



DECISION OF

LADY POOLE

IN THE APPEAL

in the case of

Social Security Scotland

Appellant

and

AM

Respondent

FTS/SSC/AE/24/01293

Representation:

For the Appellant: Scottish Government Legal Directorate

For the Respondent: no appearance

24 April 2025

DECISION

The First-tier Tribunal for Scotland erred in law in its decision of 26 November 2024 in relation to the commencement date of a higher rate of award following a change of circumstances. The decision of the FTS is quashed and remade as follows:

“The applicant became entitled to the enhanced rate of the daily living component and the standard rate of the mobility component with effect from 10 September 2022.



He scores points for daily living descriptors 1(d), 2(d), 4(c), 5(e), 6(c) and 9(b), and mobility descriptors 1(b) and 2(b), in parts 2 and 3 of schedule 1 of the Disability for Working Age People (Scotland) Regulations 2022.

His award of adult disability payment with the enhanced rate of the daily living component and the standard rate of the mobility component is for a fixed period until 21 November 2026”.

REASONS FOR DECISION

Summary

1. This case is about the start date of an increase in an award of a disability payment, following a change in circumstances. The context is the migration of an award of personal independence payment (“PIP”), already in payment, to adult disability payment (“ADP”). This decision finds that the First-tier Tribunal for Scotland (“FTS”) erred in law when selecting a start date for the increase in the award of 10 June 2022. The uplift in the award could only commence 13 weeks after an emergency operation (the consequences of which gave rise to the additional limitations resulting in the increase). That is because of the effect of the required period condition for entitlement to the higher rates of payment. The FTS ought to have selected a commencement date of 10 September 2022 for the increased award.

Background

2. On 10 June 2022, AM underwent an emergency procedure during which a stoma was fitted. On 28 October 2022 he reported a change of circumstances to the Department of Work and Pensions (“DWP”), which administers PIP. Because AM lives in Scotland, his informing the DWP about the change triggered the transfer of his PIP award to ADP. Under the transfer process, Social Security Scotland (“SSS”), which administers ADP, became responsible for considering the reported change of circumstances, not the DWP.
3. AM’s PIP payments were migrated to payments of ADP on 3 February 2023. SSS asked AM to give further details about the change of circumstances, so on 1 April 2023 AM submitted a completed form. SSS reviewed AM’s award in the light of all of the information before it. The results of the review were that SSS decided AM remained entitled to the same rates as before; the daily living component at the standard rate, with no entitlement to the mobility component.
4. AM appealed to the FTS. The FTS found that AM was entitled to an increased award, the daily living component at the enhanced rate, and the mobility component at the standard rate. It also ordered that this award should take effect from the date of the change of



circumstances, the date of the emergency operation on 10 June 2022, stating that the requirements of schedule 2, paragraph 12(4)(a)(ii) of the Disability for Working Age People (Scotland) Regulations 2022 (the “**ADP Regulations**”) were satisfied.

5. SSS appealed the decision of the FTS to the Upper Tribunal for Scotland (“**UTS**”), but only in relation to the commencement date of the increased award. The FTS granted permission to appeal on 19 December 2024 on the basis that the following ground was arguable:

“The FTS has misdirected itself in law as to the effect of paragraph 12(4)(a)(ii) of schedule 2 of the ADP Regulations, and so has erred in its conclusion as to the date on which the appellant’s entitlement to assistance begins following a change in circumstances”.

SSS argues that when the ADP Regulations are correctly applied, the correct date the change should take effect from is 13 weeks after the date of the emergency operation.

6. Neither party has requested an oral hearing, and there is sufficient information before the UTS to be able to determine the appeal on the papers fairly and justly.

Governing law

7. The ADP Regulations came into force on 21 March 2022. They govern new applications for ADP made in Scotland. But they also make provision for people in Scotland in receipt of PIP as part of the UK system of benefits. Over time, those people are migrated to the matching Scottish social security payment of ADP. Part 3 of schedule 2 of the ADP Regulations, given effect by regulation 60, governs the migration or transfer of PIP to ADP. In most cases, where a person has been in receipt of PIP, they will become entitled to the same components and rates of ADP as those they received of PIP.
8. Paragraph 12 of part 3 of schedule 2 governs the situation where a person reported a change in circumstances to the DWP before migration to ADP. SSS must review entitlement as soon as reasonably practicable after transfer to ADP (paragraph 12(2)). A review taking into account a change of circumstances may result in an increased award, or a “higher rate” in the language of paragraph 12(4). A person may become entitled to a higher rate of ADP by, for example, being found entitled to a component not previously awarded, or qualifying for the enhanced rate of either component when previously they were entitled only to the standard rate (see regulation 34). Provision is made in paragraph 12(6) of part 3 of schedule 2 for the claimant to receive arrears, if found entitled to a higher rate.



9. The start date of the entitlement to a higher rate is governed by paragraph 12(4) of part 3 of schedule 2 which provides (bold added):

“(4) Where a transferring individual's entitlement to ADP is determined in the review determination to be at a higher rate than the transfer determination, entitlement will begin—

(a) if the individual notifies the change—

- (i) within one month of the change occurring, the date when the individual **first satisfies the requirements for a higher rate of the daily living or mobility component**,
- (ii) within more than one month but not more than 13 months of the change occurring, the date when the individual **first satisfies the requirements for a higher rate of the daily living or mobility component**, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month,
- (iii) in any other case, from the date of notification of the change...”

