secretary of State's decision to refuse his claim. **GE v Secretary of State for Work and Pensions (ESA)** [2017] UKUT 145 (AAC) and **AM v Secretary of State for Work and Pensions (UC)** [2022] UKUT 242 (AAC) followed.

*Please note that 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

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) of the Tribunals, Courts and Enforcement Act 2007 (the "**2007 Act**"). The decision is **REMADE** under section 12(2) (b)(ii) of the 2007 Act in the following terms:

"The decision of the Secretary of State made on 29 July 2022 refusing the Appellant's claim to a personal independence payment was in error of law and is set aside.

The Appellant is not entitled to a personal independence payment from 20 December to 8 April 2022 (inclusive) because he did not satisfy the condition as to presence in Great Britain.

However, the Appellant did satisfy the conditions as to presence in Great Britain from 9 April 2022.

The Secretary of State shall now determine whether the Appellant satisfied the other conditions of entitlement to a personal independence payment from 9 April 2022.

Such determination shall be based on matters as they stood in the period up to and including 29 July 2022."

## REASONS FOR DECISION

### What this appeal is about

1. This appeal is about the need for a decision maker assessing entitlement to benefit to consider the circumstances of a claimant up until the date of their decision.

### Background

2. The facts relevant to this appeal are not in dispute. The Appellant (to whom I will refer as the "**claimant**") was in receipt of a Personal Independence Payment. On 17 April 2021 he left the UK to go to India, intending to stay 3 to 4 weeks. On 23 April 2021 India was placed on the UK's 'red list' for the purposes of travel restrictions in place due to the Covid pandemic. This meant that the claimant was unable to return to the UK.
3. On a date which is not entirely clear, but is not material to this appeal, the claimant's previous award of Personal Independence Payment came to an end after the

application of the rules relating to temporary absence from Great Britain. On 20 December 2021 the claimant contacted the Secretary of State to enquire about making a new claim. This enquiry appears to have been treated as the date of claim on the basis that on 12 January 2022 (within a month of the initial enquiry) the claimant submitted an online claim form providing the further information required by the Secretary of State to process his claim.

4. On 09 April 2022 the claimant returned to Great Britain.
5. On 29 July 2022, a decision maker for the Secretary of State decided that the claimant was not entitled to a Personal Independence Payment because he did not meet the residence conditions of entitlement, having been living outside the UK (in India) from 17 April 2021 until 09 April 2022 (the **“SoS Decision”**).
6. The claimant’s mother sadly passed away shortly after the claimant’s return to the UK, necessitating another trip to India from 25 June 2022 until 23 October 2022.
7. The claimant didn’t agree with the SoS Decision and requested a mandatory reconsideration. However, the SoS Decision was confirmed on reconsideration. The claimant appealed to the First-tier Tribunal.
8. On 24 June 2024, Tribunal Judge Jackson of the First-tier Tribunal sitting alone at High Wycombe (the **“Tribunal”**) dismissed the claimant’s appeal and confirmed the SoS Decision (the **“FtT Decision”**).

### The permission stage

9. The claimant sought permission from the First-tier Tribunal to appeal to the Upper Tribunal on several grounds, but on 12 November 2024 District Tribunal Judge Read of the First-tier Tribunal granted permission to appeal limited to a single ground, being:

“The First-tier Tribunal erred in law because it looked at whether the conditions of entitlement were met at the date the claim was made and not as it was required to do, at the date it was decided. This is relevant because [the claimant] returned to the UK on 09/04/2022, a date falling after he claimed PIP but before the decision was made by the Respondent on 29/07/2022. In making this argument s12(8) Social Security Act is relied upon, together with case law (**TS (by TS) v SSWP (DLA); EK (by MK) v SSWP (DLA)** [2020] UKUT 284 (AAC) and **GE v SSWP** [2017] AACR 34).”

10. The matter came before me and I made Case Management Directions, directing the parties to make submissions on the appeal and to indicate whether they requested an oral hearing.

