



Neutral Citation Number: [2026] UKUT 338 (AAC)
Appeal No. UA-2025-001256-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

KEITH JOYCE

Appellant

-v-

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:

Appellant:

Ms Goodman, Kester Disability Rights

Respondent:

C Pettet, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal:

First-tier Tribunal (Social Entitlement Chamber)

Tribunal Panel:

Tribunal Judge D French, Tribunal Medical Member Dr
Alam and Disability Qualified Professional Member
Brampton

Digital Case No.:

1703-1826-6440-9756

Tribunal Venue:

Birmingham Civil Justice Centre

Decision Date:

17 January 2025

SUMMARY OF DECISION

Personal Independence Payment – General (41)

This appeal is mainly about the need for a tribunal to give an adequate explanation of its decision making.

The Upper Tribunal allowed the appeal, set the decision aside and remitted the appeal to the First-tier Tribunal for rehearing.

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, 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 17 January 2025.
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

Background

1. On 29 March 2023 the Appellant (to whom I shall refer as the “**claimant**”) made a claim to a Personal Independence Payment because he was experiencing problems with his eyes.
2. On 1 November 2023 a decision maker for the Secretary of State considered his application and decided he did not satisfy the entitlement conditions to a Personal Independence Payment from 29 March 2023 and so was not entitled to any award (the “**SoS Decision**”).
3. The claimant applied for mandatory reconsideration of the SoS Decision, but the outcome of the reconsideration was that the SoS Decision was upheld. Dissatisfied with the outcome, the claimant appealed to the First-tier Tribunal.
4. A three-member panel of the First-tier Tribunal convened for a remote video hearing of the appeal on 17 January 2025 (the “**Tribunal**”) at which the claimant gave evidence and his representative made submissions. The Tribunal dismissed the claimant's appeal and confirmed the SoS Decision (the “**FtT Decision**”).

5. The claimant applied to the First-tier Tribunal for permission to appeal the FtT Decision, and when this application was dismissed, he exercised his right to renew the application to the Upper Tribunal. The matter came before me. In my decision on the matter of permission (which was addressed to the claimant) I said:

“8. Your claim to a Personal Independence Payment was made on the basis that you have a diagnosis of Blepharospasm, a neurological condition which causes sporadic spasms in the muscles in or around the eyes, causing them to twitch or flex, and sometimes forcing the eyes shut. The Tribunal accepted that you suffered from this condition.

9. You claimed that due to symptoms of Blepharospasm you found it difficult to carry out many of your daily tasks and mobility tasks. The Tribunal decided that you were not entitled to points for these claimed difficulties because it said that your difficulties could be overcome if you were to use an appropriate aid, namely either eye strips or special glasses to keep your eyes open, allowing you to see.

10. In her letter accompanying your application for permission to appeal your representative, Ms Josie Goodman of Kester Disability Rights maintained that the Tribunal erred in law in relying on the use of the aids it suggested. First, the Tribunal did not explain what it made of your evidence that you had tried using eye strips but found them to be ineffective because they were not strong enough to hold your eyelid back and keep your eye open. Second, she argued that special glasses that hold your eyelids open are not aids that you could “reasonably be expected to wear or use” because such a product does not exist and so cannot be said to be reasonably available to you.

11. Ms Goodman also highlighted an apparent misunderstanding of the chronology of events that might have influenced the Tribunal’s assessment of your credibility as a witness.

12. You spoke at your hearing of having a “good eye” and a “bad eye”, and said that your left eye was “ok”, albeit that you maintained that if you relied only on the use of your “good eye” you would lack peripheral vision and so would lack confidence. The Tribunal would have been entitled to have assessed your ability to carry out the relevant activities with the use of your “good eye” only, but it appears to have chosen not to do that. The Tribunal referred to there being “a lack of clarity as to whether the claimed inability to open the eye affected both eyes similarly or was more severe in the right”.

13. It does not appear to have resolved that lack of clarity and instead reached its decision in reliance on its understanding that even if your condition affected both of your eyes similarly, you would nonetheless be able to complete the relevant tasks independently to the required standard with the use of aids.

