



Neutral Citation Number: [2026] UKUT 353 (AAC)
Appeal No. UA-2026-000278-PIP

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

ISMAIL HAMED

Appellant

v

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:

Appellant:

R Kainth, Central England Law Centre

Respondent:

L Howard, Decision Making and Appeals (DMA) Leeds

On appeal from:

Tribunal:

First-tier Tribunal (Social Entitlement Chamber)

Tribunal Panel:

Judge Donovan, Medical Member Dr Borsada and
Disability Qualified Professional Member Mr Lines

Tribunal Case No.:

1712-6709-5474-9377

Tribunal Venue:

Coventry

Decision Date:

25 July 2025

SUMMARY OF DECISION

Tribunal Practice and Procedure (34); Evidence (34.1); Statements of reasons (34.9)

This appeal is mainly about the need for a tribunal to explain what it makes of relevant evidence, to exercise its inquisitorial jurisdiction and to make clear findings upon which to base its decision. In this appeal the claimant said he had been off work for more than a third of the required period but the Tribunal made no findings as to why he was off work and failed to explain what it made of the claimant's evidence.

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

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 25 July 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

What this appeal is about

1. This appeal is mainly about the need for a tribunal to explain what it makes of relevant evidence, to exercise its inquisitorial jurisdiction and to make clear findings upon which to base its decision.

Background

2. The Appellant (to whom I shall refer as the “**claimant**”) claimed a Personal Independence Payment (“**PIP**”) on 26 June 2023 and completed a questionnaire in which he complained of both physical and mental health problems.
3. On 28 November 2023 a decision maker for the Secretary of State decided that he was not entitled to any Personal Independence Payment (with either component at either rate) from 26 June 2023 (the “**SoS Decision**”).
4. The claimant disagreed with the SoS Decision and requested a mandatory reconsideration. However, the SoS Decision was confirmed on reconsideration. The claimant appealed to the First-tier Tribunal.

5. On 25 July 2025, a three-member panel of the First-tier Tribunal (Social Entitlement Chamber) convened at Coventry to consider the appeal (the “**Tribunal**”). The Tribunal decided to confirm the SoS Decision (the “**FtT Decision**”).

The permission stage

6. The claimant sought permission from the First-tier Tribunal to appeal to the Upper Tribunal on several grounds, but on 5 January 2026 Tribunal Judge Lazenby refused permission to appeal. The claimant then exercised his right to apply to the Upper Tribunal for permission to appeal and the matter came before me.

The grounds of appeal

7. The claimant’s representative argued that the FtT Decision was underpinned by a finding by the Tribunal that the claimant was “physically working shortly prior to the decision under appeal” (see paragraph 24 of the Tribunal’s written reasons), when his evidence demonstrated that he had not worked for a significant portion of the “required period” for the purposes of his claim.
8. He argued further that the Tribunal had applied the wrong standard of proof (applying a test of whether there was “compelling evidence” when it should have made its findings based on a simple balance of probabilities).
9. I granted permission to appeal because I was persuaded it was realistically arguable that the First-tier Tribunal had erred materially in law. In my grant of permission, which was addressed to the claimant, I said:

“10. The Tribunal provided some explanation of why it felt able to rely on your having been working in the period shortly prior to making your PIP claim (see paragraph 24 of the Tribunal’s written reasons):

“This work would have necessarily involved a certain amount of motivation, personal care and physical activity and the medical evidence does not indicate a sudden deterioration of any sort in the months preceding the decision.”

11. However, I am persuaded that it is realistically arguable that the Tribunal failed to make adequate findings about the reasons for your ceasing to work, and about what you were able to do (and what you struggled with) during the required period in respect of your claim.

12. I am satisfied that this ground of appeal is realistically arguable and, if the Tribunal did err in the way I have decided it might have done, such error might well be material because had the error not been made the outcome of the appeal might have been different.”

10. My grant of permission was unrestricted. 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

11. Miss Howard, on behalf of the Secretary of State, indicated support for the appeal on the basis that the Tribunal had erred in its fact finding and in its duty to give adequate reasons. She encouraged me to set the FtT Decision aside and to remit the matter to be reheard by another tribunal.
12. The claimant had no further comment to make.

13. Neither party requested an oral hearing.
14. 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

15. 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.
16. I am persuaded that the Tribunal failed adequately to exercise its inquisitorial jurisdiction to investigate the circumstances of, and reasons for, the claimant ceasing work in early June 2023 and not working again until late September 2023. This was likely to be relevant to matters in issue in the appeal.
17. The claimant reported significant difficulties with performing daily living activities 1 (preparing food), 4 (washing and bathing), 6 (dressing and undressing) and 10 (making budgeting decisions). Of course, the Tribunal did not have to accept that evidence at face value: it had to assess the evidence critically and decide what was likely to be reliable and what was not, and it had to say what it accepted and what it did not, explaining how it resolved conflicts of interest on material matters.
18. While the Tribunal partially rehearsed the claimant's evidence on these matters, it did not explain how it assessed the reliability of what the claimant said, and it did not make clear findings as to what the claimant could and could not do (or about why he was not working for a substantial portion of the "required period" in relation to his claim. As such, there was insufficient foundation for the Tribunal's scoring of the claimant's functional ability by reference to the Schedule 1 descriptors. The Tribunal's errors were material in the sense that had the errors not been made the outcome of the appeal could have been different.
19. 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

20. 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.
21. 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: 14 September 2026