



**NCN: [2026] UKUT 59 (AAC)  
Appeal No. UA-2025-000856-PIP**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**Z.M.**

**Appellant**

**- v -**

**Secretary of State for Work and Pensions**

**Respondent**

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

**Representation:**

**Appellant:** In person

**Respondent:** Mrs H. Hawley, Decision Making and Appeals, DWP

*On appeal from:*

**Tribunal:** First-Tier Tribunal (Social Security and Child Support)

**Panel:** Judge S. Rizzo, Mr A. Hawksworth and Dr J Goodman

**Tribunal Case No:** SC140/24/00452

**Digital Case No:** 1723486891047222

**Tribunal Venue:** Milton Keynes

**Hearing Date:** 13 February 2025

**Judicial summary**

Where the FTT makes a decision that an award of entitlement to PIP should be for a fixed period then the tribunal, in its statement of reasons, should provide an explanation as to why the award is for such a fixed period.

**Keywords**

**41 Personal independence payment - general**

## DECISION

**The decision of the Upper Tribunal is to allow the appeal.** The decision of the First-tier Tribunal dated 13 February 2025 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 this decision and 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 13 February 2025.**
- 3. The Appellant is reminded that the tribunal can only deal with the appeal, including his health and other circumstances, as they were at the date of the decision by the Secretary of State under appeal (namely 10 April 2024).**
- 4. If the Appellant has any further written evidence to put before the tribunal and, in particular, further medical evidence, this should be sent to the HMCTS regional tribunal office within one month of the issue of this decision. Any such further evidence will have to relate to the circumstances as they were at the date of the original decision of the Secretary of State under appeal (see Direction (3) above).**
- 5. The new First-tier Tribunal is not bound in any way either 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 Legal Officer, Tribunal Registrar or First-tier Tribunal Judge.**

## REASONS FOR DECISION

### Introduction

1. The Appellant's appeal to the Upper Tribunal succeeds. There will need to be a completely fresh hearing of the original Personal Independence Payment (PIP) appeal before a new First-tier Tribunal (FTT).

### The Upper Tribunal's decision in summary and what happens next

2. I allow the Appellant's appeal to the Upper Tribunal. The decision of the First-tier Tribunal involves a legal error. For that reason, I set aside the Tribunal's decision. The Appellant's case now needs to be reheard by a new and different First-tier Tribunal. I cannot predict what will be the outcome of the re-hearing. So, the new tribunal may reach the same, or a different, decision to that of the previous Tribunal. It all depends on the findings of fact that the new Tribunal makes.

### The factual background

3. In summary, the Secretary of State's decision-maker decided on 10 April 2024 that the Appellant, scoring nil points, did not qualify for either component of PIP. On appeal, the FTT on 13 February 2025 allowed the appeal and made an award of the standard rate of the PIP daily living component for the period from 1 December 2023 to 31 November 2026 (having scored 8 points). There was no award of the mobility component. The Appellant then applied for permission to appeal to the Upper Tribunal.

### The limited grant of permission to appeal

4. The Appellant's seven grounds of appeal ranged far and wide. I gave the Appellant limited permission to appeal on the final ground of appeal, Ground 7, which was the only ground I considered to be arguable with a realistic prospect of success. In outline, Ground 7 ran as follows: "Award Duration Error – Time-Limited Instead of Indefinite: Despite evidence of incurable, progressive cancer, the Tribunal gave a time-limited award. This contradicts accepted medical facts and applicable case law."

### Analysis: a summary

5. In the limited grant of permission to appeal I set out my provisional thinking as follows:

36. The relevant legislation is section 88 of the Welfare Reform Act (WRA) 2012, which provides as follows:

**Claims, awards and information**

88. - (1) A person is not entitled to personal independence payment for any period before the date on which a claim for it is made or treated as made by that person or on that person's behalf.

(2) An award of personal independence payment is to be for a fixed term except where the person making the award considers that a fixed term award would be inappropriate.

(3) In deciding whether a fixed term award would be inappropriate, that person must have regard to guidance issued by the Secretary of State.

(4) Information supplied under this Part is to be taken for all purposes to be information relating to social security.

37. Section 88 was considered in detail by Upper Tribunal Judge Mitchell in *RS v SSWP* [2016] UKUT 85 at paras 41 onwards (followed in *GT v SSWP (PIP)* [2019] UKUT 30 (AAC)). In particular, UTJ Mitchell observed as follows in *RS v SSWP*:

53. The Tribunal did not give adequate reasons for its refusal to make an indefinite award (for deciding that a fixed term award would not be inappropriate). This was an issue raised by Mr S's appeal. Simply to rely on the changed legislative framework was an insufficient reason. The Tribunal needed to explain, in the light of the relevant circumstances, including the likely persistence of Mr S's limiting conditions, why it concluded the section 88(2) exception to the presumption in favour of fixed term awards did not apply. Similarly, the Tribunal gave inadequate reasons for deciding a three year fixed term was appropriate. This was not reasoned by reference to the relevant circumstances, including in particular the likely persistence of Mr S's limiting conditions.

