

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**PERSONAL INDEPENDENCE PAYMENT**

Application by the claimant for leave to appeal  
and appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 19 October 2017

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Enniskillen.
2. For the reasons I give below, I grant leave to appeal. However, I dismiss the appeal.

**REASONS**

**Background**

3. The appellant claimed personal independence payment (PIP) by telephone from the Department for Communities (the Department) from 19 April 2017 on the basis of needs arising from anxiety and depression. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 2 May 2017, together with an occupational health report and a letter from his general practitioner (GP) dated 31 October 2016. On 19 May 2017 the appellant attended a consultation with a healthcare professional (HCP), who prepared a report for the Department. On 25 May 2017, on the basis of all the evidence, the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 19 April 2017. The appellant requested a reconsideration of the decision. He was notified that the decision had been reconsidered by the Department but not revised. He appealed.

4. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. After a hearing on 19 October 2017 the tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 5 February 2018. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 26 February 2018. On 12 March 2018 the appellant applied to a Social Security Commissioner for leave to appeal.

### **Grounds**

5. The appellant, represented by Fermanagh Citizens Advice, submits that the tribunal has erred in law on the basis that:
  - (i) it did not consider the need for prompting and assistance under Activity 1 (Preparing food);
  - (ii) it did not consider the need for assistance with medication under Activity 3 (Managing therapy or monitoring a health condition);
  - (iii) it did not consider the need for prompting to wash and bath under Activity 4 (Washing and bathing);
  - (iv) it did not fully consider the appellant's needs in relation to social engagement under Activity 9 (Engaging with other people face to face).
6. The Department was invited to make observations on the appellant's grounds. Mr Arthurs of Decision Making Services (DMS) responded on behalf of the Department. Mr Arthurs accepted that the tribunal had erred in law in respect of Activity 3, but not in a material way that would influence the outcome of the appeal. He indicated that the Department supported the application to that extent. The appellant's representative made submissions of fact in response.

### **The tribunal's decision**

7. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of the Department's submission, containing the questionnaire completed by the appellant, an occupational health report, a GP letter, a GP factual report and a consultation report from the HCP. The tribunal also had sight of the appellant's GP records. The appellant attended the hearing and gave evidence, represented by Ms Williams of Citizens Advice.

8. The tribunal noted the medical evidence and the history of the appellant's anxiety and depression. In relation to mobility, it did not find that the appellant had any physical restrictions walking. Noting his history of employment as a postman, the tribunal did not accept that the appellant would have any difficulty following the route of an unfamiliar journey, or that it would cause overwhelming psychological distress, while accepting that at times he did not feel well enough to leave the house.
9. In relation to daily living, the tribunal noted that the disputed activities were preparing food, managing therapy, washing and bathing, dressing and undressing and engaging with others. The tribunal found that an award of 2 points was merited for the activity of engaging with others. However, it believed that the appellant could prepare food for himself, that he could manage his own medication, that, while from time to time he would lack motivation, he could wash and bathe without prompting or supervision, and that he could dress and undress without prompting. As the number of points he scored was below the relevant threshold, the tribunal disallowed the appeal.

### **Relevant legislation**

10. PIP was established by article 82 of the Welfare Reform (NI) Order 2015. It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily activities or mobility activities is limited, or severely limited, by their physical or mental condition. The Personal Independence Payment Regulations (NI) 2016 (the 2016 Regulations) set out the detailed requirements for satisfying the above conditions.
11. The 2016 Regulations provide for points to be awarded when a descriptor set out in Schedule 1, Part 2 (daily living activities table) or Schedule 1, Part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points will be awarded the enhanced rate of that component.

### **Assessment**

12. In light of the Department's observations offering limited support to the application in relation to Activity 3, I grant leave to appeal. I consider each of the appellant's grounds below.

#### *Preparing food*

13. The appellant, represented by Citizens Advice Fermanagh, firstly submits that the tribunal erred in law by failing to consider the appellant's need for prompting and/or assistance to complete the preparation of a main meal. The relevant descriptors under the activity of "preparing food" are:

|                    |  |   |
|--------------------|--|---|
| 1. Preparing food. | a. Can prepare and cook a simple meal unaided.   | 0 |
|                    | b. Needs to use an aid or appliance to be able to either prepare or cook a simple meal.          | 2 |
|                    | c. Cannot cook a simple meal using a conventional cooker but is able to do so using a microwave. | 2 |
|                    | d. Needs prompting to be able to either prepare or cook a simple meal.                           | 2 |
|                    | e. Needs supervision or assistance to either prepare or cook a simple meal.                      | 4 |
|                    | f. Cannot prepare and cook food.   | 8 |

14. "Simple meal" in this context means a cooked one-course meal for one using fresh ingredients. "Prepare" means make food ready for cooking or eating. "Cook" means to heat food at or above waist height. "Assistance" means physical intervention by another person and does not include speech. "Prompting" means reminding, encouraging or explaining by another person.

