



Neutral Citation Number: [2025] UKUT 316 (AAC)
Appeal No. UA-2024-001803-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

SJC

Appellant

- v -

THE SECRETARY OF STATE FOR WORK AND PENSIONS
Respondent

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

Representation:

Appellant: The appellant's mother
Respondent: Lauren Foody, DMA Leeds

On appeal from:

Tribunal: First-Tier Tribunal (Social Entitlement Chamber)
Tribunal Case No: SC065/22/00622
Digital Case No.: 1666213743151823
Tribunal Venue: Chester (by telephone)
Decision Date: 29 November 2023

SUMMARY OF DECISION

PERSONAL INDEPENDENCE PAYMENT (41)

The appellant had diagnoses of ADHD and dyslexia and a letter from his GP confirming difficulties communicating by telephone. The First-tier Tribunal erred in law by proceeding with a telephone hearing without considering whether it was fair to do so and whether reasonable adjustments could be made, including allowing his mother to provide assistance during his evidence rather than only by giving evidence herself at the end of the hearing.

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 29 November 2023.
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 4 August 2022).
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 seeks permission to appeal against the First-tier Tribunal's decision of 29 November 2023 refusing the appellant's appeal against the decision of the Secretary of State of 4 August 2022 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 8 for needing an aid or appliance (overlays) to read, but no other points. On appeal, the First-tier Tribunal awarded him an additional two points for daily living

activity 1 as he can only prepare and cook a meal with a microwave. However, this was insufficient to entitle to him to any award of PIP so the Secretary of State's decision as confirmed.

3. The First-tier Tribunal's Statement of Reasons (SoR) was issued on 25 March 2024 and permission to appeal was refused by the First-tier Tribunal in a decision issued on 20 November 2024. The appellant filed the notice of appeal to the Upper Tribunal on 18 December 2024 (in time).
4. I granted permission to appeal and the Secretary of State in response indicates that she supports the appeal. Both parties have consented to me giving a decision on the papers and I am content that it is in accordance with the overriding objective for me to do so.

Why I am allowing the appeal

5. The hearing in this case took place by telephone. The appellant attended, accompanied by his mother, who he wanted to represent him and help him, but the Tribunal did not allow his mother to speak for him, or to prompt him, although it did give her an opportunity at the end of the hearing to say anything additional that she wished to say, by which time the points she might have made during the earlier part of the hearing were (the appellant says) forgotten.
6. The appellant in his grounds of appeal complains that this put him at a disadvantage, given his ADHD and dyslexia and his difficulties getting his point across when speaking on the phone. He goes on in his grounds of appeal to identify many respects in which he submits the Tribunal either misunderstood or misinterpreted his evidence or he did not get an opportunity to say everything he now considers to be relevant to the decision.
7. The Tribunal at paragraph 12 of the SoR recorded that the appellant has recognised difficulties with telephone conversations as follows:

In a medical report from the Appellant's GP, it describes that his conditions result in poor timekeeping, finding it hard to talk to people over the phone, poor concentration and difficulty expressing thoughts. He can get anxious speaking to people over the phone but will reply to a text or voice message.

8. It seems to me therefore that this was a case where real care needed to be taken by the Tribunal to ensure that the hearing was conducted in a way that was fair to the appellant and that adjustments were made for his difficulties with communicating by telephone. That was particularly important given that the Healthcare Practitioner assessment had also taken place by telephone so the appellant had likely been disadvantaged in relation to that assessment as well.
9. However, there is nothing on the face of the decision to suggest that the Tribunal considered what adjustments might be necessary to make the hearing fair for the appellant given his difficulties (cf *Galo v Bombardier Aerospace UK* [2016] NICA 25, [2016] IRLR 703). It was apparent from the First-tier Tribunal bundle that the appellant's mother was supporting him with the process, but the First-tier Tribunal failed to give specific consideration to whether it needed to make adjustments to

its usual process to allow the appellant's mother more actively to assist him with the hearing. This was in my judgment an error of law.

10. Nor did the Tribunal on the face of the decision give any consideration to whether it was fair to proceed by telephone. The Tribunal is always under a duty to ensure that a hearing is conducted fairly, and this must be considered at the start of the hearing and throughout the hearing. Compare in this regard what is required of a Tribunal before it can properly conclude it can proceed with an appeal on the papers: *JS v SSWP* [2011] UKUT 459 (AAC). Where a party has an acknowledged difficulty with the mode of the hearing, it is incumbent on the Tribunal to make a decision as to whether it is fair to proceed with the hearing. Just as the Tribunal cannot assume that it is fair to proceed with a paper determination just because a party has opted for that, so must the Tribunal assess whether it is fair to proceed with a telephone hearing if someone has difficulty dealing with telephone calls.
11. Further, the Tribunal did not make any reference to the Senior President of Tribunals' Practice Direction on 'Child, Vulnerable Adult and Sensitive Witnesses'. That provides in material part:-

"2. A child, vulnerable adult or sensitive witness will only be required to attend as a witness and give evidence at a hearing where the Tribunal determines that the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so.[...]"

4. In determining whether the welfare of the child, vulnerable adult or sensitive witness would be prejudiced it may be appropriate for the Tribunal to invite submissions from interested persons, such as a child's parents. [...]"

6. The Tribunal must consider how to facilitate the giving of any evidence by a child, vulnerable adult or sensitive witness.

7. It may be appropriate for the Tribunal to direct that the evidence should be given by telephone, video link or other means directed by the Tribunal, or to direct that a person be appointed for the purpose of the hearing who has the appropriate skills and experience in facilitating the giving of evidence by a child, vulnerable adult or sensitive witness."

12. In *RT v Secretary of State for Work and Pensions (PIP)* [2019] UKUT 207 (AAC) Judge Poynter gave detailed consideration to the interpretation and application of that Practice Direction. He held that "vulnerable adult" in principle includes anyone in receipt of any form of healthcare (see [70]-[75]) and thus may need to be considered in almost all social security appeals (see [81]). Judge Poynter went on to hold (applying *AM (Afghanistan) v Secretary of State for the Home Department and Lord Chancellor* [2017] EWCA Civ 1123) that a failure to follow the Practice Direction, where that is material to the appeal, will normally constitute an error of law.

13. I am satisfied in this case that, given the appellant's acknowledged difficulties, the failure to have regard to the Practice Direction, to give explicit consideration to how the appellant should give his evidence and to make reasonable adjustments were material errors of law.

Conclusion

14. The decision of the First-tier Tribunal was in error of law. I set it aside and remit the case for a fresh hearing before a different Tribunal.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 22 September 2025