Neutral Citation Number: [2026] UKUT 386 (AAC)
Appeal No. UA-2025-001337-PIP

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

ASHANTI BAILEY

Appellant

-v-

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:	
Appellant:	Kester Dean, Kester Disability Rights
Respondent:	R Howard, Decision Making and Appeals (DMA) Leeds
On appeal from:	
Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Judge/Panel:	Tribunal Judge DS McLeese
Digital Case No.:	1702-3939-1712-0188
Tribunal Venue:	In Chambers
Decision Date:	13 June 2025

SUMMARY OF DECISION

Reviews, revisions and supersessions (30); official error (30.8); Personal Independence Payment – daily living activities (42); Activity 2 – taking nutrition (42.2)

The First-tier Tribunal struck out the claimant's appeal against the Secretary of State's decision on her entitlement to PIP (made more than 13 months prior to the claimant's application) on the basis that the Secretary of State's decision involved no official error and the tribunal therefore lacked jurisdiction.

The Upper Tribunal finds that the Secretary of State and the First-tier Tribunal misdirected themselves in law by treating the claimant's answers to the questions in

her PIP questionnaire as definitive and not giving proper consideration to the evidence that accompanied it about the claimant's eating disorder and the treatment she was receiving for it which included prompting and supervision of taking nutrition. They also erred in basing a finding that the claimant had no issues with taking nutrition on evidence showing that her weight had been stable for a sustained six-month period during which she was receiving prompting and supervision with her eating.

The Upper Tribunal 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 judge who made the decision of 13 June 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 proper approach to PIP daily living activity 2 (taking nutrition) and the need for caution when interpreting a claimant's answers in a PIP questionnaire, which must be read in the context of the evidence as a whole.

Factual Background

2. The Appellant (to whom I shall refer as the **"claimant"**), having previously been entitled to a Disability Living Allowance, made a claim to a Personal Independence Payment (**"PIP"**), submitting a PIP2 questionnaire dated 5 October 2018.

3. The claimant had longstanding mental health problems and had since 2015 been under the care of the Bristol East Central CAMHS team due to concerns about anxiety, low mood, low weight and an eating disorder. In July 2016 she was referred to a specialist eating disorders team, working with specialist CAMHS nurses and psychologists within a regular eating disorders clinic.

4. The PIP2 questionnaire contains a series of questions with tick boxes which are intended to allow claimants to provide information relevant to assessment of their eligibility to PIP by reference to the descriptors in Schedule 1 to the Social Security (Personal Independence Payment) Regulations 2013 (the **"PIP Regulations"**). Claimants are awarded points under the Schedule 1 descriptors to the extent that the limitations they experience as a result of their health conditions match those described in the descriptors. A score of at least 12 points in relation to either the daily living or mobility component entitles a claimant to the enhanced rate of that component, and a score of at least 8 points but fewer than 12 points in relation to a component entitles a claimant to the standard rate of that component. A score of fewer than 8 points in relation to a component entitles the claimant to no award in respect of that component.

5. The claimant's PIP2 was completed by her mother. Somewhat surprisingly, given that the claimant was in the care of a specialist eating disorders team, in response to question 4(c) ("Do you need help from another person to eat and drink?") her mother ticked the "no" box. However, when the claimant's mother submitted the PIP2 questionnaire she also sent 25 pages of supporting medical evidence from the clinicians treating her, and this evidence referenced the claimant's difficulties with eating.

6. On 28 November 2018 a decision maker for the Secretary of State decided that the claimant scored 7 points in respect of the daily living activities (under 3(b), 4(c), 6(c) and 9(b)) and no points in respect of the mobility activities, with the consequence that she did not satisfy the eligibility conditions to a PIP with either component at either rate from 10 September 2018 (the **"SoS Decision"**). The claimant asked for a mandatory reconsideration of the SoS Decision, but the SoS Decision was confirmed on reconsideration.

