



Neutral Citation Number: [2025] UKUT 391 (AAC)
Appeal No. UA-2025-000755-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

MU

Appellant

- v -

Secretary of State for Work and Pensions

Respondent

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

Representation (papers only):

Appellant: Rory O'Kelly, South East London MIND

Respondent: Clare Pettet, Decision Making and Appeals

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No: SC154/23/01100

Digital Case No.: 1679927831466109

Tribunal Venue: Bexleyheath

Decision Date: 5 January 2024

SUMMARY OF DECISION

34 – Tribunal procedure and practice

41 – Personal Independence Payment – General

The restriction in Social Security Act 1998 s.12(8)(b) has as a consequence that a tribunal may not rely on evidence of circumstances subsequent to the date of decision (and which are not capable of being referred back to the date of decision) to decide to make an award of PIP only for a fixed period on the grounds that a claimant's condition has improved since the date of decision.

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 that the appeal is allowed. The decision of the First-tier Tribunal sitting at Bexleyheath on 5 January 2024 was in error of law and is set aside. There will have to be a rehearing of the appeal by the First-tier Tribunal in accordance with the Directions below.

DIRECTIONS

- 1. The case must be heard entirely afresh by a wholly differently constituted First-tier Tribunal (“FtT”).**
- 2. The file must be referred to a salaried judge of the FtT for case management directions regarding listing and any other matter on which directions may be considered necessary.**

REASONS FOR DECISION

1. This case primarily examines whether the approach of the First-tier Tribunal (FtT) to s.12(8)(b) of the Social Security Act 1998 (the 1998 Act) was correct.
2. It now concerns a “closed” period from 1 October 2021 to 15 January 2024 as the Appellant made a further claim for Personal Independence Payment (PIP) on 16 January 2024.
3. The Appellant has paranoid schizophrenia, type 2 diabetes and hypertension.
4. The Appellant had appealed to the FtT against the Respondent’s decision dated 13 May 2022 refusing her claim for PIP.
5. The FtT’s decision was to award the Daily Living component at the standard rate from 1 October 2021 to 31 December 2022. No award was made of the Mobility component.
6. Upper Tribunal Judge Wright gave permission to appeal, limited to the s.12(8)(b) point.
7. By s.71(3) of the Social Security and Contributions Act 1992:

“A person may be awarded either component for a fixed period or for an indefinite period, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.”

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

(8) In deciding an appeal under this section, the First-tier Tribunal—
...
(b) shall not take into account any circumstances not obtaining at the time when the decision appealed against was made.

9. The restriction which s.12(8)(b) creates precludes consideration of “circumstances not obtaining” at the date of the DWP’s decision: it does not preclude consideration of subsequent evidence, provided that evidence provides evidence of circumstances obtaining at or before that date: R(DLA)2/01 and 3/01.

10. The FtT made findings in para 40 of its Reasons about the Appellant’s limitations as at the date of the DWP’s decision but also in paras 41-46 findings directed to her (substantially reduced) limitations “by the date of the hearing”.

11. It made further findings directed to the position in late 2022, for example “during the period between 2020 and 2022 [the Appellant] stabilized and needed less support. Her support worker was withdrawn with effect from late 2022 (para 36).”

12. Although the FtT directed itself correctly that the issue was whether the Appellant met the criteria for an award of PIP by achieving sufficient points at the date of the DWP’s decision (13 May 2022), it encountered the difficulty that:

“we asked [the Appellant] to consider how she was at that time, but we did not think that she was able reliably to do this, and that most of her oral evidence related to her capabilities at the date of the hearing”.

13. The FtT appreciated that this meant that it had to consider the other evidence relating to the “period of decision”. In context it is clear that it meant as at May 2022.

14. Where it then went wrong was in concluding that the evidence of post-decision circumstances was something which it was entitled to take into account in deciding to make the award only for a fixed period.

15. Thus it observed (para 74) that:

“In terms of the length of the award, there was no up-to-date medical evidence and [the Appellant] has not had a care coordinator since the end of 2022... .

16. In para 75 it

“noted that she had not had any formal support since the end of 2022, and therefore extended the award to the end of that year. The only descriptor which might continue to apply to her after that date is 3b.”

17. Whilst s.71(3) of the 1992 Act allows a fixed period award to be made, the decision whether to do so is, like whether to make an award at all, a matter for

the DWP to decide on the circumstances obtaining down to the date of decision: see 1998 Act, s.8(2). The FtT on appeal is similarly restricted, by s.12(8)(b).

18. Leaving aside cases where it could be anticipated at the date of decision that entitlement would cease after a limited period and so an award could properly be made for a fixed period, the route for other post-decision improvements to be looked at is via a supersession for change of circumstances to remove or restrict entitlement.
19. Ms Pettet for the Respondent supports the appeal on the above Ground. She also draws attention to a number of places in the evidence which call into question certain of the FtT's findings and which may amount to a further error or errors of law in terms of its facts found and reasons given. As I am setting aside the FtT's decision anyway and remitting the appeal for a fresh hearing, these, like any other error the FtT may have made, will be subsumed by the new hearing and I need not consider them further here.

Christopher Ward
Judge of the Upper Tribunal

Authorised by the Judge for issue on 20 November 2025