



Neutral Citation Number: [2025] UKUT 322 (AAC)
Appeal No. UA-2025-000092-PIP

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

MAH

Appellant

-v-

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant:

Quazi Rahman, Brace Welfare Consultancy

Respondent:

Sidra Rauf, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal:

First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No.:

SC242/23/07403

Digital Case No.:

1697311749672389

Tribunal Venue:

Fox Court (remote oral hearing)

Decision Date:

25 June 2024

SUMMARY OF DECISION

41.1 Personal Independence Payment: general

1. This appeal is about the need for tribunals to ensure that their findings of fact are grounded in evidence, to avoid the temptation to speculate about matters on which they have heard no evidence, and to make clear findings of fact about each matter that is necessary to determine the material issues in the appeal.
2. In this case the Tribunal should have stuck to hearing the evidence, assessing it critically, and making findings based on the evidence as it assessed it. The Tribunal

fell into error when it strayed into speculating about whether the claimant and members of his family might adopt “traditional roles”, a matter on which it heard no evidence.

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**”) and the case is **REMITTED** to the First-tier Tribunal under section 12(2)(b)(i) for rehearing before a differently constituted panel.

DIRECTIONS FOR THE REHEARING

1. The First-tier Tribunal must (by way of an oral hearing) undertake a complete reconsideration of the issues that are raised by the appeal and, subject to the First-tier Tribunal’s discretion under Section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.
2. The First-tier Tribunal hearing the remitted appeal shall not involve the members of the panel who heard the appeal on 25 July 2024.
3. In reconsidering the issues raised by the appeal the First-tier Tribunal must not take account of circumstances which were not obtaining at the date of the original decision of the Secretary of State under appeal. Later evidence is admissible provided it relates to the time of the decision: ***R(DLA) 2 & 3/01***.
4. If the claimant has any further evidence to put before the First-tier Tribunal this should be sent to the regional office of Her Majesty’s Courts and Tribunals Service within one month of the date on which this decision is issued. Any such further evidence must relate to the circumstances as they were at the date of the decision of the Secretary of State under appeal (see Direction 3 above).
5. The First-tier 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 panel may reach the same or a different outcome from the previous panel.

REASONS FOR DECISION

What this appeal is about

3. This appeal is about the need for tribunals to ensure that their findings of fact are grounded in evidence, to avoid the temptation to speculate about matters on which they have heard no evidence, and to make clear findings of fact about each matter that is necessary to determine the material issues in the appeal.

4. In this case the Tribunal should have stuck to hearing the evidence, assessing it critically, and making findings based on the evidence as it assessed it. The Tribunal fell into error when it strayed into speculating about whether the claimant and members of his family might adopt “traditional roles”, a matter on which it heard no evidence.

Background

5. The Appellant (to whom I shall refer as the “**claimant**”) claimed a Personal Independence Payment (“**PIP**”) on 13 April 2023 and returned a completed PIP2 questionnaire form dated 18 May 2023, which was accompanied by supporting documentary evidence.
6. The claimant underwent a telephone assessment with a healthcare professional, and on 26 July 2023 a decision maker for the Secretary of State wrote to the claimant to inform him that he had scored 6 points in respect of the daily living activities (2 points for each of activities 1(b), 4(b) and 6(b)) and no points in respect of the mobility activities, and that this was insufficient to entitle him to a PIP with either component at either rate from 13 April 2023 (the “**SoS Decision**”), since the award threshold for the standard rate of PIP is 8 points.
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 25 July 2024, a three-member panel of the First-tier Tribunal (Social Entitlement Chamber) (the “**Tribunal**”) heard evidence and argument. The Tribunal confirmed the points that the Secretary of State had awarded in respect of daily living activities 1(b), 4(b) and 6(b), and awarded the claimant 4 points in respect of mobility activity 2(b), but because the claimant scored fewer than 8 points in respect of the daily living activities and fewer than 8 points in respect of the mobility activities, it confirmed the SoS Decision that the claimant was not entitled to any award of PIP from 13 April 2023 (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 16 December 2024, a District Tribunal Judge refused permission to appeal. The claimant then exercised his right to apply to the Upper Tribunal for permission to appeal and the matter came before me.
10. The claimant’s representative made numerous criticisms of the FtT Decision. Many of the criticisms that the claimant’s representative made about the FtT Decision amounted in substance to a disagreement with the Tribunal’s assessment of the evidence and the findings of fact that it made, and did not disclose any arguable error of law. However, I was able to identify an arguable error of law which I considered warranted a grant of permission, and made Case Management Directions for the parties to make submissions on the substantive appeal and to indicate whether they requested an oral hearing.

The positions of the parties

11. Ms Rauf, on behalf of the Secretary of State, indicated support for the appeal on the basis that she considered that the Tribunal had erred in its fact finding and in

failing to give adequate reasons for its decision making. She invited me to set the FtT Decision aside and to remit the matter to be reheard by another tribunal.

