

Upper Tribunal for Scotland



2026UT12

Ref: UTS/AS/25/0146

DECISION OF

Lady Poole

ON AN APPEAL IN THE CASE OF

Social Security Scotland

Appellant

- and -

RC

Respondent

FTS Case Reference: FTS/SSC/AE/24/00870

23 January 2026

DECISION

The appeal is allowed. The decision of the First-tier Tribunal for Scotland dated 3 October 2024 is quashed and re-made as follows:

“The appeal is refused. The appellant is not entitled to an award of adult disability payment. The appellant did not satisfy the residence and presence conditions for entitlement to adult disability payment on the date his application was made, or any other date in the 13 week period following that date”.



REASONS FOR DECISION

Summary

1. This is an appeal about residence and presence conditions for entitlement to Adult Disability Payment (“ADP”), and their interaction with provisions governing the start date of awards. The decision finds that the First-tier Tribunal for Scotland (“FTS”) erred in law in finding that regulation 35 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the “ADP Regulations”) did not apply to it. The FTS ought to have found that no entitlement to ADP arose on the application before it, because the applicant did not meet the residence and presence conditions of entitlement.
2. The appeal is brought by the appellant Social Security Scotland (“SSS”). There has been no opposition to the appeal on behalf of the respondent (“RC”). SSS requests that the appeal be dealt with on the papers. It is fair and just to do so.

Background

3. RC is a British national who lived in Australia from 5 November 1992 to 26 August 2023. He returned to live in the UK. He applied for ADP on 7 September 2023.
4. On 7 December 2023, SSS intimated its refusal of RC’s ADP application, finding among other things that RC did not score sufficient points for daily living and mobility activities to qualify for an award. On re-determination on 8 February 2024, SSS purported to make an award of the standard rate of the daily living component.
5. In both the determination and re-determination decisions, SSS omitted to consider the residence and presence conditions in regulation 15 of the ADP Regulations. It ought to have done so, given that entitlement to ADP requires those conditions to be met (regulation 3(1)(b)). Regulation 15(1)(e) requires there to have been presence in the common travel area for “a period of, or for periods amounting in the aggregate to, not less than 26 weeks out of the 52 weeks immediately preceding that day”. “Common travel area” is defined under regulation 15(2) in a way which includes the UK. RC’s application did not meet the residence and presence conditions because he had not been in Scotland for 26 weeks in the year preceding his application, and therefore fell to be refused.
6. RC appealed SSS’s re-determination decision to the FTS, contending he was due arrears of ADP. There was a hearing about entitlement to ADP before the FTS on 27 September 2024. SSS resisted the appeal, arguing among other things that the residence and presence condition in regulation 15(1)(e) of the ADP Regulations was not met, with the result there was no entitlement. In its decision dated 3 October 2024, the FTS appeared to accept that the residence and presence conditions were not met until 26 weeks after RC had returned



to Scotland. However, instead of finding RC was not entitled to ADP, the FTS purported to exercise powers it considered existed under section 49 of the 2018 Act to make an award of ADP from 22 February 2024. It stated in its decision that “the thirteen week restriction on delaying a start date at regulation 35 only applies to [SSS]. First-tier Tribunals are not bound by it” (para 17).

7. SSS appealed to the Upper Tribunal for Scotland (“UTS”). SSS argues that the FTS erred in law because it had failed to apply regulation 35 of the ADP Regulations. SSS argues that while regulation 35(2) allows assessment of eligibility at a date other than the date an application was received, that is only for a period of 13 weeks after the application is made. 22 February 2024 was more than 13 weeks after RC’s application was made, and the FTS was wrong to make the award it did.
8. The FTS granted permission to appeal to the UTS on 19 August 2025, although confusingly purported to grant permission on a ground different from that on which permission had been sought. The FTS was interested in clarification in relation to the case of *Social Security Scotland v HK* 2024 UT 53 (“HK”), but that has already been provided by the UTS (SSS v FR 2025 UT 72, SSS v DC 2025 UT 66, SSS v SH 2025 UT 79 paras 8 to 11, SSS v SF 2025 UT 74 paras 17 and 22). The UTS confirmed in an order dated 11 November 2025 that the appeal would proceed on the ground on which permission had been sought, and made orders for the determination of the appeal. The ground of appeal before the UTS is:

“whether the FTS has misdirected itself in law by failing to apply regulation 35 of the ADP Regulations and so has erred in its conclusion that it has the power to treat the appellant’s entitlement to assistance as beginning on a date 26 weeks after he returned to the United Kingdom.”

Decision

9. The FTS erred in law when it found provisions within regulation 35 of the ADP Regulations did not apply to it. It is an error for the FTS to fail to apply the relevant statutory rules that govern entitlement to ADP. The FTS was incorrect that the decision in *Social Security Scotland v HK* 2024 UT 53 had the effect that section 49 of the 2018 Act gave the FTS powers to disapply parts of regulation 35 and make its own determination (SSS v FR 2025 UT 72 paras 10 and 12, and SSS v RG 2025 UT 78 para 11).
10. The FTS may have been trying to take a practical view, in making an award from the date RC had been in the UK for 26 weeks, 22 February 2024. The flaw is that entitlement only arose if RC satisfied all conditions of entitlement at that time. It does not follow that because RC may have been assessed as satisfying some conditions at an earlier date, he must have satisfied all eligibility conditions on 22 February 2024. The FTS is an appellate body, and is not equipped or staffed to fulfil the duty to carry out fresh assessments of



entitlement on all conditions within the ADP regulations (as explained *SSS v DC* 2025 UT 66 para 12 and other cases). It is wrong for it to purport to do so, because it would in effect be making a first decision from which there is no right of re-determination, and the right of appeal is limited. The solution was for RC to submit a further application to SSS, and SSS to make an award on the basis of that application, if by then RC met all of the conditions of entitlement to ADP.

11. The appeal is therefore allowed and the decision of the FTS is quashed. It is remade as set out in the order at the start of this decision.

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.