



Neutral Citation Number: [2026] UKUT 326 (AAC)
Appeal No. UA-2025-000874-DLA

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

ROMAN HAWKSBY
(by his appointee, REBECCA HAWKSBY)

Appellant

v

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:

Appellant: Not represented

Respondent: A Martin, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Panel: Tribunal Judge Osborne, Medical Member Dr Brown and
Disability Qualified Professional Member Mrs Cunningham

Tribunal Case No.: SC269/24/00777

Tribunal Venue: Leeds

Decision Date: 13 November 2024

SUMMARY OF DECISION

Tribunal Practice and Procedure (34) Evidence (34.1)

This appeal is mainly about whether evidence requires corroboration if it is to be accepted. The Upper Tribunal decides that the First-tier Tribunal misdirected itself in law to the effect that the Appointee's evidence about her son's needs could not be

given weight unless it was corroborated by other evidence. There is no such requirement for corroboration.

Appeal allowed and remitted.

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 13 November 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

1. This appeal is mainly about whether evidence requires corroboration if it is to be accepted by a tribunal. The Upper Tribunal also considers when a tribunal might need to consider adjourning for further evidence.

Background

2. The Appointee is the mother of the Appellant (to whom I shall refer as the “**Roman**”). She has been appointed by the Secretary of State to act on behalf of Roman in respect of benefit matters claimed
3. The Appointee made a claim to Disability Living Allowance (“**DLA**”) on Roman’s behalf on 11 October 2023 on the basis that Roman’s health conditions (having

developmental delay, being non-verbal and lacking a sense of danger) means that he has mobility and care needs that are substantially greater than those of a child of the same age who has no health conditions. On 12 March 2024 a decision maker for the Secretary of State awarded Roman DLA with the care component at the middle rate but not the mobility component at either rate from 11 October 2023 until 10 October 2025 (the “**SoS Decision**”).

4. The Appointee was dissatisfied with this outcome and appealed the SoS Decision to the First-tier Tribunal. She asked that the appeal be decided on the papers without an oral hearing. On 13 November 2024 a three-member panel of the First-tier Tribunal convened at Leeds to consider the appeal (the “**Tribunal**”). The Tribunal dismissed the appeal and confirmed the SoS Decision (the “**FtT Decision**”).

The permission stage

5. The Appointee sought permission from the First-tier Tribunal to appeal the FtT Decision to the Upper Tribunal, which was refused by Judge Osborne on 20 May 2025. The Appointee then exercised her right to renew the application to the Upper Tribunal, and the matter came before me.
6. Although I was not persuaded that any of the grounds put forward by the Appointee were realistically arguable, I exercised my inquisitorial jurisdiction to subject the FtT Decision to my own scrutiny to identify two grounds of appeal which I considered to be realistically arguable. In my grant of permission I said:

“11. In the second bullet point in paragraph [5] of its statement of reasons the Tribunal pointed out that there was no corroborative evidence regarding the Applicant’s night needs, which were not mentioned in any of the medical paperwork, “which just left [the Appointee’s] assertions regarding the same”. This raises the possibility that the Tribunal may have been labouring under the misapprehension that it could only accept the evidence given by the Appointee if that evidence was corroborated by other evidence.

12. While the Tribunal was by no means obliged to accept the Appointee’s evidence as to her son’s needs, and had a broad discretion in weighing her evidence and making findings of fact, neither was it prevented from accepting what the Appointee said due to the absence of any medical or other evidence corroborating it. The Tribunal has given no reasons for rejecting the Appointee’s evidence other than its lack of corroboration. I am satisfied that it is arguable that the Tribunal erred in law in this regard.

13. I note also that the Tribunal said in paragraph [8] of its statement of reasons:

“The appointee elected to have the case dealt with on paper at which oral evidence could not be taken from the appointee in relation to night needs.”

14. The Tribunal did not find the Appointee’s evidence about the Applicant’s night needs persuasive, and there was no other evidence that could shed light on the Applicant’s night needs. In such circumstances it might have been incumbent on the Tribunal to consider adjourning. Even though the Appointee had indicated her preference for the appeal to be dealt with on the papers it was still open to the Tribunal to adjourn for further

written evidence of the Applicant's night needs, or for an oral hearing so that it could question the Appointee. Its failure to consider such a course of action (or, if it did consider such a course of action, its failure to explain that in its reasons arguably amounts to an error of law.

15. Either of the potential errors I have identified above could have been material in the sense that, had such error not been made the outcome of the appeal could have been different."

7. I granted permission and 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 grounds I had identified in my grant of permission. He encouraged me to set the FtT Decision aside and to remit the matter to be reheard by another tribunal, as did the Appointee.
9. 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

10. At the permission stage I was required to decide whether it was realistically arguable that the Tribunal had erred in law. At the substantive stage I must be satisfied (on the balance of probabilities) that the Tribunal did indeed go wrong in law in a way that made a difference to the outcome.
11. The reasons given by the Tribunal were extremely brief. In its statement of written reasons the first two paragraphs set out the claim history. The remaining 7 paragraphs comprise the Tribunal's explanation of its reasons. I set them out in full:

"3. The tribunal can only take account of Roman's condition up until the date of the decision under appeal. The tribunal considered the evidence contained in the papers numbered 1 to 80 together with the written submission of the Secretary of State for Work and Pensions. The Appeal was dealt with on the papers, at the request of Mrs Hawksby.