7. The SoS Decision relied heavily on a PIP assessment review report produced by a healthcare professional (physiotherapist) on 18 October 2018 which relied upon the claimant's PIP2, the healthcare professional's own expertise and a telephone call that the healthcare professional had had with a mental health worker from the CAMHS team caring for the claimant. The healthcare professional's report included a note of that call as follows:

> "18-10-18 13:23: Call received from Ann Hughs > CAMHS mental health worker. Advised that Miss Bailey attends hospital education and was referred there due to her mental difficulties. She presents with low mood, lack of motivation, social isolation at times, social anxieties, and a history of suicidal ideation … Nutrition – her weight has been stable for in excess of 6 months and there are no concerns regarding her oral intake …"

8. In relation to daily living activity 2 ("Taking nutrition"), the decision maker decided that the claimant could eat and drink unaided and therefore scored no points. The reasons provided were:

> "**My decision**
>
> I made my decision using information about your health condition or disability including details of any treatment, medication, test results and symptoms. This information is the best available and enough to decide how much help you need without a face to face consultation. You said you can manage preparing food, taking nutrition, managing toilet needs or incontinence, reading and understanding signs, symbols and words and making budgeting decisions. I agree you can manage these activities. You said you have difficulties communicating verbally. Mixing with others is not considered within the scope of this activity. You have no cognitive impairment and no difficulties understanding or expressing verbal information. Therefore I decided you can express and understand verbal information unaided. You said you have difficulties managing therapy or monitoring a health condition. I agree. I decided you need supervision, prompting or assistance to manage this task. You said you have difficulties dressing and undressing and engaging with other people face to face. I agree. You have symptoms of low mood, self neglect and lack of motivation. Therefore I decided you need prompting to get dressed or undressed, keep your clothes on, or select appropriate clothing and engage with other people. You said you can manage washing and bathing. However the telephone call with your mental health worker confirms that as stated above you have symptoms of low mood, self-neglect and lack of motivation. Therefore I decided you need prompting to wash and bathe."

9. On 18 August 2023 the claimant requested reconsideration of the SoS Decision on grounds of official error. The Secretary of State did not respond to that request.

The proceedings before the First-tier Tribunal

10. On 19 December 2023 the claimant lodged an appeal against the SoS Decision with the First-tier Tribunal. The appeal was focused on the Secretary of State's findings in relation to daily living activity 2 (taking nutrition). The First-tier Tribunal made directions observing that the appeal (received on 23 December 2023) was prima facie out of time unless the reconsideration request was based on an arguable or actual official error. The Tribunal directed the claimant to provide submissions and documents in relation to the official error relied upon, and directed the Secretary of State to make a submission on the adjudication history, to provide confirmation whether medical evidence the claimant relied upon had been provided with the claim, and to provide further evidence, including a file note of the Healthcare Professional's conversation with the claimant's mental health worker.

11. The claimant's representative made a submission identifying the official error relied upon as "the failure to implement Parliament's intentions as stipulated in regulations 4(2A) and 4(4) of The Social Security (Personal Independence Payment) Regulations 2013":

> "15. It is submitted the Appellant clearly required prompting to take nutrition and the Respondent's decision was erroneous because it simply did not consider whether the Appellant could actually safely take nutrition unaided on 28 November 2018 because it failed to make sufficient inquiry, or indeed any

> inquiry at all. It is submitted this is such a glaring Official Error that a Respondent review should deal with the matter having yet another opportunity to do so now.
>
> 16. The medical evidence is submitted to be clear the Appellant suffers a long term eating disorder and that perhaps the Respondent simply did not realise that the PIP descriptors covered her needs.
>
> …
>
> 21. It is submitted the risk from the Appellant being left without prompting to take nutrition are well within the threshold set by ***RJ, GMcL and CS v SSWP*** (2017) UKUT 0105 (AAC)."

12. The Secretary of State does not appear to have provided any submission in response to the First-tier Tribunal's Directions.

13. On 13 June 2025 Tribunal Judge DS McLeese (the **"Tribunal"**) considered the appeal and decided that:

    (a) the SoS Decision involved no official error,

    (b) the appeal had been made beyond the "absolute" 13-month time limit for appealing, and

    (c) there were no exceptional circumstances justifying an extension of time beyond the absolute time limit.

14. Somewhat confusingly, in its decision notice the Tribunal said both that it refused to admit the appeal and that it struck the appeal out for lack of jurisdiction under rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the **"FtT Rules"**) on the basis that the Tribunal had no jurisdiction to hear the appeal because there had been no official error in the determination of the claim in 2018 and the decision of 28 November 2018 contains no official error (**"FtT Decision"**).

