



2025UT18

Ref: UTS/AS/24/0137

**DECISION OF**

Lady Poole

**IN AN APPEAL**

in the case of

RM

Appellant

- and -

Social Security Scotland

Respondent

FTS Case Reference: FTS/SSC/AE/24/00397

Representation:

Appellant: Glasgow City Council Welfare Rights Team

Respondent: Scottish Government Legal Directorate

26 March 2025

**DECISION**

The appeal is refused. The decision of the First-tier Tribunal for Scotland of 5 September 2024 and issued on 6 September 2024 is upheld.



## REASONS FOR DECISION

### Summary

1. This is an appeal against a decision of the First-tier Tribunal for Scotland (“FTS”) issued on 6 September 2024. The ground of appeal before the Upper Tribunal for Scotland (“UTS”) was:

“Whether the FTS gave adequate reasons for its decision, having regard to paragraph 34 of its decision, and in relation to daily living activity 5”.

This decision finds that the FTS did not err in law by failing to give proper and adequate reasons for its decision.

### Procedural history and background

2. The appellant (“RM”) applied for Adult Disability Payment (“ADP”) on 2 May 2023, and completed an application form. On 26 September 2023 Social Security Scotland (“SSS”) decided RM was not entitled to ADP, because he scored no points for any activities. On 19 December 2023 SSS re-determined RM’s application. SSS again decided RM was not entitled to ADP, but this time found he was entitled to some points; 6 points for daily living activities (1b, 4b and 6b), and 4 points for mobility activities (2b).
3. RM appealed to the FTS. In a decision dated 6 September 2024, following a hearing at which RM was represented, the FTS found RM suffered from moderate COPD, gastritis, depression, back and neck pain, and a heart condition. The FTS decided that RM needed a perching stool for cooking, a long handled sponge to help him wash, and a dressing/undressing aid, so awarded him points based on aids for daily living activities 1b, 4b and 6b. In relation to daily living activity 5, the FTS found as fact “the appellant toilets independently”. At the hearing SSS’s representative submitted there should be an additional point for 3b, but the FTS disagreed on the evidence. In relation to mobility descriptors, the FTS found that because of breathlessness, RM could stand then move unaided more than 20 metres but no more than 50 metres, so scored 8 points. On that basis, the FTS decided RM was entitled to an award of the mobility component at the standard rate from 2 May 2023 until 2 May 2026, but found he was not entitled to the daily living component.
4. RM sought permission to appeal to the UTS, which was granted by the FTS on 25 November 2024. The application for permission criticised paragraph 34 of the decision of the FTS which read “taking a holistic view of each strand of evidence we found that daily living activities 2, 3, 5, 7, 8, 9 and 10 are not engaged”. It was argued this failed to



provide sufficient reasons, and the FTS had also erred in failing to explain why it did not accept the evidence of RM given at the hearing about toileting.

5. The UTS issued a procedural order on 15 January 2025. Paragraph 10 of that order invited parties to address particular matters in any response to the grounds of appeal or reply. Those matters were:

“the test for adequacy of reasons applicable in Scotland in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345, including that decisions must be read recognising that they are addressed to parties well aware of the issues involved, and that in the initial application and on application for redetermination the appellant did not appear to raise any issues about daily living activity 5”.
6. SSS lodged written submissions with the FTS on 17 February 2025 opposing the appeal, supported by a number of authorities. On 24 March 2025, RM’s representatives indicated they had no further response to make and relied on what they had already submitted.
7. Parties were requested in the procedural order of the UTS to say whether they wished the case to be dealt with at a hearing or without a hearing (paragraphs 6 and 8). SSS in submissions dated 17 February 2025 indicated it was content for the UTS to deal with matters without an oral hearing. RM did not request an oral hearing. There is sufficient information before the UTS to determine the appeal on the papers. All of the information before the UTS, including a paper from RM’s representatives with grounds of appeal, and SSS’s written submissions and authorities, has been taken into account.

## Governing law

8. Eligibility for ADP depends, among other things, on scoring sufficient points under the descriptors in schedule 1 parts 2 and 3 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the “**ADP Regulations**”). To qualify for points, a limitation on functioning within a descriptor has to be as a result of a person’s physical or medical condition or conditions (regulations 5 and 6 of the ADP Regulations). Daily living activity 5 in schedule 1 part 2 of the ADP Regulations provides as follows:

### **Activity 5 – Managing toilet needs or incontinence**

- a. Can manage toilet needs or incontinence unaided. **0 points**
- b. Needs to use an aid or appliance to be able to manage toilet needs or incontinence. **2 points**
- c. Needs supervision or prompting to be able to manage toilet needs. **2 points**

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- d. Needs assistance to be able to manage toilet needs. **4 points**
- e. Needs assistance to be able to manage incontinence of either bladder or bowel. **6 points**
- f. Needs assistance to be able to manage incontinence of both bladder and bowel **8 points**

All of the point scoring paragraphs contain the word “needs”.

