

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 2022

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal from the decision of an appeal tribunal with reference BE/9014/19/02/D.
2. For the reasons I give below, I allow the appeal. I set aside the decision of the appeal tribunal under Article 15(8)(b) of the Social Security (NI) Order 1998. I refer the appeal to a newly constituted tribunal for determination.

REASONS

Background

3. The appellant claimed personal independence payment (PIP) from the Department for Communities (the Department) from 10 June 2019 on the basis of needs arising from ischaemic heart disease, type 2 diabetes, depression, anxiety and osteoarthritis in knees and hips. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 5 July 2019 along with further evidence. The appellant was asked to attend a consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 5 August 2019. On 12 September 2019 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 10 June 2019. 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 at a hearing on 28 March 2022 by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal disallowed the appeal. The appellant then requested a statement of reasons for the tribunal's decision and this was issued on 30 May 2022. The appellant applied to the LQM for leave to appeal from the decision of the appeal tribunal and leave to appeal was granted by a determination issued on 8 August 2022. On 19 August 2022 the appellant lodged his appeal with the office of the Social Security Commissioners.

Grounds

5. The appellant, represented by Law Centre NI, submits that the tribunal has erred in law by:
 - (i) failing to give adequate reasons;
 - (ii) failing to consider whether there was reasonable need for aids and appliances;
 - (iii) failing to address conflicts in evidence regarding mobility;
 - (iv) misdirecting itself as to the correct law regarding daily living activity 9.
6. The Department was invited to make observations on the appellant's grounds. Mr Killeen of Decision Making Services (DMS) responded on behalf of the Department. Mr Killeen accepted that the tribunal had erred in law. He indicated that the Department supported the appeal.

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 what it called "appeal submission papers". This appears to be a reference to the Department's submission, containing the PIP2 questionnaire completed by the appellant, a consultant urologist's letter, further hospital and consultant cardiologist letters, extracts from medical records, and a consultation report from the HCP. Although their contents are not referred to expressly, I also observe that the tribunal had sight of the appellant's medical records. The appellant attended the hearing and gave oral evidence, accompanied by his daughter and represented by Ms Corr. The Department was not represented.
8. The tribunal noted that the appellant complained of ischaemic heart disease, type 2 diabetes, depression, anxiety and osteoarthritis. He had no occupational therapy referral and used no aids or adaptations and continued to drive a manual car. He indicated that he could walk for two or three minutes in 2019, stopping due to chest pain. The appellant indicated that he lacked motivation to cook, could not stand to cook, could

manage eating and taking medication, could get into a bath with difficulty, needed help getting up and down from the toilet, would need help with socks and could engage one to one. His daughter disagreed with his evidence. The tribunal found that the appellant should not be awarded any points for daily living or mobility and disallowed the appeal.

Relevant legislation

9. 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.
10. 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.
11. Additionally, by regulation 4, certain other parameters for the assessment of daily living and mobility activities, as follows:
 - 4.—(1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.
 - (2) C’s ability to carry out an activity is to be assessed—
 - (a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or
 - (b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.
 - (3) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—
 - (a) safely;
 - (b) to an acceptable standard;
 - (c) repeatedly; and

(d) within a reasonable time period.

(4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

Assessment

12. The salaried LQM has granted leave to appeal on the question of whether, notwithstanding that the appellant did not have any aids to use, such aids might have been reasonably required, with particular reference to preparing food, washing/bathing, toileting and dressing. The appellant has renewed his application on the remaining grounds advanced to the LQM as well as appealing on the ground relating to his use of aids.
13. Mr Killeen for the Department has accepted that there is a degree of merit to each of the grounds relied upon. He observed that the evidence recorded by the tribunal indicated difficulty standing to cook, using a bath, using the toilet and dressing. The tribunal did not expressly accept or reject this evidence, and Mr Killeen observed that the tribunal did not appear to accept or reject its credibility. He observed that the tribunal appeared to accept that the appellant did not have limitations requiring any aids, but did not deal with conflicting statements, such as that in the PIP2 questionnaire that indicated that the appellant used a stool in the shower. Mr Killeen noted no reference to regulations 3, 4 and 7 of the PIP Regulations in the decision of the tribunal.
14. Mr Killeen submitted that the tribunal’s reasons were not clear from the decision – in particular whether it found that the appellant lacked credibility and therefore rejected his evidence, or whether it accepted his credibility. He referred to Chief Commissioner Mullan’s decision in *SG v Department for Communities* [2020] NI Com 34, requiring clarity on whether evidence has been rejected and why. He submitted that the reasons of the tribunal were inadequate.
15. I find myself in agreement with the submissions of the parties. The tribunal had evidence before it that the appellant used or might reasonably have

required aids for certain daily living activities. Its statement of reasons makes no express finding on whether it accepted or rejected that evidence. This gives rise to an element of confusion as to how the tribunal reached its decision. On the one hand, it might have rejected the appellant's evidence that he had difficulty standing to cook, needed to sit in the shower, needed to hold on to something in order to rise from the toilet, or needed help with putting on socks. However, it does not say that, or explain that rejection in the context of the evidence of the appellant's various health issues.

16. Alternatively, it might have accepted the appellant's evidence of the need for aids in performing particular daily activities. If that was the case, it has failed to address the question that regulation 4(2)(b) of the PIP Regulations required it to address, namely whether the appellant could (only) perform daily living activities using any aid or appliance which he could reasonably be expected to wear or use. However, if he required to use an aid or appliance, that should have been reflected in the award of points under the relevant descriptors.
17. I consider that there is merit in the appellant's grounds. I further note that each of the parties submits that the tribunal has erred in law. I agree with the parties. I consider that the tribunal had not given adequate reasons to explain its approach in reaching this decision.
18. I allow the appeal. I set aside the decision of the appeal tribunal. I refer the appeal to a newly constituted tribunal for determination.

(signed): O Stockman

Commissioner

21 November 2022