12. The claimant's representative had no further comment to make. Neither party requested an oral hearing.
13. Given the degree of agreement between the parties, I decided that the interests of justice did not require an oral hearing.

Why I have allowed the appeal

14. The Tribunal accepted the claimant's evidence that he experiences right-sided pain related to a fractured collar bone sustained following a fall on the stairs at home in 2022, and that he sustained a sternum fracture in 2023 following an attack at work.
15. It found that he was prescribed 30mg of Co-codamol and 250mg of Naproxen four times a day for his pain, as well as Omeprazole (a stomach protector) 20mg daily (see paragraphs [12]-[13] of the statement of reasons).
16. The Tribunal recited that the claimant had reported experiencing side effects from his pain medication, namely feeling "lightheaded and dizzy" (see paragraph [17] of the statement of reasons), but while the Tribunal appears to have accepted that the claimant experienced some dizziness, it made no clear finding as to its degree. The Tribunal has indicated scepticism as to the claims to significant functional limitation and to the claim that the claimant receives significant input from his wife to complete various daily living activities, but the Tribunal did not make clear findings of fact. The Tribunal's assessment of the claimant's evidence is expressed very tentatively. It seems to have been unpersuaded by the claimant's evidence but reluctant to find his evidence to be false. Instead, it has shied away from rejecting his account of what the claimant does not do, and what the claimant's wife does for him, but deciding that this a matter of "choice".
17. The Tribunal explained its assessment of the evidence in this regard as follows:
 - "17. As previously stated [the claimant] is in receipt of pain medication in respect of the right sided pain relating to the shoulder, collar bone and sternum fracture. The side effects of the medication he reports are that he feels lightheaded and dizzy. He further recorded as saying that the pain medication helps him manage the pain although it does not totally go away.
 18. [The claimant] reports that since the two incidents in January and August/September 2022 he has not been able to function well, he is not involved in family life and his wife is responsible for the childcare and managing the home, he does not get involved in the school run and he does not interact regularly with his children either inside or outside the home.
 19. We were surprised about this position and wondered if that was due to traditional roles as there would seem to be no reason why he could not undertake the school run independently of his wife and he could not assist with the in-home activities having taken his medication.
 20. He said in his evidence that he had to be accompanied by his wife when he leave [sic] the home because of the dizziness he experiences. We found it difficult to understand why he was experiencing dizziness to the degree that he would require this level of input from his wife. There is nothing in the GP records

which would suggest that he had a condition that would need that degree of input. He mentioned using a crutch when out with his wife. We again saw no reason why he would need a crutch as the right sided weakness would have related to his upper body and although he had lower back pain this would be historical from 2018. We were of the view that if he was receiving this level of input this was because he chose this rather than needed it.

21. We accepted that he would require some degree of assistance with bathing, cooking and also dressing and for which we have endorsed the points awarded by the Department. We also acknowledged that the lower back pain may restrict his walking but not to less than 50 metres.”

18. The Tribunal wasn't obliged to accept what the claimant said about experiencing dizziness and light headedness, or indeed what he said about what he could do and what he couldn't do as a result of any dizziness or light headedness he experienced. Rather, it had to consider all the relevant evidence and assess it critically, resolving material conflicts of evidence to decide what was more likely in the light of the evidence as a whole, and making such findings of fact as were necessary to determine the material matters in issue in the appeal. Having done so, it had to decide the appeal by applying the correct legal tests to the facts it had found, and it had to explain (to the required standard of “adequacy”) what it decided, as well as how and why it decided as it did.
19. The Tribunal should have stuck to hearing the evidence, assessing it critically, and making clear findings of fact based on the evidence before it. It fell into error when it strayed into speculating about whether the claimant's family might adopt “traditional roles”, a matter on which it heard no evidence.
20. The Tribunal reasoned that there was nothing in the claimant's GP records to suggest the claimant “had a condition that would need that degree of input”, but this was to misunderstand the claimant's case. He had not claimed to experience dizziness or confusion as a symptom of any physical or mental health condition: he had claimed them to be side effects of the medication he was prescribed for the pain resulting from his accepted injuries.
21. I am persuaded that the Tribunal erred in law by taking into account an irrelevant consideration (namely a stereotypical assumption as to the roles adopted by the claimant and other members in his family that was not supported by evidence), by failing to make adequate findings of fact as to the matters in issue in the appeal (namely as to the degree of the dizziness and light headedness experienced by the claimant as a side effect of his prescribed medication), and by failing adequately to explain how and why it decided as it did. I am persuaded that these errors are material in the sense that had they not been made the outcome of the appeal could have been different.
22. Having found that the Tribunal erred in law in a way that was material, I consider that the interests of justice require me to exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”) to set the FtT Decision aside.

Disposal

23. 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. Because further facts need to be found, and because the First-tier Tribunal with its expert members is the most appropriate forum for finding such facts, I exercise my discretion to remit the matter to the First-tier Tribunal to redetermine the appeal.

**Thomas Church
Judge of the Upper Tribunal**

Authorised for issue on: 29 September 2025