38. This issue has also been the subject of a decision by a Tribunal of three Commissioners under the parallel legislation in Northern Ireland (see *DT v Department for Communities (PIP)* [2021] NICom 54 (C29/21-22(PIP))). The Tribunal of Commissioners ruled as follows:

29. The second issue is the adequacy of reasons in making a fixed term award. The starting point for an award of PIP is that it is for a fixed term. This is set out in paragraph 2 of Article 93(2) The Welfare Reform Order, above. The award is to be for a fixed term except where the person making the award considers that would be inappropriate. The wording places an onus on the person making an award to consider whether a fixed term would be inappropriate. Those considerations require some explanation, as does the length of any fixed term award made.

30. We appreciate that these are essentially issues of judgment and cannot be explained to a nicety; nonetheless, some reasoning is necessary to explain to somebody why, for example, a two-year award has been made, rather than, say, a ten-year award. In *C2/09-*

10(DLA), the then Social Security Commissioner said the following, at paragraphs 43 to 47:

‘43. Of course the appeal tribunal is entitled to make an award of DLA for a fixed period.

44. Section 71(3) of the Social Security Contributions and Benefits (Northern Ireland) Act, as amended, provides that a ‘person may be awarded either component for a fixed period or for an indefinite period.’

45. In making an award for a fixed period the appeal tribunal is also entitled to disagree with the Department’s alternative view that the award should be for an indefinite period.

46. The duties of an appeal tribunal, in determining an appeal against a decision of the Department, were comprehensively analysed and reviewed by a Tribunal of Commissioners in Great Britain in *R(IB)2/04*. At paragraph 55(2) of their decision, and in referring to parallel decision-making legislative provisions in Great Britain, the Commissioners state:

‘Taking first the position of an appeal against the initial decision on a claim, the section 8 outcome decision under appeal will have been either to award or not to award benefit. As described above (paragraphs 24-26), unless there is some express provision to the contrary, the appeal tribunal’s jurisdiction on the appeal is to make any decision which the Secretary of State could have made on the claim (although in doing so it need not consider any issues not raised by the appeal). That seems to us to follow simply from (a) the decision under appeal being generally an outcome decision deciding entitlement to benefit on the claim and (b) the appeal being a full appeal by way of rehearing on fact and law. In short, the appeal tribunal either upholds the Secretary of State’s decision or holds it to have been wrong: but, if the latter, it goes on to make the decision on the claim which it considers the Secretary of State ought to have made. This may involve the appeal tribunal considering issues which have not been considered by the Secretary of State.’

It is clear, however, that where an appeal tribunal makes a decision that an award of entitlement to DLA should be for a fixed period then the appeal tribunal, in its statement of reasons, should provide an explanation as to why the award is for such a fixed period. Support for that conclusion is to be found in the decision of the Chief Social Security Commissioner in *C6/94(DLA)*. In that decision, the Chief Social Security Commissioner was discussing the making of awards of DLA in the context of a general provision relating to the duration of awards. Nonetheless, his remarks concerning the requirement for a clarification of the reasons for the limitation of an award remain applicable.

47. The Chief Social Security Commissioner made it clear that the requirement to explain a limitation in award is not onerous. He described it, in paragraph 7, as the appeal tribunal making it:

‘... clear that they have considered the point and explain in brief terms why they have decided that the award should be for the fixed period which they have selected, ...’

48. In the present case, nowhere in the statement of reasons is there any indication as to why the appeal tribunal decided that a limited award of the lowest rate of the care component was appropriate. Accordingly, the minimal requirements set out in C6/94 (DLA) are not met and the decision of the appeal tribunal is in error of law for failing to meet those minimal requirements.’

31. It is axiomatic that we appreciate that the DLA and PIP are two different social security benefits with their own discrete rules of entitlement. Nonetheless, we are of the view that the general principle set out in C2/09-10(DLA) is applicable to adjudication in connection with entitlement to PIP.

32. Applying the principle in C2/09-10(DLA) the tribunal here failed to explain why it limited its award to 5 years. This was significant because of the chronic nature of the appellant’s conditions both physical and mental. Accordingly, the omission amounts to a material error of law.