15. The appellant's evidence in the PIP2 questionnaire and to the HCP was that he did not know how to cook. In a submission prepared by his representative it was submitted that he would have no interest in making a meal. In evidence to the tribunal it was stated that he does not eat breakfast, and does not normally eat until 6pm in the evening. He would buy takeaway food. He stated that he did not know how to turn a cooker on, and could not peel or wash vegetables. He would not use a kettle. He would not buy fresh food as it would "go off".

16. The tribunal found that there was no physical restriction to prevent the appellant from cooking. It did not believe that there was any impediment to prevent him from preparing or cooking a simple meal without supervision or assistance. The appellant submits that the tribunal has not considered his need for prompting and/or assistance and has thereby erred in law.

17. The appellant - aged 45 at the date of decision - maintained that he had never learned to cook. He indicated that, instead, he relied entirely on sandwiches or takeaway food. The tribunal therefore had to address the question of whether he could prepare and cook a simple meal on a

hypothetical basis. It reasoned that there was no physical restriction on the appellant, and it did not believe that he was someone who had an inability to prepare or cook a main meal for himself.

18. By Article 83(1)(a) of the Welfare Reform (NI) Order 2015, in order to qualify for the daily living component of PIP, a person's ability to carry out daily living activities must be limited by the person's physical or mental condition. In this case, the evidence was that the appellant had maintained a dependency on his mother and then his wife for the preparation of his meals. This indicates that the limitation on his ability to prepare and cook a meal was a cultural or behavioural choice, rather than a consequence of his physical or mental condition.
19. I observe that the onset of the appellant's current mental health condition was 2011. Since he had never cooked, even when well, there was no evidence before the tribunal of a direct connection between his illness and his ability to cook. The HCP relied on informal observations at examination, the history of his condition and assessment of his mental state to give the opinion that it was likely that he could prepare and cook a simple meal unaided. I observe that the appellant's representative did not adduce oral evidence on any need for prompting or supervision at hearing and that nothing in the evidence pointed to this as a relevant factor.
20. It appears to me that the tribunal has followed a fair procedure, made adequate and rational findings of fact and applied the law correctly to those facts. I do not accept that it has erred in law on this ground.

#### *Managing medication*

21. The appellant further submits that the tribunal has erred in law by not considering that the appellant satisfied Activity 3 (Managing therapy) on the basis that his keyworker accompanies him to the chemist for his medication.
22. The relevant descriptors in this activity are set out below:

|   |  |   |
|---|--|---|
| 3. Managing therapy or monitoring a health consideration. | a. Either –  | 0 |
|   | (i) does not receive medication or therapy or need to monitor a health condition, or<br><br>(ii) can manage medication or therapy or monitor a health condition unaided. |   |
|   | b. Needs any one or more of the following–   | 1 |

(i) to use an aid or appliance to be able to manage medication,

(ii) supervision, prompting or assistance to be able to manage medication

(iii) supervision, prompting or assistance to be able to monitor a health condition.

23. The evidence that the appellant is accompanied to the chemist shop by his “keyworker” is entirely consistent with the finding of the tribunal that he has difficulty with social engagement. The appellant essentially submits that a need for accompaniment to the chemist shop also entitles him for an award of points under Activity 3.
24. To establish this case, it would be necessary for such accompaniment to qualify as “supervision, prompting or assistance to be able to manage medication”. “Manage medication” is defined as “take medication where a failure to do so is likely to result in a deterioration in C’s health”, where C means a person who has made a claim for, or is entitled to, PIP.
25. The Department has given some support to this ground. Mr Arthurs submitted that the tribunal had not had sufficient regard to the appellant’s history of suicidal thoughts, noting the involvement of other people in managing his tablets. He accepts that the tribunal has erred in law in relation to Activity 3.
26. The evidence before the tribunal was that the appellant’s sister left him with 3 days dosage of Sertraline 100mg tablets at a time, that he kept them in his bedside locker and took them first thing in the morning. Therefore the evidence, as found by the tribunal, indicated that the appellant managed his medication independently. There was nothing to indicate a problem with compliance in taking medication.
27. I consider that Mr Arthurs is wrong in his approach. The definition of “managing medication” is quite precise and envisages a situation where the assistance is about ensuring that an individual does not fail to take tablets where deterioration in health is likely to result. It does not apply to the converse situation where deterioration in health is likely to result from an individual taking an overdose of tablets. In any event, the evidence did not suggest that this was a likely scenario in the case of the particular appellant.
28. The support given to the appellant in attending the chemist shop to collect tablets is doubtless important, as he might not otherwise obtain tablets. However, giving support to collect medication is self-evidently not assistance with managing medication. There is no evidence that the appellant has any problem taking the tablets once they are in his

possession. The “keyworker” plays no part in ensuring that the appellant takes his medication. As his involvement is remote from the actual activity and descriptor in issue, I do not consider that the tribunal has erred in law on this basis.

