

Neutral Citation Number: [2026] UKUT 437 (AAC)
Appeal No. UA-2025-002025-PIP

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

KRZYSZTOF SROCZYNSKI

Appellant

-v-

SECRETARY OF STATE FOR WORK AND PENSIONS

Respondent

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

Representation:	
Appellant:	Reiza Khan, Leicester City Council Welfare Rights Service
Respondent:	Decision Making and Appeals (DMA) Leeds
On appeal from:	
Tribunal:	First-tier Tribunal (Social Entitlement Chamber)
Tribunal Panel:	Judge L Gardner-Brown, Medical Member Dr N Gravestock and Disability Qualified Professional Member Mrs DF Nolan
Tribunal Case No.:	SC314/24/00576
Tribunal Venue:	Leicester
Decision Date:	27 August 2025

SUMMARY OF DECISION

42 - Personal Independence Payment; 42,2 Activity 2: taking nutrition; 34 – Tribunal practice and procedure; 34.9 – statements of reasons

The Tribunal had to decide on the appropriate scoring for the activity of taking nutrition. Because the claimant told the Tribunal that his wife cut his food up for him, the Tribunal had to conduct a "thought experiment" to decide whether he would be able to carry out the task were he to attempt it. It analysed this by analogy with a task that the claimant performed regularly that involved using both his hands: riding his motorcycle.

Its analysis was flawed because the Tribunal did not make clear findings about the claimant's evidence that he used a splint when riding his motorcycle or about whether use of a splint was reasonably required.

The Upper Tribunal decided that if he did use a splint when riding his motorcycle, and if use of a splint was reasonably required, the claimant's ability to ride his motorcycle while wearing a splint could not provide a reliable foundation for concluding that he could take nutrition without the use of an aid.

The Upper Tribunal allowed the appeal, set aside the decision and remitted the matter for redetermination by a fresh panel of the First-tier Tribunal.

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 27 August 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. By way of brief background, the Appellant (whom I shall call the **"claimant"**) made a claim to Personal Independence Payment on 27 April 2023. A decision maker for the Secretary of State disallowed that claim, deciding on 30 August 2023 that the claimant was not entitled to any award of Personal Independence Payment (with

either component at either rate) from 27 April 2023 (the **"SoS Decision"**). Unhappy with this outcome, the claimant requested a mandatory reconsideration. The reconsideration decision maker confirmed the SoS Decision. The appointee appealed on behalf of the claimant to the First-tier Tribunal.

The decision under appeal

2. On 27 August 2025 a three-member panel of the First-tier Tribunal convened at Leicester to consider the claimant's appeal against the SoS Decision (the **"Tribunal"**). While the Tribunal decided that the claimant should score 6 points under the daily living descriptors this was insufficient to meet the threshold for any award of Personal Independence Payment (which requires a minimum of 8 points in respect of either component). The Tribunal decided to uphold the SoS Decision and confirm that the claimant was not entitled to any Personal Independence Payment from 27 April 2023 (the **"FtT Decision"**).

3. The claimant was unhappy with the FtT Decision and applied to the First-tier Tribunal for permission to appeal, but on 18 November 2025 the application was refused by Tribunal Judge J Garbett. The claimant renewed his application to the Upper Tribunal.

The grounds of appeal

4. The claimant's representative argued that the Tribunal erred in law when deciding which descriptor best characterised the claimant's ability to perform daily living activity 2 (taking nutrition). He said that the Tribunal's reasoning for awarding no points in relation to that activity, which relied on a secondary inference from its primary finding that the claimant used both of his hands when riding his motorbike, was problematic, especially because the claimant's evidence was that he wore a splint on his right hand when riding his motorbike, and he would need to wear his splint if he were to use a knife and fork.

The relevant statutory provisions

5. Entitlement to Personal Independence Payment is governed by the provisions of the Welfare Reform Act 2012 and the Social Security (Personal Independence Payment) Regulations 2013 (the **"PIP Regulations"**). Entitlement to the daily living and mobility components of Personal Independence Payment depends on the number of points a claimant scores for a series of activities. There are ten daily living activities and two mobility activities. Each activity has a list of "descriptors," each with a different number of points. The PIP decision maker considers all the evidence provided and decides which descriptor is the most appropriate choice for each activity, and awards the relevant points for that activity.

6. The relevant points for the ten daily living activities and two mobility activities are added up. If the total number is 8-11 points, a claimant is considered to have "limited" ability to carry out daily living activities and is awarded the standard rate of the daily living component of Personal Independence Payment. If the total is 12 or more points, the claimant is considered to have "severely limited" ability to carry out daily living activities and is awarded enhanced rate of the daily living component of the benefit. If the total number is fewer than 8 points, the claimant is not awarded the daily living component at all. The same principles apply to the mobility component: a claimant who scores 8-11 points is entitled to an award of the mobility component at the standard rate, a claimant who scores 12 or more points is entitled to the mobility component at the enhanced rate, and a score of

fewer than 8 points under the mobility activities means the claimant is not entitled to any award of the mobility component of PIP at all.

