

**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 6 November 2023

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. The appellant, represented by Ms Gorman of Law Centre (NI), seeks leave to appeal against the decision of the appeal tribunal dated 6 November 2023, following a hearing conducted by telephone from Omagh.
2. The appeal was against a decision dated 28 February 2023 (as revised) which had awarded the daily living component at the standard rate but made no award in respect of the mobility component. Eight points had been awarded in respect of the former and 4 points in respect of the latter.
3. Previously the appellant had been in receipt of an award made in 2018 (and extended during the Covid pandemic) of the standard rate of the daily living component and the enhanced rate of the mobility component.
4. The decision of 28 February 2023 had been made following receipt of evidence from a Healthcare Professional who had conducted a telephone assessment.
5. The appeal tribunal awarded 13 points for the daily living component and 8 for the mobility component. It entitled the appellant to an award of the daily living component at the higher rate and the mobility component at the standard rate.
6. What remains in issue in the present proceedings is the tribunal's decision in respect of mobility activity 1 (Planning and following journeys). The tribunal awarded 4 points under descriptor 1(b) on the basis that the appellant "needs prompting to be able to undertake any journey to avoid

overwhelming psychological distress to the claimant”. Ms Gorman submits that that was in error of law and that the correct award should be under descriptor 1(d) as the appellant “cannot follow the route of an unfamiliar journey without another person, assistance dog or orientation aid”.

7. The error of law is submitted to be that the tribunal failed to consider the impact of the appellant’s undisputed social anxiety on his ability to plan and follow a journey on public transport or on foot. This is said to be contrary to *SB v SSWP (PIP)* [2019] UKUT 274 where Upper Tribunal Judge Hemingway said that “what is required is an overall and holistic assessment encompassing a claimant’s ability to follow the route of a journey through various ways, including driving, travelling on foot and utilising public transport, with neither, of themselves, being determinative.”
8. Ms Patterson for the Department agrees that the tribunal’s decision was in error of law on the ground put forward by Ms Gorman. She confirms that her observations may be treated as observations on any ensuing appeal, under reg.18(1) of the Social Security Commissioners (Procedure) Regulations (Northern Ireland) 1999. She accepts the potential materiality of the error in that “if 1d...was given, it carries an award of 10 points and could result in an award of the enhanced rate of the mobility component if the Commissioner or a new tribunal were to again find that 2b is also applicable.” She thus accepts that the Commissioner might choose to remake the decision; beyond that, she does not directly address the invitation implicit in Ms Gorman’s submission that I should exercise the Commissioner’s power under art.15(8) of the Social Security (Northern Ireland) Order 1999 to give the decision.
9. I agree that the tribunal’s decision was in error of law for the reasons advanced by Ms Gorman. Although Judge Hemingway’s observations were *obiter* (not needed for the logic of the operative part of his decision), they were given after a careful review of authority and have been cited, with apparent approval, by Upper Tribunal Judge Wikeley in *HO’H v SSWP (PIP)* [2020] UKUT 135 (AAC).
10. I therefore grant leave to appeal and allow the appeal. I turn to the question of disposal.
11. Art.15(8) provides:

“(8) Where the Commissioner holds that the decision appealed against was erroneous in point of law, he shall set it aside and—

(a) he shall have power—

(i) to give the decision which he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; or

(ii) if he considers it expedient, to make such findings and to give such decision as he considers appropriate in the light of them; and

(b) in any other case he shall refer the case to a tribunal with directions for its determination.”

12. I do consider it expedient to act under paragraph (8)(a)(ii). The appellant has an acquired brain injury, poor mental health and experiences considerable pain from physical conditions. He has a history of substance misuse and has issues of anger management. He is recorded as having left the telephone hearing three times, apparently because of difficulty in coping with it, even though it was conducted with his sister physically present with him and with a representative on his behalf joining by telephone. He should not lightly be subjected to the stress of another tribunal hearing.
13. The available evidence is limited but that is typical in a situation where one is having to assess the effects on a claimant of a type of journey (to unfamiliar places) which they do not in practice make and there can be no real expectation that more would be forthcoming if the matter were to be remitted.
14. I note the findings in paragraph 11 of the tribunal’s reasons, including that the appellant has a brain injury, has suffered a personality change, has difficulty controlling his emotions and that this can manifest itself in anger; also that he has some issues with memory.
15. I find that the appellant has been barred from shops and removed from the GP surgery because of violent behaviour caused by the brain injury. He does not go anywhere he does not know by himself. Even to a place with which he has a degree of familiarity (such as Derry) he is accompanied because his social anxiety results in him becoming annoyed. He would not be able to cope with a diversion if travelling by public transport.
16. The effects of his acquired brain injury do not change and a variety of interventions have been attempted (and others offered, but not taken up) for his poor mental health. In 2018 the appellant was awarded 12 points for meeting descriptor 1(f) i.e. that he could not follow even the route of a familiar journey. There is evidence that he can follow the route of a familiar journey and Ms Gorman does not suggest otherwise. Save to that possible extent (or it may be that the 2018 award was over-generous in that respect), I have not been taken to evidence suggesting that as regards following the route his condition has materially improved.
17. For these reasons and based on the further findings in paragraph 15, I give the decision which I consider the tribunal should have given. There is no challenge to the points awarded for the daily living component, nor to the 4 points awarded under mobility activity 2(b). My decision is that the

appellant additionally qualified for an award of 10 points in respect of mobility descriptor 1(d), leading to a total of 14 points for the mobility component.

18. In consequence he is entitled to an award to the daily living component and the mobility component, in each case at the enhanced rate, from and including 28 February 2023 until 1 February 2026.

A handwritten signature in black ink, appearing to read 'C G Ward', written in a cursive style.

(Signed): C G WARD

DEPUTY COMMISSIONER (NI)

30 September 2024