15. If the appeal was not admitted there was nothing to strike out. In any event, it is clear enough that the claimant was unsuccessful and her appeal would not proceed.

16. The Tribunal's reasoning for finding that the SoS Decision involved no official error was explained as follows:

> "The factual background is that the appellant or those who dealt with the application on her behalf did not list an eating disorder as being one of her conditions in her application. They ticked no to the question 'do you need help from another person to eat and drink?' The form also clarifies that this includes reminding or supervising to eat and drink."

The permission stage

17. The claimant first applied to reinstate her appeal, and when this was refused, she sought permission from the First-tier Tribunal to appeal the FtT Decision. When that application too was dismissed, the claimant exercised her right to apply to the Upper Tribunal for permission to appeal and the matter came before me.

18. I granted permission. In my grant of permission (which was addressed to the claimant) I said:

> **"**6**.** Your counsel, Mr Abedian, has provided detailed grounds of appeal and written submissions in support, arguing that the First-tier Tribunal erred in law in three ways:
>
> a. it was wrong to consider that it had no jurisdiction to hear your appeal because your completion of the tick boxes in the PIP questionnaire did not preclude a finding that the SoS Decision involved an official error (**"Ground 1"**);
>
> b. it failed to recognise that the Secretary of State's approach to daily living activity 2(d) disclosed an additional error of law or official error (requiring a claimant's need for prompting to be unmet for the claimant to qualify for an award of points in respect of activity 2(d)), which would have given it jurisdiction to hear the appeal (**"Ground 2"**); and
>
> c. it failed to explain with adequate clarity why it gave weight to the Healthcare Professional's report in respect of the SoS Decision and preferred it to the evidence adduced by the claimant (**"Ground 3"**).
>
> 7. I am persuaded that these grounds are arguable with a realistic (as opposed to fanciful) prospect of success. If the Tribunal did err in one or more of the ways Mr Abedian says it did, such error or errors may well have been material in the sense that had such error or errors not been made the outcome of your appeal might have been different. This justifies a grant of permission to appeal to the Upper Tribunal."

19. I made Case Management Directions for the parties to make submissions on the appeal and to say whether they requested an oral hearing.

The positions of the parties

20. Miss Howard, on behalf of the Secretary of State, indicated support for the appeal on the basis that the Tribunal had erred in law in its fact finding and in its reasons. She invited me to set the FtT Decision aside and remit it to the First-tier Tribunal for redetermination.

21. 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

Ground 1

22. The Tribunal struck out the claimant's appeal because it considered the SoS Decision contained no official error. The basis for that conclusion was "the Appellant or those who dealt with the application on her behalf did not list an eating disorder as being one of her conditions in her application" (per the Tribunal's decision notice). In essence, the Tribunal considered that the responses to the tick boxes in the PIP questionnaire justified the SoS Decision and precluded a finding of official error.

23. In response to the claimant's submission that the official error had been the failure to apply the relevant regulations to her needs, the Tribunal found that "[t]he Respondent did apply the PIP Regulations based on what was claimed". Further,

when considering whether there were exceptional reasons to extend the 13-month time limit for appeal, the FtT said:

> "There are none. The Appellant, her mother or whoever was representing her did not claim any issues with taking nutrition in the original application and did not seek to challenge the decision of the DWP on that descriptor as being erroneous. The Tribunal is entirely satisfied on the evidence before it that that is because they did not, as was reflected in the application form and again the evidence garnered from the treating professional spoken to, seek to suggest there was any such issue at the time of that application or when it was decided."

24. In ***AW v SSWP (PIP)*** [2022] UKUT 316 (AAC) I considered the status of the tick boxes on the PIP questionnaires and urged caution:

> "13. The "yes", "no" and "sometimes" tick boxes in the PIP 2 questionnaire are a very blunt instrument. If they are all the First-tier Tribunal has, then it may need to draw inferences from them in the light of whatever other evidence it has, or it may need to seek more evidence. Where, as here, the claimant has provided substantial narrative comments in the text boxes, it is incumbent on the First-tier Tribunal to interpret the ticks in the light of the explanation provided in the narrative.
>
> 14. Of course, no First-tier Tribunal needs to accept what is said in the narrative box. What is written in the box has no special status: it is, rather, just another piece of evidence. But that evidence must be considered, and it may well be incumbent on the First-tier Tribunal to explain what it makes of it and how it evaluated that evidence to reach its findings."

