

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 15 November 2023

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I give leave to appeal and allow the appeal. I direct that the Appellant's appeal against the Department for Communities (the Department) decision of 24 July 2018 be remitted to the Appeal Tribunal to be considered entirely afresh by a wholly differently constituted panel.
2. By the above decision, the Department had refused the Appellant's claim for Personal Independence Payment (PIP). On 15 November 2023 her appeal against that decision came before the Appeal Tribunal at a hearing in person at Belfast. The Appellant was represented. The appeal was dismissed.
3. She has sought leave to appeal to the Commissioners and has changed her representative.
4. In the usual way, the comments of the Department were invited on the application. These were provided by Laura Patterson, who by a submission dated 4 July 2024 initially opposed leave to appeal being granted. No response was received from the Appellant at that point and the case was subsequently referred to me.
5. I was concerned at two aspects which had not been previously aired and directed a further submission from the Department.
6. By a submission dated 11 November 2024, Ms Patterson accepts that the Appeal Tribunal's decision was in error of law in respect of one of the points I had flagged up. She has accepted that her submissions on the

application for leave may be treated as observations on the appeal under regulation 18(1) of the Social Security Commissioners (Procedure) Regulations (Northern Ireland) 1999.

7. The record of proceedings reads in material part:

“LQM made introductions and explained procedure. LQM outlined the history of the appeal and confirmed that the decision under appeal was the decision made by the Department on 24 July 2018.

LQM reminded the parties that the decision under appeal is that of 9 September 2019...”

8. The latter of these dates was incorrect. Ms Patterson comments that it might have been a typo and that it is perhaps surprising that if the Legally Qualified Member (LQM) did give the wrong date, that neither the Appellant, nor her then representative, nor the other panel members picked up on this.
9. I am unable to conclude that it was a typo: this was on its face a misdirection, specific in its terms, on a material matter. The use of “reminded” suggests that the LQM was giving guidance to the parties that they were expected to heed. Even if the Appeal Tribunal was not itself confused when it came to its decision, there is a real risk that the Appellant and her representative were confused by the LQM’s “reminder” and so did not receive a fair hearing.
10. There is limited evidence available to me apart from the record of proceedings. The Appellant’s representative at that time is no longer instructed. For her part, the Appellant says “I would agree the dates confused myself and I thought the tribunal was referring to 2019 when it was in fact 2018.” Such evidence could of course be self-serving, but given the tenor of the Appellant’s submissions I consider it unlikely.
11. The understanding of the Appellant’s mental health appear to have evolved with time, which makes it particularly important that the evidence was given, and considered, by reference to the circumstances obtaining at the correct date and in relation to the correct “required period”. It is not possible to conclude with confidence that it was, in either respect, and Ms Patterson does not put forward any submission to the contrary. Nor does she submit that the error was not material.
12. I therefore give leave to appeal and allow the appeal, setting the decision of the Appeal Tribunal aside.
13. That makes it unnecessary to deal with the second point which I flagged up, which concerned whether the Appeal Tribunal was mistaken as to the nature of the medical evidence before it relating to the post-2019 period. Nor do I need to address the Appellant’s own grounds, as if there was any

other error of law in the Appeal Tribunal's decision, that decision has been set aside and her appeal against the Department's decision will be considered wholly afresh.

14. This is not a case in which I consider it expedient to remake the decision myself. As further findings of fact are required, it will best be made by a panel of the Appeal Tribunal, which will contain a Medically Qualified Panel Member and a Disability Qualified Panel Member. It is as I understand it part of the Appellant's case that she had for some years prior to the date of decision been suffering from Post Traumatic Stress Disorder but it had only latterly been diagnosed and that her evidence should be understood in the light of the diagnosis. The letter dated 5 February 2021 from Dr Idris to Dr Dallas does provide an indication that such a diagnosis was in place at the date of the letter. That is one aspect (including whether it is relevant to the circumstances obtaining at the date of the decision under appeal) which the new panel of the Appeal Tribunal will need to consider, along with any other issues raised by the appeal and any other issue which, in its discretion, it sees fit.
15. I did note that the Appellant had given a somewhat equivocal indication about wanting an oral hearing before the Commissioner. She first ticked "Yes" but then crossed it out and ticked "No", while still completing the reasons why she wanted one. It is clear that her motivation for seeking a hearing was "to put forward the true facts of her condition and how it affects her". That can be done when the case is reheard by the Appeal Tribunal. Oral hearings before the Commissioner are primarily concerned with whether the Appeal Tribunal went wrong in law: in this case it has been accepted that it did, without the need for a hearing before the Commissioner.
16. The fact that this appeal has succeeded on a point of law carries no implication as to the likely outcome of the Appellant's appeal against the Department's decision, which is a matter for the new panel.



(Signed): C G WARD

DEPUTY COMMISSIONER (NI)

3 December 2024