



Neutral Citation Number: [2026] UKUT 250 (AAC)
Appeal No. UA-2025-000982-DLA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Ahmed Bashir (by his appointee, Faryal Bashir)

Appellant

-v-

Secretary of State for Work and Pensions

Respondent

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

Representation:

Appellant: R Khan, Leicester City Council Welfare Rights Service
Respondent: A Martin, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)
Tribunal panel: Tribunal Judge Chapman, Dr Wright and Disability
Qualified Professional Member Sher

Tribunal Case No.: 1707-2336-6984-6215

Tribunal Venue: Leicester

Decision Date: 24 February 2025

SUMMARY OF DECISION

**DLA Severe Behavioural Problems (10.4); Tribunal practice and procedure –
statements of reasons (34.9)**

The First-tier Tribunal had accepted evidence that the claimant, a child with autism, had no sense of danger, regularly ran off, required to be restrained with strong straps, and displayed impulsive behaviour. However, it concluded that the claimant did not display “extreme” disruptive behaviour and did not satisfy the requirement for regular physical restraint.

The Upper Tribunal decided that given its acceptance of that evidence the First-tier Tribunal was obliged to explain with greater clarity than it did why it came to the conclusion that it did.

The Upper Tribunal set aside and remade the decision, finding that the severe mental impairment conditions for entitlement to the higher-rate mobility component were all met based on the findings of the First-tier Tribunal.

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

As the decision of the First-tier Tribunal involved the making of an error of law that was material, it is **SET ASIDE** under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 (the “**2007 Act**”) and I **REMAKE** the decision under section 12(2)(b)(ii) in the following terms:

“The appeal is allowed. The decision made by the Secretary of State on 08 July 2022 is set aside and remade as follows: the Appellant’s award of Disability Living Allowance is superseded on the grounds of a relevant change in circumstances.

The Appellant is entitled to the Highest Rate of the Care Component of Disability Living Allowance from 3 March 2022 to 8 April 2033 (both dates included) because he needs attention with bodily functions several times at short intervals throughout the day and needs attention with bodily functions more than once a night or once for a prolonged period, and the Higher Rate of the Mobility Component of Disability Living Allowance from 9 April 2021 to 8 April 2033 (both dates included) because he falls within subsection 73(3) of the Social Security Contributions and Benefits Act 1992.”

REASONS FOR DECISION

What this appeal is about

1. This appeal is about whether the panel of the First-tier Tribunal which heard Mr Bashir’s appeal in respect of his entitlement to Disability Living Allowance erred in law when it decided that the conditions set out in section 73(3) of the Social Security (Contributions and Benefits) Act 1992 (the “**SMI Criteria**”) were not satisfied in Mr Bashir’s case.
2. Mr Bashir (to whom I shall refer as the “**Ahmed**”) has had an award of Disability Living Allowance (“**DLA**”) with the Care Component at the Highest Rate and the Mobility Component at the Lower Rate since 9 April 2021. On 3 March 2022 Ahmed’s mother (as his appointee) made an application for a supersession of Ahmed’s DLA award, arguing that he should be awarded the Higher Rate of the Mobility Component. On 8 July 2022 a decision maker for the Secretary of State decided not to supersede the existing award (the “**SoS Decision**”).

3. Mrs Bashir disagreed with the SoS Decision and requested a mandatory reconsideration. However, the SoS Decision was confirmed on reconsideration and Mrs Bashir appealed to the First-tier Tribunal.
4. On 24 February 2025, a three-member panel of the First-tier Tribunal (Social Entitlement Chamber) convened at Leicester (the “**Tribunal**”). The Tribunal heard evidence and argument. The Tribunal decided to dismiss the appeal and confirm the SoS Decision (the “**FtT Decision**”).

The permission stage

5. Ahmed sought permission from the First-tier Tribunal to appeal to the Upper Tribunal on several grounds, but on 10 June 2025 Judge Robson refused permission to appeal. Mrs Bashir then exercised the right to apply to the Upper Tribunal for permission to appeal and the matter came before me.
6. I granted permission to appeal. In my grant of permission (which was addressed to Ahmed) I said:
 - “7. Your representative has criticised the Tribunal’s decision making on the ‘severe mental impairment’ criteria to eligibility for an award of the Mobility Component of Disability Living Allowance at the Higher Rate.
 8. Your representative argues that, given that the Tribunal accepted (at paragraph 30 of its statement of reasons) the evidence recited at paragraphs 19 and 20, it was incumbent on it to explain with greater particularity than it did why it did not accept that you satisfied the ‘severe mental impairment’ criteria.
 9. I am persuaded that this ground of appeal is realistically arguable and warrants a grant of permission to appeal to the Upper Tribunal. My grant of permission extends to all matters raised in your UT1 application form.”
7. I made Case Management Directions for the parties to make submissions and indicate whether they requested an oral hearing of the appeal.

