



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**UT ref: UA-2023-001807-PIP
[2024] UKUT 163 (AAC)**

On appeal from First-tier Tribunal (Social Entitlement Chamber)

Between:

ZY

Appellant

- v -

The Secretary of State for Work and Pensions

Respondent

Before: Upper Tribunal Judge Wright

Decision date: 2 May 2024

Decided on consideration of the papers

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal made on 28 April 2023 under case number SC320/22/00629 was made in error of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remit the case to be reconsidered by a completely freshly constituted tribunal, at an oral hearing.

REASONS FOR DECISION

1. I am satisfied that the First-tier Tribunal erred in law in the decision to which it came on 28 April 2023 (“the FTT”) and that its decision should be set aside as a result. I do not consider I am able to redecide the appeal. The appeal is therefore to be remitted to an entirely new and properly constituted three-person First-tier Tribunal to be redecided. The appeal should be redecided after or at an oral hearing before the First-tier Tribunal
2. The FTT erred in law on the fundamental basis that it was not properly constituted to hear or decide the appeal.
3. As the FTT set out in paragraph of its reasons, it sat without a disability qualified panel member (“DQPM”) to decide the PIP appeal on 28 April 2023. It considered that it was possible to continue to hear and decide the appeal in the absence of the DQPM because the “rules of procedure” enabled it to do so. It erred in law in so concluding, for the following reasons.

4. Firstly, the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 do not deal with the constitution of the First-tier Tribunal in the Social Entitlement Chamber. And the FTT provided no further explanation for why it considered it could decide the appeal as a First-tier Tribunal of only two people.

5. Secondly, and more fundamentally, paragraph 4 of the Practice Statement on *“Composition of tribunals in social security and child support cases in the Social Entitlement Chamber on or after August 1, 2013”* provides that a personal independence (“PIP”) appeal must be determined by a three-member First-tier Tribunal, made up of a Tribunal Judge, DQPM and registered medical practitioner. Although that paragraph 4 is subject to paragraphs 8-13 in the same Practice Statement, there is no evidence that the Chamber President or a Regional or District Tribunal Judge directed that this PIP FTT could sit as a two person tribunal. In any event, none of the grounds for altering the paragraph 4 three-person composition of a PIP First-tier Tribunal in those paragraphs 8-13 obviously applied. The only other relevant provision is paragraph 15(6) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007. However, that would only have allowed the FTT to sit as a two person FTT on the appellant’s appeal on 28 April 2023 “if the parties to the case agree”. As the Secretary of State was not present at the hearing on 28 April 2023, both parties could not have agreed to the FTT deciding the appeal as a two person tribunal, even if the appellant had agreed (for which there is no evidence).

6. It may be thought curious that the FTT on 28 April 2023 proceeded as it did notwithstanding that the previous First-tier Tribunal had adjourned the appeal on 1 December 2022 (see page 1 of Addition B) on the (entirely correct) basis that it only had two members and both parties did not consent to the PIP appeal being decided by a two person tribunal.

7. For the reason given above, the appeal succeeds. The Upper Tribunal is not able to re-decide the first instance appeal. The appeal will therefore have to be re-decided afresh by a completely differently constituted First-tier Tribunal (Social Entitlement Chamber), at a hearing. That First-tier Tribunal should be properly constituted as a three-person tribunal.

8. The appellant’s success on this appeal to the Upper Tribunal on error of law says nothing one way or the other about whether her appeal will succeed on the facts before the First-tier Tribunal, as that will be for that tribunal to assess in accordance with the law and once it has properly considered all the relevant evidence.

9. The appellant has since been successful on a fresh claim for PIP, with the award on that fresh claim commencing on 5 July 2023. A decision was made on that fresh claim, on 7 December 2023, to award the appellant 9 points for the daily living component (descriptors 1b, 4e, 5b, 6b) and 10 points for the mobility component (descriptor 12d), for the period 5 July 2023 to 27 November 2026. The new First-tier Tribunal to whom this appeal is being remitted will thus only be concerned with the closed period of 20 October 2021 to 4 July 2023.

**Approved for issue by Stewart Wright
Judge of the Upper Tribunal**

On 2 May 2024