*Washing and bathing*

29. The appellant further submits that the tribunal has erred in law in relation to Activity 4, saying that the tribunal has not considered evidence that he can neglect his hygiene for up to 3 weeks.

30. The relevant activity is as follows:

|                         |   |   |
|-------------------------|---|---|
| 4. Washing and bathing. | a. Can wash and bathe unaided.  | 0 |
|                         | b. Needs to use an aid or appliance to be able to wash or bathe.                    | 2 |
|                         | c. Needs supervision or prompting prompting to be able to wash or bathe.            | 2 |
|                         | d. Needs assistance to be able to wash either their hair or body below the waist.   | 2 |
|                         | e. Needs assistance to be able to get in or out of a bath or shower.                | 3 |
|                         | f. Needs assistance to be able to wash their body between the shoulders and waist.  | 4 |
|                         | g. Cannot wash and bathe at all and needs another person to wash their entire body. | 8 |

31. There was no evidence stated by the appellant in the PIP2 questionnaire to indicate a problem in relation to washing and bathing. He is reported as saying to the HCP that when in good form he would wash daily and that on bad days he would not have the motivation to wash. He had washed on the day of the assessment and appeared well kempt. His GP had indicated that he “needs encouragement” with washing and bathing. The applicant’s representative had submitted to the tribunal that he would stay in bed and avoid washing and dressing for weeks at a time. At hearing he stated that he might not wash for 3 or 4 weeks at any time and had not shaved for two weeks. He had no physical difficulty with showering or bathing. His sister would tell him to get washed.

32. The tribunal noted that the appellant had access to his children on a weekly basis and did not accept that he would go unkempt if he was to have contact with them. It accepted that he may not shave for several days, but did not accept that the appellant's sister would need to remind him to wash or bath himself. It considered that, while from time to time he might lack motivation, generally and for the majority of the time he was able to wash or bathe without any assistance or encouragement whatsoever.
33. It is therefore plain that the tribunal had given consideration to the appellant's evidence that he did not wash or bathe for weeks at a time but had rejected it. It simply did not accept the credibility of his account. It was open to the tribunal to reach this conclusion on the evidence and I reject this ground of appeal.

*Engaging with others*

34. Finally, the appellant submits that the tribunal failed to consider that he avoids social contact and is not capable of going into shops alone.
35. The relevant activity and descriptors are as set out below:

|   |  |   |
|---|--|---|
| 9. Engaging with other people face to face. | a. Can engage with other people unaided.   | 0 |
|   | b. Needs prompting to be able to engage with other people.   | 2 |
|   | c. Needs social support to be able to engage with other people.  | 4 |
|   | d. Cannot engage with other people due to such engagement causing either –   | 8 |
|   | (i) overwhelming psychological distress to the claimant, or  |   |
|   | (ii) the claimant to exhibit behaviour which would result in a substantial risk of harm to the claimant or another person. |   |

The tribunal awarded 2 points for descriptor 9(b).

36. In the PIP2 questionnaire, the appellant had stated that he needed help to mix with other people, and that he didn't like people looking at him. He had said to the HCP that he would feel anxious and paranoid and sometimes would avoid engaging with people. His GP had said that he avoids social contact. The representative's submission to the tribunal



had submitted that he would pretend to be talking on the phone in order to avoid having to converse with other people. He told the tribunal that he would meet his children at a shopping centre but that he would not go into it without them.

37. The tribunal accepted that the appellant would have difficulty engaging with other people most of the time, awarding 2 points. It noted that he would have regular contact with his ex-wife and some family members. It did not accept that a higher level of points was appropriate.
38. The submission of the appellant in this respect merely recites some submissions of fact, appearing to question whether the tribunal has properly addressed itself to the facts. The facts as identified do not appear to me to compel any conclusion other than that reached by the tribunal. I consider that the appellant does not identify any arguable error of law in the tribunal's decision under this Activity. Therefore, I consider that there is no merit in this ground of appeal.
39. For the reasons I have given above, I dismiss the appeal.

(signed): O Stockman

Commissioner

1 November 2018