25. The questions in the claimant's PIP questionnaire relevant to the activity of eating and drinking read as follows:

> "**Q4 Eating and drinking**
>
> Use page 8 of the Information Booklet to help answer these questions.
>
> **Tell us about whether you can eat and drink.**
>
> This means:
>
> - remembering when to eat
> - cutting food into pieces
> - putting food and drink in your mouth, and
> - chewing and swallowing food and drink
> - tick the boxes that apply to you then provide more information in the Extra information box.
>
> **Q4a Do you need to use an aid or appliance to eat and drink?**
>
> Aids and appliances include things like:
>
> - weighted cups, adapted cutlery
>
> Yes [ ] No [ ] Sometimes [ ]
>
> **Q4b Do you use a feeding tube or similar device to eat or drink?**
>
> This means things like a feeding tube with a rate limiting device as a delivery system or feed pump.

Yes [ ] No [ ] Sometimes [ ]

Q4c Do you need help from another person to eat and drink?

By this we mean:

- do they remind you to eat and drink?
- do they supervise you?
- do they physically help you to eat and drink?
- do they help you manage a feeding tube?

This includes help you have **and** help you need but don't get.

Yes [ ] No [ ] Sometimes [ ]

Q4d Extra information – Eating and drinking

Tell us more about any difficulties you have when **eating and drinking**:

- tell us how your condition affects you doing this activity
- tell us how you manage at the moment and the problems you have when you can't do this activity
- tell us how long it takes you to complete this activity
- does whether you can do this vary throughout the day? Tell us about good and bad days
- do you experience any other difficulties, **either during or after the activity,** like pain, breathlessness or tiredness?
- tell us about the aids and appliances you **need** to use to help you eat and drink
- tell us about the **help you need from another person** when eating and drinking. This includes help you have **and** help you need but don't get"

26. While it would have been obvious to a benefits adviser that any problems with eating arising out of an eating disorder should be explained in response to Q4, in this case the claimant appears to have completed the form herself. This gives rise to two potential difficulties. First, neither the explanation of what "whether you can eat and drink" means, nor the questions that follow, immediately bring to mind the situation of someone with a condition such as anorexia nervosa because the only difficulty they have with eating and drinking is their choice to restrict their nutritional intake, a choice that is a symptom of their mental health condition. Second, people with eating disorders may have limited insight into their mental health condition, and may not consider themselves to have disordered eating at all, so they may not be well placed to report their difficulties with food.

27. The proper approach to entitlement to benefits was explained in ***R (DLA) 5/06***:

> "41. Another relevant fact of tribunal life is that the benefits system exists to pay benefits to those who are entitled to them. As counsel put it to us in ***Hinchy v Secretary of State for Work and Pensions*** [2005] UKHL 16, [2005] 1 WLR 967, R(IS) 7/05, the system is there to ensure, so far as it can, that everyone receives what they are entitled to, neither more nor less"

28. For these reasons it is important that a decision maker considers the evidence in the round, and a claimant is not denied a benefit to which they are entitled because they lack insight into their condition or have misunderstood the questions in the form. The PIP questionnaire was not the only evidence available to the decision

maker on behalf of the Secretary of State or to the Tribunal. There was ample evidence of the claimant's difficulties with eating and of her receiving treatment for those difficulties. The evidence outside the questionnaire form should have been considered and findings should have been made as to how the claimant managed her nutrition during the required period and whether she reasonably required prompting and/or supervision to take nutrition to the standard required by regulation 4(2A) of the PIP Regulations, including "reliably" and "safely". This required consideration both of the likelihood of harm occurring and the severity of the consequences if it did, per ***RJ, GMcL and CS v SSWP*** [2017] UKUT 105 (AAC) at [56] (underlining added for emphasis):

