



**DECISION OF**

Lord Young

**ON AN APPLICATION FOR PERMISSION TO APPEAL  
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)  
IN THE CASE OF**

KB  
per Welfare Rights - Argyll and Bute Council

Appellant

- and -

Social Security Scotland

Respondent

FTS Case Reference - FTS/SSC/AE/23/00266

12 March 2024

**Decision**

Permission to appeal is REFUSED.

**Reasons for Decision**

**Introduction**

1. The appellant made an application for Adult Disability Payment (“ADP”) in September 2022. Social Security Scotland (“SSS”) found that that he was not entitled to an award of ADP on 17 January 2023. On 4 April 2023, following an application for a re-

determination, SSS found the appellant entitled to 6 points under the daily living component and 4 points under the mobility component. The appellant appealed to the First-tier Tribunal for Scotland (“FTS”) seeking additional points on both daily living and mobility components. His appeal was refused on 8 December 2023 with the FTS confirming the re-determination decision dated 4 April 2023. The FTS stated that the evidence did not justify any points being awarded for the daily living component and no additional points being justified for the mobility component.

2. On 21 December 2023, the FTS refused permission to appeal on the basis that the grounds of appeal do not disclose any arguable point of law.

#### Grounds of appeal

3. The grounds of appeal refer to five paragraphs from the FTS’s findings in fact and contend that the FTS ought to have drawn different conclusions from the medical evidence before it. In summary, the grounds of appeal are:-
  - (i) The FTS failed to take into account the medical evidence in relation to his enlarged prostate as that medical condition was not listed by the FTS at paragraph 9 of its decision.
  - (ii) Where the FTS relied at paragraph 15 upon the absence of a referral to rheumatology by the appellant’s general practitioner, that fact is explained by the general practitioner’s view that there is nothing which can be done to improve his symptoms via such a referral.
  - (iii) The FTS referred at paragraph 17 to a letter from the appellant’s urologist which made no reference to bladder incontinence but the FTS ought to have concluded on the basis of the appellant’s scoring on the international prostate symptom score

that he would be likely to have all or most of the usual symptoms associated with an enlarged prostate which would include urinary incontinence.

- (iv) The FTS's questioning of the aids purchased privately by the appellant implied that such aids did not count in determining the extent of his disability.
  - (v) The FTS's finding in fact at paragraph 21 is inconsistent with the letter from the appellant's general practitioner in relation to the gross swelling of his hands and its impact on his fine motor skills, and with other aspects of daily living.
4. In response to the FTS's refusal of permission to appeal, the appellant submitted a further letter dated 8 January 2024 seeking permission to appeal from the Upper Tribunal for Scotland ("UTS"). That letter repeated the grounds of appeal summarised above and included the following additional alleged errors of law
- (i) That the FTS appear to have investigated the circumstances of the appellant's housing in advance of the hearing and asked irrelevant questions based on that research. This research was not relevant and any decision should not have been taken in light of this line of questioning, (*GL v SSWP* 92009) UKUT 36 (ACC); and *HI v SSWP* (2014) UKUT 238 (ACC)).
  - (ii) That the FTS erred at paragraph 36 of its decision in stating that if the appellant was embarrassed to acknowledge the extent of his disabilities, he could have submitted a blank application form. The computerised application form did not allow a section to be left blank.

### Discussion

5. By statute, a decision of the FTS may be appealed to the UTS. The appeal is restricted to points of law only (section 46(2)(b) of the Tribunals (Scotland) Act 2014 ("the 2014 Act"). The UTS has to be satisfied that any grounds of appeal are arguable, (section 46(4) of the 2014 Act). An appeal to the UTS from a decision of the FTS is not a re-hearing of the case.

6. The grounds of appeal summarised at paragraph 3 above do not raise any arguable point of law. In relation to each of these grounds of appeal, the appellant challenges the findings in fact found by the FTS. The grounds of appeal contend that the FTS ought to have made different factual findings by reference to inferences to be drawn from aspects of the evidence. The conclusions to be drawn from the evidence, including any reasonable inferences from such evidence as is accepted by the FTS, falls within the fact finding jurisdiction of the FTS alone. The FTS explains in its decision that the primary findings in fact in relation to the appellant's capacity are based on the appellant's original application form. The ground of appeal summarised at paragraph 3(i) above which alleges that the FTS failed to take account of relevant medical evidence is not an arguable point of law since such medical evidence was expressly considered by the FTS at paragraph 17 of its decision.
  
7. The further potential grounds of appeal raised in the appellant's letter of 8 January 2024 and summarised in paragraph 4 above do not raise arguable points of law. Even if it is assumed that some prior investigations were carried out by the FTS in advance of the hearing, there is no *prima facie* unfairness in such a course of action since the FTS are engaged in the task of understanding the effect of the appellant's disabilities on his day to day activities. It has not been submitted that the FTS took its decision on the basis of information which the appellant was not given a reasonable opportunity to respond to. There has been no breach of the rules of natural justice. In relation to the appellant's criticism of paragraph 36 of the FTS decision, this does not raise a point of law. The FTS at paragraph 36 of its decision set out its reasons for accepting the terms of the appellant's original statement as opposed to his evidence at the hearing. It is for the fact finding Tribunal to decide what evidence it accepts and what evidence it rejects based upon its view of the reliability and credibility of the witnesses before it. Any inability to submit a completely blank application form does not alter the fact that the appellant's original

form contained evidential material which the FTS found more credible and reliable than his subsequent testimony.

Conclusion

8. Permission can only be granted if there are arguable grounds of appeal on a point of law (section 46 of the Tribunals (Scotland) Act 2014). As that statutory test is not met, permission is refused.

Member of the Upper Tribunal for Scotland