### The positions of the parties

11. Ms Foody, on behalf of the Secretary of State, indicated support for the appeal on the basis that the FtT Decision was in error of law for the reasons identified as arguable in the grant of permission. She invited me to set the FtT Decision aside and to remit the matter to be reheard by another tribunal.
12. Ms Messenger, on behalf of the claimant, agreed that the First-tier Tribunal erred in law in the way that Judge Read said at the permission stage that it might have

done. She encouraged me to set aside the FtT Decision but to remake the decision, rather than remit it to the First-tier Tribunal, which would introduce unnecessary delay.

13. Neither party requested an oral hearing.

14. Given the degree of agreement between the parties, I decided that the interests of justice did not require an oral hearing.

### The law

15. The Welfare Reform Act 2012 (the **"2012 Act"**) introduced the new benefits of universal credit and personal independence payment.

16. Section 77 of the 2012 Act provides for a personal independence payment to be payable to a person subject to satisfaction of conditions of entitlement. Section 77(3) provides:

"A person is not entitled to personal independence payment unless the person meets prescribed conditions relating to residents and presence in Great Britain."

17. Regulations 16 and 17 of the Social Security (Personal Independence Payment) Regulations 2013 (the **"PIP Regulations"**) set out the prescribed conditions referred to in section 77(3) of the 2012 Act:

#### **"Conditions relating to residents and presence in Great Britain**

**16.** - Subject to the following provision of this Part, the prescribed conditions for the purposes of section 77(3) of the [2012 Act] as to residence and presence in Great Britain are that on any day for which C claims personal independence payment C –

(a) is present in Great Britain;

(b) has been present in Great Britain for a period of, or periods amounting in aggregate to, not less than 104 weeks out of the 156 weeks immediately preceding that day;

(c) is habitually resident in the United Kingdom, the Republic of Ireland, the Isle of Man or the Channel Islands; and

(d) is a person –

(i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum act 1999; or

(ii) to whom, by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, section 115 of that act does not apply to the purposes of personal independence payment."

**"17, - (1)** Where C is temporarily absent from Great Britain, C is treated as present in Great Britain for the purposes of regulation 16(a) and (b) for the first 13 weeks of absence.

(2) C is temporarily absent if, at the beginning of the period of absence, C's absence is unlikely to exceed 52 weeks."

18. Regulations 18 and 19 provide further instances in which absence from Great Britain is to be disregarded, covering medical treatment and particular types of employment overseas. Neither of these regulations applies in this case, as the claimant was not travelling for medical reasons or for employment reasons.
19. There are other conditions of entitlement, including those relating to the scoring of points in respect of difficulties with the activities described in Schedule 1 to the PIP Regulations, but these are not relevant for the purposes of the current appeal.
20. The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (the "**Claims and Payments Regulations**") set out how a claim for a personal independence payment must be made and when it is treated as having been made. Regulation 11 of the Claims and Payments Regulations states in paragraph (1) the claim for a personal independence payment must be made:
- "(a) in writing on a form authorised by the Secretary of State for that purpose and completed in accordance with the instructions on the form;
  - (b) by telephone call to the telephone number specified by the Secretary of State; or
  - (c) by receipt by the claimant of a telephone call from the Secretary of State made for the purpose of enabling a claim to personal independence payment to be made,"
21. Regulation 11 (4) states that a claim made by telephone in accordance with paragraph (1) is properly completed if the Secretary of State is provided during that call with all the information required to determine the claim, and the claim is defective is not so completed. Regulation 12 sets out how to calculate the date on which a personal independence payment claim is made, including where the claim is defective. Paragraphs (1) and () of regulation 12 provides:
- "(1) subject to paragraph (4), where a claim for personal independence payment is made in accordance with regulation 11 the date on which the claim is made is –
  - (a) in the case of the claim in writing made by means of an electronic communication in accordance with the provisions set out in Schedule 2, the date on which the claim is received at the appropriate office;
  - (b) in the case of the claim made by telephone, the date on which a claim made by telephone is properly completed; or
  - (c) where a person first notifies an intention to make claim and provided that a claim made in writing produced other than by means of electronic communication is properly completed and received at the appropriate office designated by the Secretary of State in that claimant's case within one month or such longer period as the Secretary of State considers reasonable of the date of first notification, the date first notification,
- or the first day in respect of which the claim is made later than the above.
- (2) in the case of a claim which is defective by virtue of regulation 11(3) or (4)
-