7. Regulations 4(2A) and 4(4) of the PIP Regulations provide that a claimant is to be considered capable of completing an activity only if they can do so "safely", "repeatedly" and "within a reasonable time period". "Safely" means in a manner unlikely to cause harm to anyone during or after completion of the activity, "repeatedly" means as often as the activity is reasonably required to be repeated, and within a "reasonable time period" means not more than twice as long as the maximum period that someone with no physical or mental health condition would take to complete the activity.

8. A claimant's ability to carry out an activity is assessed while they wear any "aid or appliance" which is normally worn or used. If a claimant does not wear an aid or appliance but it is reasonable for them to do so, he or she assessed as if they were wearing that aid or appliance (see regulation 4(2)(a) and (b) of the PIP Regulations). "Aid or appliance" means any device which improves, provides or replaces a claimant's impaired physical or mental function. This includes a prosthesis (see regulation 2 of the PIP Regulations).

9. Under regulations 12 and 13 of the PIP Regulations a claimant must satisfy the descriptors for the "required period." This means that a claimant must have satisfied the descriptors for three months before the date of their claim or first day of entitlement, and must be expected to satisfy the descriptors for a further 9 months from that date (save in the case of a claimant who is terminally ill, to whom special rules apply).

10. A descriptor only applies if a claimant satisfies it on over 50% of the days of the required period. Only one descriptor under each activity can be applied. If two or more descriptors could apply, the descriptor with the highest number of points is awarded. Where no descriptor applies on over 50% of the days of the required period but two or more descriptors (other than a descriptor which scores 0 points) apply for periods which, when added together, amount to over 50% of the days of the required period, the descriptor that applies is the descriptor which is satisfied on the greater or greatest proportion of days of the required period or, where both or all descriptors are satisfied for the same proportion, the descriptor which scores the higher or highest number of points (see regulation 7(1) of the PIP Regulations).

11. The descriptors relevant to this appeal are those relating to the activity of "taking nutrition". They are set out in Schedule 1 to the PIP Regulations as follows:

Activity	Descriptors	Points
2. Taking nutrition	a Can take nutrition unaided	0
	b Needs - (i) to use an aid or appliance to be able to take nutrition; or (ii) supervision to be able to take nutrition; or (iii) assistance to be able to cut up food.	2

	c Needs a therapeutic source to be able to take nutrition.	2
	d Needs prompting to be able to take nutrition.	4
	e Needs assistance to be able to manage a therapeutic source to take nutrition.	6
	f Cannot convey food and drink to their mouth and needs another person to do so.	10

My decision on permission

12. I was persuaded that it was realistically arguable that the Tribunal erred in law in its decision making in relation to the proper scoring of the claimant's ability to carry out daily living activity 2. Because the Tribunal awarded the claimant 6 points in relation to daily living descriptors 1(b), 4(b) and 6(b), any award of points under daily living activity 2 would have meant that he would reach the threshold for an award of a Personal Independence Payment with the daily living component at the standard rate. Such error, if made, would therefore be material.

13. In my permission decision (which was addressed to the claimant) I said:

> "7. The Tribunal accepted that you experienced problems with your right hand due to a stage 3 scaphoid non-union of your right wrist, as well as a tendon injury affecting the middle finger of your right hand (see paragraph 11 of the Tribunal's written reasons for the FtT Decision).
>
> 8. The Tribunal heard conflicting evidence about whether you were using a splint on your right hand at the time of the SoS Decision. It summarised the evidence as follows:
>
> > "Evidence indicated that he used a self-purchased hand splint, however, Mr [Sroczynski] told the Tribunal that he did not use the splint at the time of the decision. Later in the hearing he said that he did, and this was supported by evidence within the HCA. Mr [Sroczynski] rides a 125cc motorbike and, at the time of the decision, used this to get to and from work, which was 20 miles away on a bypass. At the time of the hearing, he was still riding his motorbike. The Tribunal gathered detailed evidence of how Mr [Sroczynski] was able to operate a motorbike given his reported limitations. He is able to get on and off without restriction and turn it on using keys in his left hand. Mr [Sroczynski] claimed that he used his right hand flat on the handlebar of the motorbike, He showed the panel this action at the hearing. He was not wearing his splint at the hearing. He stated that operating his motorbike did not cause pain. He holds the handlebar with an open hand and steers it. Mr [Sroczynski] initially claimed that he had no controls on the right side of the handlebars – they were all on the left side. He then clarified this and said that there was a brake on the right hand side, but he doesn't use it a lot. The rear brakes are operated by his leg, and he claimed that he used this mostly. If he had to do an emergency stop, he would need to use both brakes. If he experienced pain then, he said that he would need to survive that pain somehow. Later in the hearing Mr [Sroczynski]'s evidence changed again, and he said that there was an accelerator on

> the right handlebar, and he is able to grip the handle sufficiently to go faster or slower using it. He told the Tribunal that the DVLA is satisfied that he can operate the motorbike safely."

