

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

UNIVERSAL CREDIT

Application to a Social Security Commissioner
for leave to appeal on a question of law from the decision of a Tribunal
dated 14 November 2023

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The appellant applies for leave to appeal against the decision of the appeal tribunal dated 14 November 2023. The tribunal upheld the Department's decision dated 18 January 2022 and held that the appellant did not have limited capability for work (LCW) nor limited capability for work-related activity (LCWRA).
2. Surprisingly, neither the Department's determination which fed into the ensuing decision, nor the decision itself appear to have considered the possible application of schedule 8, para 4 of the Universal Credit (Northern Ireland) Regulations 2016/216 which provides that a claimant is to be treated as having LCW if:

“(1) The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work.

(2) This paragraph does not apply where the risk could be reduced by a significant amount by—

(a) reasonable adjustments being made in the claimant's workplace, or

(b) the claimant taking medication to manage their condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.”

3. Nor is there mention thereof schedule 9 para 4, which provides that a claimant is to be treated as having LCW and LCWRA if:

“The claimant is suffering from a specific illness, disease or disablement by reason of which there would be a substantial risk to the physical or mental health of any person were the claimant found not to have limited capability for work and work-related activity.”

4. In a written submission on the appeal, Mid & East Antrim Community Advice Services however did put schedule 9 para 4 in issue (there was no express reference to schedule 8 para 4 but it might be considered to follow from the structure of the submission).
5. The tribunal's record of proceedings refers to the existence of the written submission. However, at no point do its reasons address the submission; in particular, they do not address the deeming provision of schedules 8 and 9 referenced above, even though one of them had expressly been raised by the submission. Failure to address the submission in relation to schedule 9 is of itself an error of law sufficient to set the decision aside.
6. A further possible error of law was raised by Mr Finnerty's submission on behalf of the Department. The appellant had been awarded Personal Independence Payment following a consultation (by telephone) held on 1 July 2021. She had scored 19 points for Daily Living activities and 12 points for Mobility activities. Mr Finnerty questions whether the tribunal's approach to the evidence provided by that consultation was in error of law. I can understand why Mr Finnerty raised it, but as I am setting the decision aside on other grounds do not need to prolong this decision by considering the point in detail.
7. I can address the appellant's grounds of appeal relatively shortly. The Public Contracts Regulations 2015 and the Employment Rights (Northern Ireland) Order 1996 have no relevance to determining whether a person has LCW or LCWRA for Universal Credit purposes. There is no indication that her rights under article 6 of the European Convention on Human Rights have been infringed; merely because a body has reached a decision against an individual does not mean that the hearing was unfair. The Equality Act 2010 has very limited applicability in Northern Ireland and, as with the appellant's previous ground, reaching a decision against an individual does not of itself amount to discrimination. In any event, the appellant has exercised her right of appeal and, albeit not by virtue of the grounds she advanced, has secured the right to a re-hearing. That will be a full re-hearing. It is a matter for her, but I would encourage her to focus her energies on how the evidence is said to demonstrate that she is entitled to points under schedule 6 to the Universal Credit Regulations (Northern Ireland) 2016, or meets any of the descriptors under schedule 7, and if not, whether the provisions of

schedule 8, para 4 or schedule 9 para 4 (set out above) are applicable on the evidence. There is a risk that misplaced reliance on irrelevant legislation may serve to obscure her case. She may also wish to consider attending an oral hearing when the matter is back before the tribunal.

8. I therefore give permission to appeal. I allow the appeal and set the tribunal's decision aside. I direct that the appellant's appeal against the Department's decision of 18 January 2022 be heard afresh by a differently constituted panel of the tribunal. I remind the appellant that the new tribunal will be restricted to considering the circumstances obtaining down to the date of the Department's decision.

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

(Signed): C G WARD

DEPUTY COMMISSIONER (NI)