

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

UNIVERSAL CREDIT

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 15 March 2023

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The appellant seeks to appeal against the appeal tribunal's decision dated 15 March 2023 that she did not have limited capability for work from and including 7 June 2022 for the purposes of her universal credit (UC) claim.
2. Her grounds of appeal, submitted by her representative in the Commissioners' proceedings, Sinéad McKinley of STEP NI, are in summary that the appellant's "learning difficulties" were not considered by the tribunal, which ought to have sought additional evidence in relation to them. The need to do so is submitted to be especially acute in view of claimed "language barriers".
3. In the usual way, the Department's comments were invited on the application. In a submission dated 10 June 2024, Lisa Toner submits that the tribunal did not err in the manner submitted, in essence because there was no evidence before it to suggest that the appellant had any learning disability and therefore the tribunal could not be criticised for failing to investigate that aspect further.
4. Ms Toner goes on to submit that, with one possible exception, which I consider further below, the tribunal carried out a comprehensive review of the evidence before it and was entitled to come to the conclusions which it reached.

5. The possible exception, which Ms Toner has properly flagged, is whether, in the light of the evidence which it had, the tribunal ought to have adjourned in order to clarify whether or not the appellant had a certificate of visual impairment and if so whether it was for visual impairment or severe visual impairment/blindness.
6. Ms Toner indicated that if the Commissioner were to grant leave, her submission may be treated as a submission on the resulting appeal.
7. Ms Toner's submission was sent to Ms McKinley inviting her comments but none have been received.

The certificate

8. The oral evidence before the tribunal given by the appellant's mother was that the appellant had a certificate of visual impairment but it was at home. The mother said she was unable to say whether the certificate was for blindness (severe visual impairment) or for visual impairment. The mother also described how a lady at the appellant's school, who was possibly a social worker, had advised them to get the certificate. She indicated that her daughter had applied for a guide dog but had been given a stick instead.
9. In her interview with the Health Care Professional, which was conducted by telephone, the appellant is recorded as having stated that she has "partial blindness" and had not been declared blind. She stated that she did not have a certificate of visual impairment. She also indicated that she had a white stick but did not use it as she didn't feel comfortable with it. She could not say who had provided it. She did not know her visual acuity.
10. There was evidence from an optician, noted by the tribunal, that the appellant had recently been re-referred to the hospital low vision team.
11. The tribunal recorded that:

"At the oral hearing the Appellant's mum stated that she has a certificate of visual impairment but had not brought it with her. The [Appellant's] mum was unable to say whether the [Appellant] was registered as blind or visually impaired. The panel did not find this credible."
12. It is not clear to me what the tribunal was saying here. Did they think that the appellant did not, in fact, have a certificate of visual impairment and that her mother was making it up? Did they think that the mother was not telling the truth when she said that she did not know the degree of visual disability? Further and in any event, they did not address the evidence that the appellant had been advised at school to obtain such a certificate, nor the evidence that the appellant had applied for a guide dog but had

been given a white stick, an application and outcome which one might think were unlikely to have occurred without the issue of a certificate of (at least) visual impairment. The appellant was a poor historian: she did not know her visual acuity and could not say who had provided the white stick. That made the need for accurate objective evidence more acute and in my judgment the tribunal's dismissal of the mother's evidence on the point for lack of credibility, apparently without considering other evidence which might bear on it and apparently without the possibility of an adjournment with a direction requiring the certificate (if it existed) to be provided, deprived the appellant of a fair hearing and was in error of law.

The learning disabilities

13. I do not accept Ms Toner's submission that there was no evidence before the tribunal indicative of learning disabilities. The tribunal has an inquisitorial jurisdiction, which may require it on occasions to "read between the lines".
14. There was evidence that the appellant was born extremely prematurely (at 24 weeks' gestation). She had "needed" (which I interpret as meaning "been provided with") a "permanent classroom assistant" while at school. The college course she was following at the time of the hearing (at the age of 21) was entitled "Learning for life".
15. All of those are potential indicators of a degree of learning difficulty or disability. While they could be attributable to visual disability alone, it is unlikely that the appellant would have been provided with a permanent classroom assistant, seemingly throughout her school career, in the absence of other disabling factors. "Learning for life" is not a term of art in relation to courses, but is frequently found in relation to courses designed to assist those with learning disabilities to prepare for independent living in adulthood. If learning difficulties or disabilities are established, they might exacerbate the difficulty of dealing with a visual impairment.
16. None of this was explored by the tribunal. I do not consider that a sufficient justification for failing to do so is provided by the appellant's "clarification" to the assessor, noted by the tribunal, that "she has no musculoskeletal or mental health problems": learning difficulties or disabilities are not in themselves "mental health problems".
17. I would therefore allow the appeal on this ground also.
18. I therefore give permission to appeal and allow the appeal. I direct that the appeal against the Department's decision dated 7 June 2022 be remitted to a wholly differently constituted panel of the appeal tribunal which must consider the appeal entirely afresh. The file should be referred to a legally qualified member to give case management directions, without limitation

in relation to the filing of any further evidence and the provision of a Polish interpreter at the new hearing.

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

(Signed): C G Ward

Deputy Commissioner (NI)

25 September 2024