14. I am persuaded that it is at least arguable that the Tribunal’s reliance on your being able to use the aids it suggested was incompatible with its scoring you no points at all, or that the Tribunal’s reasons are inadequate to explain why you were awarded no points.

15. I am also persuaded that it is arguable that the Tribunal erred in law in relying on the potential use of “special glasses” to hold your eyelids open because such glasses do not appear to be widely available and may not exist at all.

16. I am satisfied that if the Tribunal did err in one or more of the ways I have said that it might have done, such error could be material in the sense that had such error or errors not been made, the outcome of your appeal might have been different.”

6. I gave permission to appeal and made Case Management Directions for the parties to make submissions on the appeal and to indicate whether they requested an oral hearing.

The positions of the parties

7. Mrs Pettett, on behalf of the Secretary of State, indicated support for the appeal on the basis that the Tribunal had erred materially in law. She invited me to set the FtT Decision aside and remit it to the First-tier Tribunal for redetermination.
8. The claimant's representative provided an update on the claimant's situation but had nothing to add to the Secretary of State's "helpful" submissions.
9. Neither party requested an oral hearing. 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 the claimant'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.
11. The Tribunal explained its approach to scoring the claimant's functional limitations as follows:

“9 ... (ii) This Tribunal accepted that the Appellant had a significant health condition. However, the Tribunal was required to make its decision not on the basis of diagnoses but rather functionality in respect of statutory criteria on the majority of days. There was a lack of clarity as to whether the claimed inability to open the eye affected both eyes similarly or was more severe in the right. In any event there were options available to the Appellant to keep his eyes open, including “strips” to hold the eyelid back and special glasses to do the same...”
12. “Aids” are defined in Regulation 2 of the Social Security (Personal Independence Payment) Regulations 2013 (the “**PIP Regulations**”) as follows:

“2. In these Regulations –

...

“aid or appliance” –

(a) means any device which improves, provides or replaces C's impaired physical or mental function; and

(b) includes a prosthesis ...”
13. The Tribunal addressed the scoring of the daily living activities as follows:

“12. “Daily Living- There was no cognitive or musculoskeletal reason why the Appellant should be unable to carry out any task of DL. The issue for every activity was whether he could "hold his eye open " long enough to complete the task and whether he could complete the task using his other hand. As the DQPM had pointed out there were aids available in terms of "strips" to hold the

eye open and glasses which could do likewise, but he said strips were "not strong enough" and he had never tried the glasses. The Tribunal considered that since he had adequate vision to carry all tasks of DL. No points were applicable and there was no award."

14. The Tribunal's explanation of its scoring is contradictory: the Tribunal appears to rely on the availability of special strips or glasses that would allow the claimant to carry out his tasks of daily living with the use of both his eyes and his hands despite his spasms but has not explained why these items would not amount to aids or appliances the use of which would attract points if reasonably required.
15. Further, the Tribunal does not address the claimant's evidence that he had tried the strips suggested, but they were "not strong enough" to allow him to carry out tasks without resorting to holding his eyes open manually. The Tribunal does not address this aspect of the claimant's evidence. Instead, the Tribunal simply ignored it. This lack of explanation of what it made of the claimant's evidence renders its reasons inadequate.
16. Further, it was put to the claimant at the hearing that since he had good vision in his left eye, he could wear a patch over his right eye so that he was not affected by spasms in that eye. The claimant is reported as saying in response that if he did so "he would lack peripheral vision and so he would not be confident" (see paragraph 5(c) of the Tribunal's written reasons). The Tribunal failed to explain what it made of this evidence and how it came to the conclusion that the claimant could carry out the relevant activities to the standard required by regulation 4(2A) of the PIP Regulations (safely, to an acceptable standard, repeatedly and within a reasonable time period).
17. For the same reasons that persuaded me at the permission stage that it was realistically arguable that the FtT Decision involved a material error of law and for the additional reasons set out above, I am now persuaded that the Tribunal did err in law and I am persuaded that the error was material.

Disposal

18. Having found that the Tribunal erred in law in ways that were 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.
19. 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.
20. To the extent that the FtT Decision involves any other errors of law, those will be subsumed by the rehearing.

Thomas Church
Judge of the Upper Tribunal

Authorised for issue on: 27 August 2026