

**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 28 November 2023

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal with reference NS/1347/23/02/D.
2. For the reasons I give below, I grant leave to appeal. I allow the appeal under Article 15(8)(b) of the Social Security (NI) Order 1998. I set aside the decision of the appeal tribunal. 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 20 September 2022 on the basis of needs arising from paraumbilical hernia, umbilical hernia, high blood pressure, epilepsy, sleep apnoea, varicose veins and sporadic memory loss. He was asked to complete a PIP2 questionnaire to describe the effects of his disability and returned this to the Department on 17 October 2022. The appellant participated in a telephone consultation with a healthcare professional (HCP) and the Department received a report of the consultation on 20 January 2023. On 10 February 2023 the Department decided that the appellant did not satisfy the conditions of entitlement to PIP from and including 20 September 2022. The appellant requested a reconsideration of the decision, submitting further evidence. The Department obtained a supplementary medical advice note. The

appellant 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 November 2023 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 12 January 2024. 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 20 March 2024. On 16 April 2024 the appellant applied to a Social Security Commissioner for leave to appeal.

### **Grounds**

5. The appellant, represented by Ms Roberts of Community Advice Ards and North Down, submits that the tribunal has erred in law by failing to address functional limitations caused by the appellant's alcohol dependency.
6. The Department was invited to make observations on the appellant's grounds. Mr Clements of Decision Making Services (DMS) responded on behalf of the Department. Mr Clements submitted that the tribunal had erred in law and indicated that the Department supported the application.

### **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 PIP2 questionnaire completed by the appellant, an audited report of a telephone consultation with a HCP, further evidence and a supplementary advice note from a HCP. The tribunal also had a copy of the appellant's medical records. The appellant attended the hearing and gave oral evidence, represented by Ms Roberts and accompanied by his wife.
8. The tribunal found that the appellant's epilepsy was controlled to the extent that he was permitted to drive. It found that he had become alcohol dependent, affecting his long term health, but that he could function day to day. It found that he was overweight but could manage his sleep apnoea mask himself. It accepted that he needed help with compression stockings. It found that he could stand for five minutes and reasoned that this was sufficient to prepare and cook a simple meal. It found that he could get in and out of a bath safely. It found that intoxication did not impair function and awareness of hazards. It did not accept that his mobility was limited to less than 200 metres. Therefore it 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. An appeal lies to a Commissioner from any decision of an appeal tribunal on the ground that the decision of the tribunal was erroneous in point of law. However, the party who wishes to bring an appeal must first obtain leave to appeal.
13. Leave to appeal is a filter mechanism. It ensures that only appellants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
14. An error of law might be that the appeal tribunal has misinterpreted the law and wrongly applied the law to the facts of the individual case, or that the appeal tribunal has acted in a way which is procedurally unfair, or that the appeal tribunal has made a decision on all the evidence which no reasonable appeal tribunal could reach.
15. The grounds submitted by the appellant are that the tribunal did not take into account relevant Great Britain Upper Tribunal case law in the form of *SD v Secretary of State for Work and Pensions* [2017] UKUT 310 as followed by the Northern Ireland Commissioner in *SA v Department for Communities* [2019] NI Com 43. In particular, it was submitted that the tribunal did not ask the appellant about the effect that alcohol dependence had on his ability to carry out daily living or mobility activities.
16. For the Department, Mr Clements made reference to the Great Britain Upper Tribunal decision in *DE v Secretary of State for Work and Pensions* [2021] UKUT 226, where in particular Judge Clough had said at paragraph 39 that, "it would be incorrect to assume that a 'functioning alcoholic' meets the functionality threshold for PIP and is therefore ineligible as the legislation requires thorough fact finding, rather than jumping to such a conclusion". Mr Clements observed that the appellant had not referred to issues with alcohol dependency on the PIP2 questionnaire or in the report of the telephone consultation with the HCP. He noted that there was some information in his GP records and in a written submission from his representative. However, he submitted that the papers generally lacked information about the effects of the appellant's alcohol dependency. Mr Clements submitted that the tribunal had not put any questions to the appellant about alcohol dependency and its effects on his ability to perform the PIP activities at the hearing.

17. On this basis the Department agreed with the submissions of Ms Roberts for the appellant to the effect that the tribunal failed in its duty to ask relevant questions regarding alcohol consumption when assessing if any of the descriptors were satisfied. It was submitted by Ms Roberts that the tribunal's failure to ask these questions meant that it had not taken into consideration whether the appellant could carry out activities safely, to an acceptable standard, repeatedly and within a reasonable time period, in line with regulation 4 of the PIP Regulations.
18. I consider that Judge Clough in *DE v Secretary of State for Work and Pensions* has given an accurate statement of the relevant law. I accept the submissions of the parties.
19. In light of the submissions before me, I grant leave to appeal. I accept the submissions of the parties that the tribunal has erred in law. I allow the appeal and I set aside the decision of the appeal tribunal. I refer the appeal to a newly constituted tribunal for determination.

(Signed): O STOCKMAN

COMMISSIONER

28 October 2024