In passing, it may be noted that similar wording to the passages in bold appears in the provisions governing changes of circumstances where a person has previously been in receipt of ADP rather than PIP (regulation 45(1)(b) of the ADP Regulations). Both focus on the date when the individual “first satisfies the requirements for a higher rate”.

10. In this case, the increase in the award reflected the FTS's view that AM qualified for the enhanced (rather than standard) rate of the daily living component, and also the mobility component at the standard rate. The requirements for those components, at those rates, are found in regulations 5(3) and 6(2) of the ADP Regulations respectively. Entitlement depends on two things. The first, read short, is scoring sufficient points under the descriptors in parts 2 and 3 of schedule 1 of the ADP Regulations. But there is a second requirement in regulations 5(3)(b) and 6(2)(b); the individual must also “meet the required period condition” in accordance with regulation 11 (daily living component) or 12 (mobility component).
11. Read together, regulations 11 and 12 of the ADP Regulations provide, in relation to the daily living and mobility activities in part 2 of schedule 1:

“An individual meets the required period condition ... where, if the individual's ability to carry out the daily living activities were determined every day in the required period, it is likely that the Scottish Ministers would determine on all of



those days that the individual had limited or, as the case may be, severely limited ability to carry out the ... activities”.

In circumstances where there is already an award in payment, Regulation 10(3) provides, insofar as relevant to this case:

“In these Regulations, "required period" means—

- (b) where Adult Disability Payment has been awarded to an individual ...
- (ii)...for each day of the award, the period of 13 weeks ending with that day of the award together with the period of 39 weeks beginning with the day after that date”.

Application of governing law

12. The relevant facts found by the FTS were that the operation giving rise to AM’s further functional limitations took place on 10 June 2022. The change of circumstances was notified by AM on 28 October 2022. The FTS found there was good reason not to have notified earlier, essentially because the change had been as a result of an emergency operation. The FTS also found AM was entitled to the daily living component at the enhanced rate and the mobility component at the standard rate as a result of the change of circumstances. None of these findings are challenged by SSS; the only matter in issue is the correct start date for the resulting increased award.
13. Paragraph 12(4)(a)(ii) of part 3 of schedule 2 the ADP Regulations governs the start date of the increase. That is because the change of circumstances was notified within 13 months of the change occurring, and the FTS found there was good reason for it not having been notified within one month. The increase begins on “the date when the individual first satisfies the requirements for a higher rate of the daily living or mobility component”.
14. The “requirements for a higher rate of the daily living or mobility component” have to be ascertained by looking at other parts of the ADP Regulations, and of relevance for this case are regulations 5(2) and 6(3). Those provisions contain requirements of scoring sufficient points for the higher rate, but also satisfying the required period condition. As explained in *Social Security v FK* 2024 UT 23, the policy behind the required period condition is to ensure that ADP awards are channelled to impairments with significant and not short-term effects, so that finite public funds are targeted where the legislature considers they are most needed. This underlying policy applies equally to changes of circumstances. A person may have a change of circumstances which results in short term



incapacity, such as spraining a wrist. But that may heal in a few weeks, leaving no residual disability. On the other hand, an example of a change of circumstances could be having both feet amputated, which would result in lifelong limiting effects. The required period condition results in a distinction being drawn between short and long term incapacity, including where changes in circumstances are reported.

15. In this case there is no dispute that AM scored sufficient points for an increased award. But he also had to satisfy the required period condition for an award at a higher level. Because ADP had been awarded already, following the transfer of the PIP award to ADP, regulation 10(3)(b)(ii) applied. It contains a required period totalling 52 weeks, but divided so there is a “backwards” and a “forwards” test. There is no dispute that the “forwards” test was met, of the functional limitations subsisting 39 weeks into the future. But, applying the wording of regulation 10(3)(b)(ii), the earliest date the “backwards” test could be satisfied is 13 weeks after the increased functional limitation commenced. As a result, the first date on which the required period condition could be met for an increased award is 13 weeks after the emergency operation on 10 June 2022, which is 10 September 2022.

Decision

16. It follows that the FTS erred in law because it did not give proper effect to the words “the date when the individual first satisfies the requirements for a higher rate of the daily living or mobility component” in paragraph 12(4)(a)(ii) of part 3 of schedule 2 to the ADP Regulations. It failed properly to give effect to the requirement in regulations 5(3) and 6(2) that the required period condition must be satisfied, or properly to apply the provisions of regulation 10(3)(b) to determine the earliest date when the required period condition could be satisfied. The start date for the one year required period could only commence 13 weeks after the change of circumstances. As a result, the FTS erred in finding the uplift in the award applied from 10 June 2022.
17. The error of the FTS relates only to the date for commencement of the award. In its decision, the FTS found sufficient facts to enable the UTS properly to determine the correct commencement date. The appropriate outcome under section 47 of the Tribunals (Scotland) Act 2014 is therefore to quash the decision of the FTS, and remake it as set out at the beginning of this decision, correcting the commencement date of the increased award to 10 September 2022. As the applicant was migrated from personal independence payment to adult disability payment on 3 February 2023, paragraph 12(6) of part 3 of schedule 2 of the ADP Regulations has the effect that he is entitled to any difference between the value of personal independence payment or adult disability payment he has received, and the higher rates found due with effect from 10 September 2022.



Lady Poole

*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.*