



DECISION OF

Lady Poole

in an

APPEAL

in the case of

Social Security Scotland

Appellant

- and -

IR

Respondent

FTS Case reference: FTS/SSC/AE/23/00949

Representation for appellant: Anderson Strathern LLP
No appearance for respondent.

25 November 2024

DECISION

The appeal is allowed. The decision of the First-tier Tribunal for Scotland (“FTS”) dated 16 May 2024 is quashed. The decision of the FTS is remade in the following terms:

“The appeal is refused. The claimant was not entitled to Adult Disability Payment at any time between making his application to Social Security Scotland on 20 March 2023 and 16



May 2024. He had been awarded Personal Independence Payment, so did not meet the conditions for entitlement to Adult Disability Payment at those times.”

REASONS FOR DECISION

Background

1. This appeal is about eligibility conditions for Adult Disability Payment (“ADP”), and in particular the statutory prohibition on entitlement if a person is in receipt of Personal Independence Payment (“PIP”).
2. In a decision dated 16 May 2024, following a hearing before the FTS, the claimant was found entitled to both the daily living and mobility components of ADP at the standard rate from 20 March 2023 for a five year period. At the time of that hearing, the FTS was not informed by either the claimant or Social Security Scotland (“SSS”) that the claimant had already been awarded PIP. SSS became aware of the claimant’s pre-existing PIP award after the FTS decision.
3. SSS appealed against the decision of the FTS. Permission to appeal to the UTS was granted by the FTS on 15 August 2024. The ground of appeal on which permission was granted was as follows:

“[IR] is in receipt of PIP and therefore cannot also be entitled to ADP under regulation 4 of the Disability Assistance for Working Age People (Scotland) Regulations 2022”.

4. The appeal has not been opposed. SSS requested an oral hearing, and that view has been taken into account. Nevertheless, it is just and fair to determine the case on the papers, having regard to the issue raised, the written submissions with the grounds of appeal and supplementary written submissions, the absence of opposition, and proportionality.

Governing law

5. Regulation 4 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (“**the ADP Regulations**”) provides:

“An individual is not entitled to adult disability payment while they are entitled to....Personal Independence Payment”.

Application of governing law



6. The claimant had previously made an application for PIP and been given an award. It is possible that the claimant did not think he was receiving PIP anymore because payments had been disrupted due to him being in hospital. Payments of an award are suspended where a claimant is being maintained in hospital at public expense, after the first 28 days of in-patient treatment (regulations 29 and 30 of the Social Security (Personal Independence Payment) Regulations 2013; there is a similar provision in regulation 28 of the ADP regulations). However, that did not mean that the PIP award terminated. Once the claimant was out of hospital, in principle PIP payments might revive for the duration of the award. The claimant therefore remained entitled to PIP, even though this did not show up on SSS's checks when he applied for ADP.
7. As a result, the claimant was still entitled to PIP at the time of his application and the decision of the FTS. It follows under regulation 4 of the ADP Regulations that he was not entitled to ADP. The decision of the FTS was in error of law and must be quashed.

Outcome

8. Although the decision of the FTS is quashed, there is no dispute between the parties that the claimant scores sufficient points for an award of ADP. The claimant's existing award of PIP became eligible for transfer to an award of ADP shortly after the decision of the FTS. The claimant was notified on 29 May 2024 that his award of PIP would end on 10 June 2024 and ADP would commence on 11 June 2024. While the FTS decision remained in force, the systems of SSS were not set up to be able fully to effect the transfer to ADP. Now, given that the decision of the FTS of 16 May 2024 has been deprived of legal effect, payments of ADP made to the claimant since 11 June 2024 may be regarded as made pursuant to the transfer previously notified to the claimant.
9. It is important that public bodies administering social security seek to do so in a way that minimises difficulty for people in Scotland having to transfer from a UK-wide system of social security to a Scottish system. If any further issues arise from this decision, the expectation is that SSS will work together with the Department of Work and Pensions to seek to resolve them. Adult disability payments exist to provide assistance to people who have impairments with significant effects. Many people claiming disability benefits are vulnerable. In this particular case, the FTS found as a matter of fact that the claimant had very significant health problems which were unlikely to improve in the immediate future. It is to be hoped that SSS has reviewed its procedures, now it is aware of the lacuna which led to the FTS decision that has been quashed.

Lady Poole

Upper Tribunal for Scotland



*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*