(a) subject to sub- paragraph (b) and paragraph (4), the date of claim is to be the first date on which the defective claim is received or made but is treated as properly made in the first instance in accordance with regulation 11(6);

(b) the date of claim is to be the date of first notification of an intention to make claim where a claim made by a person to paragraph (1)(c) applies is defective but is treated as properly made in the first instance in accordance with regulation 11(6)."

22. The Social Security Act 1998 (the "**1998 Act**") makes provision for a right of appeal against decisions of the Secretary of State in relation to claims under Part V of the Social Security Contributions and Benefits Act 1992 to the First-tier Tribunal.

23. Section 12(8) of the 1998 Act provides:

"In deciding an appeal under this section, the First-tier Tribunal –

(a) need not consider any issue that is not raised by the appeal; and

(b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made."

### **Why I have allowed the appeal**

24. While it is apparent from the Tribunal's statement of reasons that the Tribunal directed itself to the relevant statutory provisions concerning entitlement to a personal independence payment, it is equally apparent that when considering whether the claimant was entitled to a personal independence payment, it fixated on the claimant's circumstances as at the deemed date of his claim, ignoring the important principle that a claimant's circumstances must be considered down to the date of the decision, just as the decision maker for the Secretary of State had done.

25. In **GE v Secretary of State for Work and Pensions (ESA)** [2017] UKUT 145 (AAC); [2017] AACR 34, Judge Poynter held:

*'54. I accept it will sometimes be possible to say that if a claimant does not have a particular right of residence at the date of claim she probably will not have it at the date of decision either. For example, it is extremely unlikely that a claimant who does not retain worker status when she claims ESA will somehow retain it ten days later when the claim is decided.*

*55. However, that does not change the general principle that decision-makers can and must take into account changes in a claimant's circumstances between the date of claim and the date of the decision.*

*56. That principle is axiomatic and it is therefore difficult to cite direct legislative authority for it. However it is implicit in section 12(8)(b) of the Social Security Act 1998, which prevents the F-tT from considering circumstances that did not obtain at the date of the decision under appeal. It is also inherent in regulation 3(9)(a) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999/991) - and the equivalent provisions of the other sets of Decisions and Appeals Regulations - which prevents the Secretary of State from revising a decision under the "any grounds" power conferred by regulation 3(1) on the basis of a "relevant change of circumstances which occurred since the decision had effect". It follows that a relevant change of*

*circumstances which occurred before the decision had effect can be taken into account on an "any grounds" revision. That, in turn, only makes sense if the original decision maker could also have taken that change into account.*

*57. The ability to take into account a change in circumstances that occurs between the date of a claim and the date that claim is decided cuts both ways. The claimant who has not retained worker status in the example in [54] above may have married another EU national who does retain that status during the period between claim and decision. If so, he may have acquired a right of residence as a family member from the date of the wedding. Equally, an ESA claimant with a right of residence may get better during that period and return to work, thereby losing entitlement to benefit.*

*58. There is no reason in law why the first of those changes of circumstances should be treated differently from the second. In all claims for benefit, whether the claimant satisfies the conditions of entitlement falls to be assessed on a daily, or sometimes weekly, basis from the earliest date covered by the claim until the date on which the claim is decided. If a claimant does not satisfy those conditions when she first claims but does satisfy them from some later date (before the date of decision) then the correct decision is to award benefit from the date on which the conditions were first satisfied. If she did satisfy the conditions at the start of the claim but ceased to do so before the claim is decided, the correct decision is to award benefit up to, but not after, the date of the change. All this is elementary and it applies in right to reside cases as it does in others.'*

