

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 28 March 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The chair of the Appeal Tribunal in this case granted leave to appeal on 25 October 2018. Both parties have expressed the view that the majority decision of the Appeal Tribunal, which is the subject of this appeal, is in error of law.
2. I agree with both parties that the majority decision of the Appeal Tribunal was in error of law in that it failed to give adequate reasons for its decision.
3. Pursuant to the powers conferred on me by Article 15(8) of the Social Security (Northern Ireland) Order 1998, I set aside the decision appealed against.
4. Furthermore, and pursuant to the powers conferred on me by Article 15(8)(a)(i) of the Social Security (Northern Ireland) Order 1998, and adopting the facts of the case as found by the whole panel as regard daily living, and the dissenting member as regard mobility, I give the decision which the Appeal Tribunal ought to have made, to the following effect:
 - (i) the appellant scores 9 points for the daily living activities and so is entitled to the standard rate of the daily living component of personal independence payment (PIP) from 9 August 2017 to 8 August 2021;
 - (ii) the appellant scores 16 points for the mobility activities and so is entitled to the enhanced rate of the

PIP mobility component from 9 August 2017 to 8 August 2021;

(iii) any payment of PIP made to date and covering the period referred to in sub-paragraphs (i) and (ii) above is treated as having been made on account of this award.

5. The appellant had previously been entitled to the middle rate care component and the lower rate of the mobility component of disability living allowance (DLA). This was for the period from 27 August 2013 to 8 August 2017. On transfer to PIP, the Department initially awarded her 4 daily living points and 0 mobility points. This was increased to 6 daily living points and 4 mobility points on reconsideration, but this did not change the outcome, i.e. the refusal of the PIP claim.
6. The Appeal Tribunal heard her appeal against the Department's refusal to award PIP at a hearing on 28 March 2018.
7. The Appeal Tribunal unanimously allowed the appeal insofar as it awarded 9 points for daily living activities (descriptors 1b, 3(b)(i), 4b, 5b, and 6b), resulting in an award of the standard rate of the PIP daily living component from 9 August 2017 to 8 August 2019. There has been no appeal by either party against the Tribunal's decision to award the standard rate of the daily living component.
8. The Appeal Tribunal by a majority dismissed the appeal as regard the mobility component of PIP. The majority awarded 4 points only for mobility activity 2b (moving around), with no points for mobility activity 1 (planning and following journeys). The appeal to the Commissioner focussed solely on this aspect of the Tribunal's decision.
9. The appellant, with invaluable support and later formal representation from the Law Centre (NI), has argued that the majority of the Tribunal failed to give adequate reasons for why it awarded her nil points for mobility activity 1.
10. Mr Marc Williams, for the Department, has provided a helpful and detailed submission in support of the appeal. He agrees that the evidence before the Tribunal did not support the majority's finding that the appellant is able to undertake a familiar or unfamiliar journey by herself. The majority failed to explain the basis on which it rejected the appellant's contrary evidence on the point. In contrast, the dissenting member had made a finding that the appellant reasonably required to be accompanied when undertaking a journey (even) to a familiar place, a finding which was wholly sustainable on the evidence.
11. The evidence does not support the majority's finding of fact. In contrast, it does support the minority member's finding and reasoning, which I adopt as regards the mobility component. Based on that finding, the Tribunal should have awarded the appellant 12 points for descriptor 1f,

so making 16 mobility points overall, and hence giving rise to entitlement to the enhanced rate of the mobility component.

12. There is no point in referring this appeal back to a new Appeal Tribunal under Article 15(8)(b) of the 1998 Order. The minority member has found sufficient facts and given adequate reasons for why mobility descriptor 1f should apply as well as mobility descriptor 2b. I therefore give the decision that the Tribunal should have made, pursuant to the powers conferred on me under Article 15(8)(a)(i).
13. As regard the length of the award, the unanimous decision of the Tribunal was to award the daily living component for the period from 9 August 2017 (the day after the expiry of the previous DLA award) to 8 August 2019. The Tribunal did not give any express explanation for making a two-year award. If the length of that award were simply repeated, then the appellant would be required to undergo the renewal process right away, so increasing the stress to which she would be exposed. Given that her mental health issues are both significant and chronic (i.e. of some standing) – see e.g. her e-mail of 6 December 2018 – I consider that an appropriate length for the award is for four years and not two years. I therefore make both awards for the period from 9 August 2017 to 8 August 2021.

(signed):N J Wikeley

Deputy Commissioner (NI)

15 October 2019