> "56. In conclusion, the meaning of "safely" in regulation 4(2A) and as defined in regulation 4(4) is apparent when one considers the legislation as a whole and with the assistance of the approach by the House of Lords to the likelihood of harm in the context of protecting people against future harm. An assessment that an activity cannot be carried out safely does not require that the occurrence of harm is "more likely than not". In assessing whether a person can carry out an activity safely, a tribunal must consider whether there is a real possibility that cannot be ignored of harm occurring, having regard to the nature and gravity of the feared harm in the particular case. It follows that both the likelihood of the harm occurring and the severity of the consequences are relevant. The same approach applies to the assessment of a need for supervision."

29. The Tribunal found that the Secretary of State had applied the PIP Regulations correctly based on what had been claimed in the tick boxes on her PIP questionnaire and that this was consistent with the record in the PIP assessment review report of the "conversation with the professional involved in the Appellant's care at the relevant time [which] was wholly in keeping with there being no issue with the taking of nutrition". However, the Tribunal failed to engage with the requirement to consider whether the claimant could carry out the task safely.

30. For these reasons I am persuaded that the Tribunal was wrong to consider that it had no jurisdiction to hear the claimant's appeal because her completion of the tick boxes in the PIP questionnaire and failure to include her eating disorder in her list of health conditions or disabilities in response to Q2a did not preclude a finding that the SoS Decision involved an official error. The Tribunal should have considered the evidence provided with the PIP questionnaire and made findings of fact necessary to determine whether the SoS Decision involved an official error.

Ground 2

31. Turning to Ground 2, the Secretary of State and the Tribunal both appear to have relied heavily on the note of the conversation with the claimant's family therapist, which read:

> "Food prep – able to do this without problem. Nutrition – her weight has been stable for in excess of six months and there are no concerns regarding her oral intake."

32. The Tribunal found this to be "wholly in keeping with there being no issue with the taking of nutrition" (see the Tribunal's decision notice). The Tribunal, like the Secretary of State, appears to have proceeded on the basis that in order to score points under descriptor 2(d) there must be evidence of ongoing weight loss. That

approach is inconsistent with the approach taken in ***AB v SSWP*** [2017] UKUT 217 (AAC), in which the Upper Tribunal held (at [39]):

"39. …As I read Schedule 1 to the Regulations, its structure in relation to all the activities listed is that it was intended that a claimant should always fall within one descriptor or another, the extremes within each activity being that the claimant can manage it unaided or, in effect, cannot manage the activity at all. That being the case, there will inevitably be a descriptor in relation to each activity which is satisfied by a claimant who cannot reach the reg. 4(2A) standard. Despite the apparent generality of the statutory language, reg. 4(2A) includes the words that the claimant satisfies a descriptor "only if [the claimant] can do so …" It seems clear that the function of reg. 4(2A) is to eliminate arguments that a claimant is able to carry on an activity although he can only perform it on isolated occasions and very poorly, in a way which bears no relation to how it might be performed by a person not suffering from the claimant's illness or disability. Where the argument is not over whether the claimant can do something and so satisfies a descriptor, but whether claimant cannot do something and so satisfies a descriptor, reg. 4(2A) does not apply."

33. The medical evidence indicated that in 2018 the claimant was receiving input from healthcare professionals in relation to her weight and her mother was prompting and supervising the content and frequency of her nutritional intake. The fact that the claimant's weight had been stable for 6 months is as consistent with the prompting and supervision she received being effective as it is with there being "no concerns regarding her oral intake". The Secretary of State's reliance on the claimant's stable weight as a basis for concluding that she could not satisfy descriptor 2(d) was an error of law and amounted to a further official error.

Ground 3

34. Ground 3 argues that the Tribunal failed to explain with adequate clarity why it gave weight to the Healthcare Professional's report in respect of the SoS Decision and preferred it to the evidence adduced by the claimant. Given the errors I have already identified in the Tribunal's decision making, which I am satisfied are material in the sense that had they not been made the outcome of the appeal could have been different, I do not consider it necessary to deal with this ground.

Disposal

35. 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.

36. 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.

Thomas Church

Judge of the Upper Tribunal

Authorised for issue on: 5 October 2026