9. Under the heading "Findings of Fact" in paragraphs 19 and 20 of its written reasons the Tribunal sets out some findings of fact relating to Mr [Sroczynski]'s use of his right hand, as well as reciting some of the conflicting evidence. It may not always be entirely clear which statements are findings of fact, and which are recitations of evidence, and it may not be entirely clear whether the Tribunal made a finding as to whether or not Mr [Sroczynski] used his hand splint when riding his motorbike around the date of the SoS Decision.

10. In paragraphs 26 to 29 of its written reasons the Tribunal explains in some considerable detail its decision making in relation to daily living activity 2 (taking nutrition). Importantly, because you told the Tribunal that your wife cut your food up for you and you did not cut up your own food, the Tribunal had to conduct a "thought experiment" to decide whether you would be able to carry out the task were you to attempt it.

11. The Tribunal broke down the tasks required to complete the activity of taking nutrition, which it decided included being able to keep food still with one hand while cutting with the other. In the absence of evidence of you attempting that activity, it analysed the situation by analogy with a task that you did which involved using both of your hands: riding your motorcycle.

12. It explained as follows:

> "The Tribunal considered the hand and arm movements required to cut up food. It found that this requires being able to keep food still with one hand, usually using a fork to do so, and stopping the food from moving. This is whilst using the other hand to do the cutting of the food, often using a knife. Not all food needs to be cut up with a knife. The Tribunal found that it is an acceptable standard to use the side of a fork to cut up softer foods and many people without limitations, do so. Mr [Sroczynski] is able to use his left hand to do the harder task of cutting with a knife. The Tribunal considered how a hand is used to hold a fork and the pressure required in order to stop food from moving whilst it is being cut. The Tribunal found that the grip in Mr [Sroczynski] [sic] right fingers (save for his middle one which is fixed in the extended position) was sufficient to hold a fork and stop the food from moving. The pressure used to stop a potato from moving when cutting it (as discussed above) or to have a sufficient grip of a handlebar to steer, brake and accelerate a motorbike, or to steady items when using a saw would be enough to keep food stationary whilst cutting it with the other hand. Holding a fork does not require the base of the palm or wrist area of a hand to be used. Mr [Sroczynski]'s fingers have sufficient grip to do this. "

13. This is a clear explanation of an impressively thorough analysis. However, given that the Tribunal made secondary findings about your ability to cut up food by way of inference from its primary findings about your ability to ride your motorbike, I am persuaded that it is arguable with a "realistic" (as opposed to "fanciful") prospect of success that the Tribunal erred in law in not making a

clear finding as to whether at the relevant time you used a splint when riding your motorbike, and as to whether the use of that splint was reasonably required.

14. If you did use your splint when riding your motorbike, and if the use of that splint was reasonably required, then your ability to ride your motorbike while wearing a splint would not provide a reliable foundation for concluding that you could cut up food without the use of an aid.

15. Given that the Tribunal awarded you 6 points in relation to the daily living descriptors, the award of 2 points for requiring an aid or appliance to take nutrition would have resulted in a different outcome to your appeal. As such, if the Tribunal did err as I have said it might have done, that error could have been material."

14. I made Case Management Directions for the parties to make submissions on the appeal and to indicate whether they wanted an oral hearing of the substantive appeal.

The positions of the parties

15. An undisclosed submission writer from DMA Leeds on behalf of the Secretary of State indicated support for the appeal, adopting what I had said in my grant of permission, and submitting that the Tribunal had erred in its fact finding and in its duty to give adequate reasons. The Secretary of State encouraged me to set the FtT Decision aside and remit the matter to be reheard by another tribunal.

16. The claimant's appointee had no further comment to make, other than to agree with the Secretary of State that this was an appropriate case for the setting aside of the FtT Decision and for remittal to the First-tier Tribunal for redetermination.

17. Neither party requested an oral hearing.

18. Given the degree of agreement between the parties, I decided that the interests of justice did not require an oral hearing.

Why I allow this appeal

19. At the permission stage the test for a grant of permission was whether it was realistically arguable that the Tribunal had erred in law in a way that was material. At this stage if I am to allow the appeal I must be satisfied that the Tribunal did err in law in a way that was material.

20. For the same reasons I identified at the permission stage for finding it realistically arguable that the Tribunal erred materially in law I am now persuaded that the Tribunal did indeed err in law in a way that was material.

21. 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

22. 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.

23. 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: 6 November 2026