4. The tribunal made the following findings of fact regarding Roman's health conditions:

- He is non-verbal.
- He has developmental delay.
- He has no sense of danger.

5. The Tribunal made the following findings of fact in respect of the tests for care under Disability Living Allowance as set out in (S. 72 Social Security Contributions and Benefits Act 1992:

- Roman's conditions meant that he requires frequent attention throughout the day. This was supported in evidence by Roman's nursery who confirmed his conditions and his needs during the day.

- There was no corroborative evidence regarding night needs. They were not mentioned in any of the medical paperwork, which just left Mrs Hawksby's assertions regarding the same.

6. The Tribunal must apply the findings of fact set out above when considering Roman's condition's [sic] and applying them to the legislative framework set out above.

7. The tribunal found that there was a lack of evidence to support this appeal. The medical paperwork went to the conditions that Roman suffers from. There was some support from his nursery which supported the award of middle rate care for day needs. There was no supporting evidence with regards to night needs.

8. The appointee elected to have the case dealt with on paper at which oral evidence could not be taken from the appointee in relation to night needs.

9. The Tribunal was of the view that this application was premature in its nature. When there is further, supportive evidence about all of Roman's needs, not just his day needs, including medical evidence not just in relation to his conditions but also his needs, the Respondent could consider the matter afresh."

12. A tribunal's statement of written reasons must be read together with its decision notice. However, the decision notice does not shed much more light on how and why the Tribunal decided as it did. Having set out the outcome of the appeal, its explanation of its decision making is limited to three short paragraphs:

"4. The Tribunal was of the view that there was insufficient evidence on the papers of medical issues of the Appellant that would justify a higher rate of award.

5. No party has objected to the matter being decided without a hearing.

6. Having considered the appeal bundle to page 69 and the requirements of rules 2 and 27 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 the Tribunal is satisfied that it is able to decide the case in this way."

13. The Appointee had claimed in her DLA1 application form (see p. 37 of the First-tier Tribunal bundle) that Roman had significant night time care needs, requiring:

7 minutes of help 3-4 times every night with encouragement, prompting or assistance to get into, get out of or turn in bed,

- (a) 8-10 minutes of help 1-2 times every night with encouragement, prompting or assistance to get to and use the toilet, manage nappies or pads,
- (b) 10-12 minutes of help 1-2 times on 4-5 nights each week with encouragement, prompting or assistance to have treatment, and
- (c) 20 minutes of help up to 4 times every night with encouragement, prompting or assistance to settle or re-settle.

14. She also claimed that Roman had significant night time supervision needs, requiring:

- (a) 11-13 minutes of supervision 2-4 times every night because he is unaware of danger or may harm himself or others,
 - (b) 10-15 minutes of supervision 4 times every night because he might wander about, and
 - (c) 8-10 minutes of supervision 4-5 times a night because he may have behavioural problems.
15. The Appointee also gave a narrative account of Roman's night time needs: "He can break out of his sleeping bag, get his legs stuck in the bars on his cot which should be the safest place for him at bedtime" (see p. 39 of the First-tier Tribunal bundle).
16. The Tribunal did not address the Appointee's evidence as to Roman's night time needs except to note that there was "no corroborative evidence regarding night needs", such needs "were not mentioned in any of the medical paperwork" (paragraph 5 of the statement of reasons), and there was "no supporting evidence with regards to night need" (paragraph 7 of the statement of reasons). The Tribunal gave no other explanation of its apparent rejection of the Appointee's evidence as to Roman's night time needs.
17. In the absence of any further explanation of why it did not accept the Appointee's evidence I conclude that the Tribunal wrongly believed there to be a legal requirement for corroboration. There is no such requirement. The Tribunal misdirected itself in law in that regard.
18. The Tribunal had a broad discretion in its role evaluating the evidence and making findings of fact. It was by no means required to accept the Appointee's evidence, but neither was it prevented from accepting it just because what she said was not supported by any other evidence (whether from a medical professional or a lay person).
19. The Tribunal should have evaluated the Appointee's uncorroborated evidence, given it the weight it considered appropriate in the light of the evidence as a whole, made such findings of fact as were required to determine the issues in the appeal and explained with adequate clarity why it decided as it did.
20. If the Tribunal was concerned that the evidence before it was insufficient to allow it to decide the issues in the appeal fairly and justly in accordance with the overriding objective, it should have considered adjourning for further evidence. While the decision notice makes reference to consideration of rules 2 and 27 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, it does not explain why, given what it had said about there being an insufficiency of evidence, the statement that the Tribunal was "satisfied that it is able to decide the case in this way" is not adequate to explain how the Tribunal satisfied itself that determining the appeal without seeking further evidence was the course that best served the overriding objective.
21. For these reasons I am persuaded that the Tribunal erred in law. Its errors were material because 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, because the First-tier Tribunal with its expert members is the most appropriate forum for finding such facts, and because this is the form of disposal preferred by both parties, 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: 20 August 2026