

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 8 May 2018

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Enniskillen.
2. For the reasons I give below, I grant leave to appeal, I set aside the decision of the appeal tribunal under Article 15(7) of the Social Security (NI) Order 1998. I direct that the appeal shall be determined by a newly constituted tribunal and that the Department shall prepare a revised submission to the tribunal dealing with the issues of "Preparing food" and "Dressing and undressing" in particular, but not limited to those issues.

REASONS

Background

3. The applicant had an award of disability living allowance (DLA) from the Department for Communities (the Department) for a fixed term expiring on 21 November 2017. She claimed personal independence payment (PIP) by telephone from 4 September 2017 on the basis of needs arising from advanced macular degeneration, vitreous ruptures, inflammation of the sciatic nerve and restricted movement in her right arm. She was asked to complete a questionnaire to describe the effects of her disability and returned this to the Department on 20 September 2017. A previous GP factual report obtained for the purpose of the DLA claim was considered. The applicant was asked to attend a consultation with a healthcare professional (HCP) and a consultation report was received by the Department on 10 October 2017. On 23 October 2017 the

Department decided that the applicant did not satisfy the conditions of entitlement to PIP from and including 4 September 2017. The applicant requested a reconsideration of the decision, and she was notified that the decision had been reconsidered by the Department but not revised. She appealed.

4. The appeal was considered by a tribunal consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. After a hearing on 8 May 2018 the tribunal disallowed the appeal. The applicant then requested a statement of reasons for the tribunal's decision and this was issued on 13 August 2018. The applicant 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 21 September 2018. On 3 October 2018 the applicant applied to a Social Security Commissioner for leave to appeal.

Grounds

5. The applicant submits that the tribunal has erred in law on the basis that:
 - (i) it did not fully consider the activity of Preparing food;
 - (ii) it did not consider the activity of Washing and bathing;
 - (iii) it did not consider the activity of Dressing and undressing;
 - (iv) it did not consider the activity of Engaging with people;
 - (v) it did not consider the activity of Planning a journey.
6. The Department was invited to make observations on the applicant's grounds. Mr Arthurs of Decision Making Services (DMS) responded on behalf of the Department. Mr Arthurs 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 questionnaire completed by the applicant, a general practitioner (GP) factual report prepared for the previous DLA claim and a consultation report from the HCP. The tribunal also had sight of a written submission from the applicant's representative and her GP records. The applicant attended the hearing and gave oral evidence, represented by Ms Williams of CAB. The tribunal was asked to consider only the activities of Preparing food, Managing medication, Washing and bathing, Dressing and undressing, Reading and understanding signs, Engaging with other people, Planning and following a journey and Moving around.

8. The tribunal accepted that the representative's submission was a comprehensive and fair reflection of the issues to be determined at the hearing. This indicated that the applicant suffered from advanced macular degeneration, leading to difficulty reading but retaining an ability to drive. She had neck, shoulder, back and leg pain which impacted on daily activities. She suffered from depression and anxiety. The tribunal accepted that the applicant would require some prompting in order to help her with the activity of preparing food, awarding 2 points, that she needed help managing a dosette box, awarding 1 point, and that she needed to use a magnifying glass at times to read, awarding 2 points. It did not accept that she required help with Washing and bathing, Dressing and undressing or Engaging with other people. It further found that the applicant did not have any difficulty with the activity of Planning and following a journey, or with Moving around most of the time.

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.

Assessment

11. 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.
12. Leave to appeal is a filter mechanism. It ensures that only applicants who establish an arguable case that the appeal tribunal has erred in law can appeal to the Commissioner.
13. 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.

14. The applicant has submitted that the tribunal erred in law by failing to address a number of aspects of the disputed activities. The Department is in agreement with some elements of the applicant's case. In particular, Mr Arthurs observes that stated difficulty with "Preparing food", giving rise to a need for prompting, would equally amount to supervision. The implication was that descriptor 1(e) rather than 1(d) might be appropriate, with a higher award of 4 points. Mr Arthurs observed that the tribunal had not addressed the issue of how mood might affect the ability to dress. The implication is that the tribunal had not fully considered the issue of whether the applicant sometimes required prompting in order to dress. There were 2 points in issue here. Together with the issue of Preparing food, this might have had a material difference on the outcome of the daily living aspect of the appeal. Mr Arthurs raises a further issue regarding "Engaging with other people". However, I do not need to consider that issue.
15. As the parties are in agreement that the tribunal has erred in law, I consider that it is appropriate to set aside the decision of the appeal tribunal under Article 15(7) of the Social Security (NI) Order 1998. I refer the appeal to a newly constituted tribunal for determination.
16. I direct the Department to prepare a revised submission for the benefit of the tribunal. This should deal with the questions that Mr Arthurs has raised in relation to "Preparing food" and "Dressing and undressing", in particular. However, the Department is not confined to submissions on those issues alone, and may address the issue of "Engaging with other people", as raised by Mr Arthurs, at its discretion.

(signed): O Stockman

Commissioner

16 July 2019