The positions of the parties

8. Mr Martin, on behalf of the Secretary of State, supported the appeal on the basis that the Tribunal had failed to make adequate findings of fact to support its decision and had failed to provide adequate reasons for its decision. He asked me to set aside the FtT Decision and remit the matter to be redetermined by a fresh panel of the First-tier Tribunal.
9. Ahmed’s representative asked me to exercise my discretion to remake the decision on the basis that the evidence that the Tribunal had accepted clearly indicated that Ahmed exhibits disruptive behaviour which is extreme and that he regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property.
10. Neither party requested an oral hearing, and given the degree of agreement between the parties, I decided that the interests of justice did not require one. There was no application under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

The ‘SMI Criteria’ for an award of the Higher Rate of the Mobility Component of DLA

11. Section 73 of the 1992 Act provides (so far as relevant to this appeal):

“The mobility component

73. (1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the relevant age and throughout which-

...

(c) he falls within subsection (3) below;

...

(3) A person falls within this subsection if –

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.”

12. The meaning of “severely mentally impaired” is explained in regulation 12(5) of the Social Security (Disability Living Allowance) Regulations 1991 (the “**DLA Regulations**”):

“(5) A person falls within subsection (3)(a) of section 73 of the [1992 Act] (severe behavioural problems) if he exhibits disruptive behaviour which-

(a) is extreme,

(b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and

(c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake.”

13. In the proceedings before the Tribunal the Secretary of State accepted that, by reason of his autism, Ahmed was severely mentally impaired. He also accepted that both the day and night conditions were met. Subparagraphs (a) and (c) of Section 73(3) were therefore not in issue. The only issue in respect of the SMI Criteria was therefore whether the Ahmed fell within subparagraph (b) of section 73(3) (i.e. whether he “displays severe behavioural problems”).

14. The Tribunal summarised the written evidence in the appeal bundle about Ahmed’s behaviour as follows:

“18. Within the documents in the bundle, we were told the following about Ahmed’s parents’ experience of his behaviour:

a. Ahmed has no sense of danger. He will run off in any direction and somebody needs to be with him to stop him from running on to the road (pages 26-27).

b. When he runs, he is unable to judge obstacles and his surroundings. He will trip over causing himself cuts and bruises (page 28).

c. He needs to be restrained with strong straps and there is a need for a special-needs pushchair (page 50).

d. He will not respond to the command ‘stop’ (page 50).

- e. There are two extra locks on each door in the house, and there is a need to ' put a GPS tracker in Ahmed's nappy pad (page 51).
- f. He does not sleep and can spends days awake. He will be full of energy, hopping and jumping (page 51).
- g. He is unable to follow simple instructions (page 66).
- h. If he drops to the floor, he has to be physically moved (page 79).
- i. He occasionally has episodes where he will temporarily paralyse and not be willing to walk (page 87).

19. In an Education, Health and Care Plan ("EHCP") dated 01.07.2020, the following relevant matters are explained about his behaviour:

- a. Ahmed is a cuddly, happy and energetic boy (page 63). He enjoys cuddles (page 65).
- b. He is described as being sensitive to too much sound. He responds well to firm pressure and contact (page 63).
- c. He can display sensory seeking behaviours with his hands such as playing with cornflour and foam, as well as his poo (page 63).
- d. He displays little sense of safety or awareness of others (page 63).
- e. He can be impulsive in his behaviours which can impact on the safety of those around him, for example he will push past and bump into other children if they are in his way (page 63).
- f. He finds it difficult to follow instructions (page 64) and is unable to follow simple instructions (page 66).
- g. He can get very upset when someone comes to play with toys he is playing with or takes them away. When playing alongside peers, at times he can push other children to get what he wants (page 66).

20. At the appeal hearing, Mrs Bashir told us the following additional information about Ahmed's behaviour in response to our questions:

- a. After Ahmed's father passed in 2021, Ahmed's behaviour deteriorated. Examples included pulling, hitting, pinching, pulling Mrs Bashir's hair, throwing things, biting, and breaking things in the house. It has led to broken tiles and a broken dining table. He will scratch the walls with pens.
- b. He does not seem to feel pain when he gets cut.
- c. He is hyperactive at night time and wakes his siblings up.
- d. There are 3 locks on the front door.
- e. His behaviour has been worse since the 2020 EHCP document was produced. She did not recall receiving any written reports from the school about his behaviour. It was more likely she has received phone calls. She was not getting any written reports about physical restraint.
- f. At home, she will restrain him by holding him down on the couch and encouraging deep breathing.