6. However, Mrs H. Hawley, the Secretary of State’s representative in these proceedings, resists the appeal. She notes that the FTT had found as a fact that the Appellant had been diagnosed the following health conditions, namely non-curative cancer, plantar fasciitis, fatty liver, chronic tiredness and a comprised immune system. The Appellant had also been referred to cardiology due to intermittent chest pain. Mrs Hawley further observes as follows:

4.4 It is noteworthy that whilst the FtT acknowledges and found as fact that the claimant suffers from non-curative cancer, they also found that based upon the medical evidence before them his cancer was in remission at the date of the decision under appeal. It is also notable that the claimant’s condition is under regular review by the Oncology Department and most significantly “...as of the date of the decision he has not received any further chemotherapy since 2020 and was not receiving treatment for his cancer during the period that the Tribunal must consider.”

7. The Secretary of State’s representative then concludes as follows:

4.6 The medical evidence within the appeal bundle shows that the claimant’s cancer is in remission at the date of the decision under appeal and had been so since at least December 2020. The claimant also has other health conditions, which impact on his wellbeing and day to day activities. The FtT do highlight this when reaching their conclusions noting at

paragraph 78 of the SOR that they had to “...consider the impact of [claimant] conditions on his ability to carry out specific daily living and mobilising activities and we cannot guess or speculate but we have to make conclusions based upon the evidence as it is presented to us.”

4.7 In doing so there does not appear to be any evidence presented by the claimant to the FtT which suggests that his various health conditions will remain unchanged for the foreseeable future. This in turn would have allowed the FtT to consider whether it is appropriate to make an ongoing award of the standard rate of the daily living component.

4.8 Notwithstanding the above, the FtT when considering the claimant’s appeal appears to have taken a rounded and holistic view of the evidence before them, relying upon on the expertise of both the medical and disability members of the FtT panel when determining the length of the PIP award. The FtT’s decision to make a fixed period award will allow for a review of the claimant’s circumstances at a future date in order to determine the level of his needs at that time. Additionally, the claimant does have the right to apply for a change of circumstances should he wish to do so, if he feels there is a relevant change to his health conditions or his ability when undertaking the activities of PIP.

4.9 I, therefore, respectfully submit that the FtT have not erred in law in this matter. The FtT using the expertise of the panel members hearing the claimant’s appeal have reached a decision regarding his appeal that was reasonably open to them based upon the evidence before them with regards to the length of the fixed period PIP award for the standard rate of the daily living component.

8. It may well be that the FTT have reached a decision “that was reasonably open to them based upon the evidence before them with regards to the length of the fixed period PIP award for the standard rate of the daily living component”, as Mrs Hawley puts it. However, that is not quite the answer to the question posed by Ground 7. As Judge Mitchell expressed it in *RS v SSWP* [2016] UKUT 85 (PIP):

The Tribunal needed to explain, in the light of the relevant circumstances, including the likely persistence of [the Appellant]’s limiting conditions, why it concluded the section 88(2) exception to the presumption in favour of fixed term awards did not apply. Similarly, the Tribunal gave inadequate reasons for deciding a three year fixed term was appropriate. This was not reasoned by reference to the relevant circumstances, including in particular the likely persistence of [the Appellant]’s limiting conditions.

9. So likewise in the instant case, the FTT needed to explain, if only briefly, why it considered that a three-year fixed term award was appropriate, as opposed to e.g. a five-year award, a ten-year award or an indefinite award. I am accordingly satisfied that the First-tier Tribunal erred in law. I therefore allow the Appellant’s appeal to the Upper Tribunal and set aside the Tribunal’s decision.

## Disposal

10. The Appellant invites me to substitute my own decision for that of the FTT, and to make the PIP award indefinite. On balance, however, I consider that the appropriate length of any award – whether fixed-term or indefinite and, if fixed-term, for how long – is best determined by the three-person FTT panel with its range of relevant experience and expertise. I therefore remit the original appeal for re-hearing to a new tribunal, which must make a fresh decision.

## What happens next: the new First-tier Tribunal

11. There will therefore need to be a fresh hearing of the appeal before a new First-tier Tribunal. Although I am setting aside the previous Tribunal's decision, I should make it clear that I am making no finding, nor indeed expressing any view, on whether the Appellant is entitled to PIP and, if so, which component(s) and at what rate(s) and for which period. That is all a matter for the good judgement of the new Tribunal. That new Tribunal must review all the relevant evidence and make its own findings of fact.
12. In doing so, however, the new Tribunal will have to focus on the claimant's circumstances as they were as long ago as in April 2024 and not the position as at the date of the new hearing, which will obviously be about two years later. This is because the new Tribunal must have regard to the rule that a tribunal "**shall not** take into account any circumstances not obtaining at the time when the decision appealed against was made" (emphasis added; see section 12(8)(b) of the Social Security Act 1998). The decision by the Secretary of State, which was appealed to the FTT, was taken on 10 April 2024.

## Conclusion

13. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. The case must be remitted for re-hearing by a new tribunal subject to the directions set out above (section 12(2)(b)(i)). My decision is also as set out above.

**Nicholas Wikeley**  
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 6 February 2026