26. Additionally, it was held in paragraph 81 of Judge Jacobs' judgement in **AM v Secretary of State for Work and Pensions (UC)** [2022] UKUT 242 (AAC):

*"It is possible for the decision-maker to decide that entitlement begins only after the date of claim but before the date of decision. This does not affect the analysis. The relevant period does not change, but the decision-maker is able to award from a later date in the period. This is a result of the claim subsisting until it is decided. That was decided in **R(S) 1/83** at [10] and is assumed by section 8(2)(a) of the 1998 Act.*

27. The second basis on which a personal independence payment can be awarded from a date after the date of claim is the advance award provision in regulation 33 of the Claims and Payments Regulations, which provides:

*"(1) Where, although a person does not satisfy the requirements for entitlement to personal independence payment on the date on which the claim is made, the Secretary of State is of the opinion that unless there is a change of circumstances the person will satisfy those requirements for a period beginning on a day ("the relevant day") not more than 3 months after the date on which the decision on the claim is made, the Secretary of State may award personal independence payment from the relevant day subject to the condition that the person satisfies the requirements for entitlement on the relevant day."*

28. In effect, then, the 'down-to-the-date-of-decision' principle allows an adjudicating authority to consider the claimant's entitlement during the period down to when the claim is decided, and then regulation 33 allows it to consider the three months after that.

29. In the case at hand, the claim was decided on 29 July 2022, when the decision maker in effect disallowed the claim on the ground that the claimant did not satisfy the condition of entitlement in section 77(3) of the 2012 Act (see the First-tier Tribunal bundle at pages 653-4). By virtue of the 'down-to-the-date-of-decision' principle, the First-tier Tribunal could consider the claimant's entitlement down to 29 July 2022. In doing so, it did not have to consider any issue that was not "clearly apparent from the evidence" (*Hooper v Secretary of State for Work and Pensions* [2007] EWCA Civ 495 (reported as *R(IB) 4/07*) at paragraph [28]), but was obliged to consider any issue that was clearly apparent from the evidence (*R(IS) 2/08* at paragraph [47]). The First-tier Tribunal accepted the claimant's evidence that he had returned to Great Britain on 9 April 2022 (see the Upper Tribunal bundle at page 25, paragraph 18).
30. Clearly, a personal independence payment could not be disallowed in respect of the period from 9 April 2022 onwards merely because the claimant was not "present in Great Britain" (regulation 16(a) of the PIP Regulations). The Secretary of State's decision to dismiss the claimant's claim on that basis was clearly in error of law, and the Tribunal's decision to confirm the SoS Decision was likewise in error of law. The error of law was plainly material because as a result of that decision no assessment was made as to whether the claimant satisfied the other conditions of entitlement to an award of a personal independence payment. That warrants the setting aside of the FtT Decision.

### Disposal

31. Having decided to set aside the FtT Decision under section 12(2)(a) of the 2007 Act I have a discretion whether to remit the matter to the First-tier Tribunal for redetermination, or to remake the decision for myself.
32. The only issue before the Tribunal was whether the claimant met the condition as to presence in Great Britain at any point between the making of his claim and the Secretary of State's decision disallowing the claim and, if so, from what date. That is why the appeal was listed before a judge sitting alone, rather than a three-member panel with expert members.
33. The appropriate course is to remake the FtT decision as the Tribunal should have made it, and to remit the matter back to the Secretary of State to assess (on the basis that the claimant did satisfy the condition as to presence in Great Britain from 9 April 2022) whether the claimant satisfies the other conditions of entitlement to a personal independence payment, including assessing his ability to carry out the activities set out in Schedule 1 to the PIP Regulations. Such decision will carry a right of appeal.
34. I therefore remake the decision in the terms set out at the top of this Notice.

**Thomas Church**  
**Judge of the Upper Tribunal**

**Authorised for issue on: 20 August 2025**