9. In previous cases the UTS has set out the test for adequacy of reasons for decisions of the FTS about eligibility for social security payments as follows.

“The classic test for adequacy of reasons in Scotland is found in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. The tribunal must “give proper and adequate reasons for [its] decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader ... in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it” (see also *DS v SSWP* [2019] 4 UKUT 347 at paragraphs 5 to 15). Reasons, to be adequate, do not require to involve consideration of every issue raised by the parties or deal with every piece of material in evidence. The decision of the FTS has to be read as a whole, in a straightforward manner, and recognising it is addressed to parties well aware of the issues involved”. (*AK v Social Security Scotland* 2024 UT 5 para 8).

## Decision

10. RM refers to a practice direction about reasons issued on 4 July 2024 by the Senior President of Tribunals in the UK Tribunal system. This direction is not applicable to tribunals in the structure under the Tribunals (Scotland) Act 2014, and although entitled to respect, there is no need to have regard to the practice direction in this case. The law of reasons in Scotland set out above applies, and is sufficient for determination of the appeal.
11. The first aspect of the ground of appeal, criticising paragraph 34 of the decision of the FTS, has no substance. As set out in the governing law section above, decisions should be read as a whole. It is clear when the decision of the FTS is read in this way that paragraph 34, criticised by RM, is only part of the reasons given by the FTS. When read with paragraphs 8 to 33, and paragraphs 35-36 of the decision of the FTS, the reasons are adequate to explain the decision reached.



12. The criticism of the adequacy of the reasons of the FTS about daily living descriptor 5 also fails. The extent of reasons required to pass the “proper and adequate” test will depend on the nature of the issues before the FTS. The context is also relevant, in particular that reasons are addressed to parties well aware of the issues involved. In the present case, there was nothing to alert the FTS to daily living descriptor 5 being a substantial question in issue and requiring anything more than brief reasons.
13. It is true, as can be seen from the grant of permission by the FTS, that RM said at the FTS hearing that he uses the bath and door for support getting onto and off the toilet. However, it is not a necessary inference that this was a result of a medical condition or that he “needed” an aid to manage his toilet needs. Nor did the issue require anything other than short reasons given the rest of the information before the FTS. This included:
- 13.1 The initial application form to SSS. Where RM had difficulties, he explained them clearly; for example in relation to daily living activity 1 he ticked boxes which indicated he had problems and stated “I am very breathless and I always need someone to help me and I cannot stand for long. My daughter does most of this due to severe back pain”. By contrast for daily living activity 5 he did not report any problems, and ticked boxes that he did not have incontinence, did not need anybody to remind or prompt him to use the toilet, and that he could use the toilet by himself without any help.
- 13.2 The request for re-determination by RM to SSS. RM made no reference to issues with toileting, despite an express finding in SSS’s initial determination that RM reported no problems with daily living activity 5.
- 13.3 Telephone conversation between SSS and RM on 30 November 2023 about his application for redetermination. The note of that conversation shows that RM was able to provide information about difficulties with activities such as mobility activity 2. Again, he did not raise problems with toileting.
- 13.4 The written appeal to the FTS. In the application to appeal to the FTS by RM, there is no specific mention of daily living activity 5. That was despite the decision of SSS on redetermination recording that RM had not reported difficulties with managing toilet needs or incontinence, and there was no further supporting information to suggest otherwise.
- 13.5 The appeal hearing before the FTS. RM was represented by a welfare rights officer from Glasgow City Council. The FTS records that further points were specifically requested by the representative under daily living activity 3b, but records no submission in respect of daily living activity 5.



14. The decision of the FTS has to be assessed against that background. It is an obvious inference from the decision of the FTS that it had regard to RM's evidence at the hearing. The decision notes that RM was present at the hearing in paragraph 5. There is reference to "listening to the appellant's evidence" at paragraphs 29 and 33. Having done so, it was for the FTS to decide which facts it found on the basis of all of the evidence. What the FTS found as fact at paragraph 19 was that "The appellant toilets independently". It also found at paragraph 34 that daily living activity 5 was not engaged. It found 0 points were scored on daily living activity 5. From the wording of descriptor 5a (the descriptor for 0 points), it follows that the FTS found, having taken into account all of the evidence before it, that the appellant "can manage toilet needs or incontinence unaided"; or put another way that he did not need an aid and other descriptors did not apply. Having regard to all of the information before the FTS, and the actual extent to which daily living descriptor 5 was in issue in the proceedings, the reasons of the FTS are adequate to explain to the informed reader why the FTS did not award points for daily living descriptor 5.
  
15. There being no error of law by the FTS by failing to provide proper and adequate reasons, the appeal is refused. Under section 47 of the Tribunals (Scotland) Act 2014 the decision of the FTS is upheld.

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.*