- g. If walking outside, she will hover around him, hold his hand or guide him with her hand. If she takes him to the park, she will follow him around the park.
 - h. Ahmed last saw the community paediatrician in 2019 or 2020.
 - i. She did not receive a pushchair from the NHS despite expecting one.
 - j. The reference in the EHCP document to touching poo is a reference to Ahmed putting his finger in his nappy.”
15. The Tribunal was not obliged to accept all the evidence before it: its role was to assess the evidence critically, deciding which pieces of evidence were likely to be reliable (and so given weight) and which were less reliable (attracting less weight). It had to resolve conflicts of evidence on material issues accordingly. It had a broad discretion in this regard.
16. The Tribunal explained at paragraph 30 of its statement of reasons that it accepted the evidence summarised in paragraphs 18 and 19 of its statement of reasons. However, in relation to the evidence summarised in paragraph 20 of its statement of reasons it said:
- “Mrs Bashir told us about [...] further behaviour as outlined at paragraph 20 above. It was more severe than the behaviour described in the documents we had read. There were no documents to support this deterioration in behaviour, such as reports from the school. Ahmed had also not seen the Consultant Paediatrician since 2019 or 2020. We accept that Ahmed’s behaviour probably did get worse for a period after the death of his father. This would be entirely understandable. Because the description is not supported by other evidence, however, we are not satisfied that Ahmed’s behaviour can be properly described as extreme disruptive behaviour.”
17. At the permission stage I was required to decide whether Ahmed’s grounds of appeal were “arguable” with a realistic prospect of success. At the substantive stage I must be satisfied (on the balance of probabilities) that the Tribunal did indeed err in law in a way that was material.
18. Given the Tribunal’s acceptance of the matters set out in paragraphs 18 and 19 of its statement of reasons, it was incumbent on the Tribunal to explain with greater clarity why it did not consider Ahmed’s behaviour to be disruptive and extreme.
19. The Tribunal directed itself correctly that the word “extreme” in Regulation 12(5)(a) of the DLA Regulations is to be given its ordinary meaning of “wholly out of the ordinary” (per **SSWP v MG (DLA)** [2012] 429 (AAC) (“**SSWP v MG**”) at [22]). However, it failed to explain why behaviour that included running off in all directions, tripping resulting in cuts and bruises, requiring a GPS tracker in his nappy pad, needing to be restrained with strong straps and bumping into other children did not amount to extreme disruptive behaviour.
20. Further, while the Tribunal accepted that Ahmed’s behaviour got worse after his father died, it appears to have rejected Mrs Bashir’s evidence summarised in paragraph 20 of its statement of reasons on the basis that what Mrs Bashir said was not supported by documentary evidence. This suggests that the Tribunal misdirected itself in law that Mrs Bashir’s evidence required corroboration if it was to be believed. There is no such requirement for corroboration.

21. The Tribunal said that the behaviour described by Mrs Bashir and summarised in paragraph 20 of its statement of reasons was “more severe” than the behaviour described in the documents it had read. This suggests that had the Tribunal accepted Mrs Bashir’s evidence it might have accepted that Ahmed’s behaviour was disruptive behaviour which was extreme.
22. The Tribunal considered whether Ahmed regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property, and directed itself correctly that what amounts to physical restraint is specific to the facts of each case, a firm grip on the arm perhaps being sufficient to avoid danger for a 5 year old child, but insufficient for a 16 year old (citing **SSWP v MG** at [24]). However, it failed to explain why in this case it found that the requirement for regular physical restraint was not satisfied given that it accepted that Ahmed needed “to be restrained with strong straps”, he had “no sense of danger”, would “run off in any direction”, did not respond to the command “stop” and would run into the road.
23. The errors I have identified are material in the sense that had they not been made the outcome of the appeal could have been different.
24. 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

25. 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.
26. This matter has been going on for some time. I consider that the overriding objective is best served by my redetermining the appeal for myself based on the factual findings made by the Tribunal.
27. I am persuaded based on the facts found by the Tribunal that Ahmed’s behaviour in the relevant period was both disruptive and extreme and he regularly required another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another, or damage to property. All the SMI criteria are met.

Thomas Church
Judge of the Upper Tribunal

Authorised for issue on: 29 June 2026