

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 4 April 2019

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. As will be explained in greater detail below, both parties have expressed the view that the decision appealed against was erroneous in point of law.
2. Accordingly, pursuant to the powers conferred on me by Article 15(7) of the Social Security (Northern Ireland) Order 1998, I allow the appeal, I set aside the decision appealed against and I refer the case to a differently constituted tribunal for determination.
3. It is imperative that the appellant notes that while the decision of the appeal tribunal has been set aside, the issue of her entitlement to Personal Independence Payment (PIP) remains to be determined by another appeal tribunal.
4. I direct that the parties to the proceedings and the newly constituted appeal tribunal take into account the following:
 - (i) the decision under appeal is a decision of the Department, dated 8 February 2018, which decided that the appellant was not entitled to either component of PIP from and including 24 October 2017;
 - (ii) the Department is directed to provide details of any subsequent claims to PIP and the outcome of any such claims to the appeal tribunal to which the appeal is being referred. The appeal tribunal is directed to take any evidence of subsequent claims to PIP into account in line with the principles set out in *C20/04-05(DLA)*;

- (iii) it will be for both parties to the proceedings to make submissions, and adduce evidence in support of those submissions, on all of the issues relevant to the appeal; and
- (iv) it will be for the appeal tribunal to consider the submissions made by the parties to the proceedings on these issues, and any evidence adduced in support of them, and then to make its determination, in light of all that is before it.

Background

5. On 8 February 2018 a decision maker of the Department decided that the appellant was not entitled to PIP from and including 24 October 2017. Following a request to that effect the decision dated 8 February 2018 was reconsidered on 28 February 2018 but was not changed. An appeal against the decision dated 8 February 2018 was received in the Department on 28 March 2018.
6. Following an earlier adjournment, the substantive appeal tribunal hearing took place on 4 April 2019. The appellant was present and was represented. There was a Departmental Presenting Officer present. The appeal tribunal disallowed the appeal and confirmed the decision dated 8 February 2018. The appeal tribunal did apply descriptors from Parts 2 and 3 of Schedule 1 to the Personal Independence Payment Regulations (Northern Ireland) 2016 ('the 2016 Regulations') which the decision maker had not applied. The score for these descriptors was insufficient for an award of entitlement to the daily living and mobility components of PIP at the standard rate – see article 83 of the Welfare Reform (Northern Ireland) Order 2015 and regulation 5 of the 2016 Regulations.
7. On 10 September 2019 an application for leave to appeal to the Social Security Commissioners was received in the Appeals Service (TAS). On 23 October 2019 the application for leave to appeal was refused by the Legally Qualified Panel Member (LQPM).

Proceedings before the Social Security Commissioner

8. On 4 November 2019 a further application for leave to appeal was received in the Office of the Social Security Commissioners. The appellant was represented in this application by Mr Black of the Law Centre (Northern Ireland). On 12 November 2019 observations on the application for leave to appeal were requested from Decision Making Services ('DMS'). In written observations dated 21 November 2019, Mr Arthurs, for DMS, supported the application for leave to appeal on one of the grounds submitted on behalf of the appellant. Written observations were shared with the appellant and Mr Black on 21 November 2019. Further correspondence was received from Mr Black on 29 November 2019.

9. The case became part of my workload on 29 April 2020. On that date I granted leave to appeal. In granting leave to appeal, I gave, as a reason that certain of the grounds of appeal, as set out in the application for leave to appeal, were arguable. On the same date I determined that an oral hearing of the appeal would not be required.

Errors of law

10. A decision of an appeal tribunal may only be set aside by a Social Security Commissioner on the basis that it is in error of law. What is an error of law?
11. In *R(I)2/06* and *CSDLA/500/2007*, Tribunals of Commissioners in Great Britain have referred to the judgment of the Court of Appeal for England and Wales in *R(Iran) v Secretary of State for the Home Department* ([2005] EWCA Civ 982), outlining examples of commonly encountered errors of law in terms that can apply equally to appellate legal tribunals. As set out at paragraph 30 of *R(I) 2/06* these are:

- “(i) making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
- (ii) failing to give reasons or any adequate reasons for findings on material matters;
- (iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters;
- (iv) giving weight to immaterial matters;
- (v) making a material misdirection of law on any material matter;
- (vi) committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of proceedings; ...

Each of these grounds for detecting any error of law contains the word ‘material’ (or ‘immaterial’). Errors of law of which it can be said that they would have made no difference to the outcome do not matter.”

Analysis

12. The agreed error of law with which I concur was set out by Mr Arthurs as follows:

'The tribunal has, in relation to activity 9 Engaging With Other People Face to Face, made a misdirection of law on a material matter.

Mr Black has drawn attention to the following paragraph offered by the tribunal in its reasons:

"26. There is also reference in the submission on her behalf to a need for social support to engage with others. Again, we find this to be misguided. Social support means help from someone trained or experienced with assisting people. There is no evidence of any such need."

Mr Black contends that the belief that only individuals and groups trained or experienced in assisting people are suitable for this purpose is a material misdirection of law. Mr Black submits this belief has been used to come to an unfavourable decision when dealing with (the appellant's) appeal, therefore making this a material matter.

In relation to the issue of social support, I would refer to unreported decision CD v Department for Communities (PIP) [2018] NI Com 30 where Chief Commissioner Mullan has endorsed the principles in Upper Tribunal Decision SL v SSWP (PIP) UKUT 147 (AAC) which deals with **who** is qualified to provide social support and held that the principles of this decision reflect the law in Northern Ireland.

Chief Commissioner Mullan refers to paragraph 1 of Judge Hemmingway's where he states:

"The primary issue which I have considered in this decision is and the only one which may be of wider interest to persons other than the parties, is whether or not "social support" for the purposes of descriptor 9(c) relates only to assistance or specific expertise (perhaps obtained professionally) or whether the requirements of the descriptor may be met, in appropriate circumstances and on appropriate findings, if the social support is not limited to support provided by persons with particular training or expertise or which is provided professionally and the descriptor may, indeed be satisfied on appropriate findings where the support is provided by family of

friends.” I have concluded for reasons set out below that.”

Chief Commissioner Mullan then refers to paragraphs 19 to 23 of the above decision where Judge Hemmingway outlines the reasons for his conclusions.

Similar views were held by the Supreme Court in its recent Judgment in the case of Secretary of State for Work and Pensions v MM [2019] UKSC.

As can be seen from the above a family member or friend can provide this so long as the input amounts to more than mere prompting. From the reasons for decision, which are lacking in detail, it does not appear that the tribunal has considered the help provided by (the appellant's) daughter would fall under the definition of social support and I would support Mr Black's contention that the tribunal has erred in law. The tribunal should have determined and made findings as to the nature of the help that was provided by (the appellant's) daughter and whether this amounted to help being provided by 'someone trained or experienced' with assisting with people'. The tribunal's reasons appear to indicate that because (the appellant's) daughter provided the help she would not qualify as 'a person trained in assisting people'.

13. As both parties have expressed the view that the decision appealed against was erroneous in point of law, pursuant to the powers conferred on me by Article 15(7) of the Social Security (Northern Ireland) Order 1998, I allow the appeal, I set aside the decision appealed against and I refer the case to a differently constituted tribunal for determination.

(signed): K Mullan

Chief Commissioner

20 July 2020