Upper Tribunal for Scotland

2024UT05
Ref: UTS/AS/23/0985

**DECISION OF**

Lady Poole

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

AK

Appellant

- and -

Social Security Scotland

Respondent

FTS Case reference: FTS/SSC/AE/23/00268

Representation
For the appellant: Ms Angela Logan and Ms Anna Schneider, Welfare officers at Inverclyde Council
For the respondent: Mr Sam Bingham, Anderson Strathern

12 February 2024

**DECISION**

Permission to appeal is REFUSED.

**REASONS FOR DECISION**

*Background*

1. The appellant made an application for adult disability payment ("**ADP**"). Social Security Scotland ("**SSS**") found that he was not entitled to ADP, in both an initial decision of 8 February 2023, and on redetermination on 3 May 2023. On 5 October 2023 the First-tier Tribunal for Scotland ("**FTS**") refused an appeal against the decision of SSS. An oral hearing was held on the appellant's application for permission to appeal to the Upper Tribunal for Scotland ("**UTS**") on 12 February 2024.

2. Permission was sought for two grounds of appeal, which are dealt with separately below. In written submissions, the appellant raised two further points, about the substantive merits of the appeal, and the form in which the record of proceedings was provided. At the oral hearing it was confirmed these further points were not grounds of appeal sought to be relied on, and so they are not considered any further in this decision.

*Powers of the FTS to call for further evidence*

3. The first ground of appeal is that the FTS failed to use its powers to call for further evidence, in particular further medical evidence (GP and secondary care records).

4. This ground of appeal relies on dicta in my decision in *NB v Social Security Scotland* [2023] UT 35. It is important to read what was said in that case as a whole and in context. What is said in paragraph 19 is:

> "In many cases, documents already lodged with the FTS will be sufficient to enable it to determine the case fairly and justly. However, in other cases, it may be necessary for the FTS to consider exercising procedural powers available to it before determining the appeal".

In *NB v SSS,* the decision set out the particular facts and circumstances which led to the conclusion that the FTS erred in law in failing to consider exercising its procedural powers before reaching its decision. The decision in *NB v SSS* took care to stress it was the unusual circumstances of that case which led to the outcome, by setting out those circumstances, and repeatedly using wording such as "in this particular case" (paragraphs 20 and 23).

5. The background context is that by the time a case comes before the FTS for a decision on an appeal, a significant amount of information will already be available. SSS gathers the information it considers it needs to make decisions, from applications made to it (in this case orally and in writing), by requesting further information (for example in this case from the appellant's medical practice), and contacting and speaking with applicants. Applicants are expected to assist SSS in this process. If an applicant then appeals to the FTS against a decision of SSS, there is express provision in the First-tier Tribunal for

Scotland Social Security Chamber Rules of Procedure 2018 (the "**FTS Rules**") enabling both appellants and respondents to provide additional documents to the FTS (eg rules 4, 20 and 21). The bundle of papers before the FTS ordinarily includes the evidence available to SSS when it made both its initial and redetermination decisions, and any further documents produced by parties for the purposes of the appeal. This is why, in many cases, documents already lodged before the FTS will be sufficient to enable it to determine the case fairly and justly. This is particularly so in cases where written evidence is supplemented by additional oral evidence at a hearing, and the expertise of the FTS is used effectively (FTS Rules, rule 2(2)(d)).

6. The circumstances of the present case are very different from *NB v SSS*. *NB* was a case decided on the papers without an oral hearing. The appellant's account of the medical conditions from which she suffered from had changed considerably over time, and there was a resulting factual dispute about them and their effect on her functioning. A medical advisor contacted by SSS had recommended obtaining GP records, but this had not been done. By contrast, in the present case there was an oral hearing by teleconference, at which the appellant gave evidence. The FTS also had a bundle of papers which included information obtained by SSS from the appellant's medical practice and other sources. It is evident from the FTS decision that the appellant, although unrepresented, raised issues about the adequacy of the information provided by his medical practice. But the FTS sits with a medical member, and is governed by rules suggesting it should use its special expertise effectively (FTS Rules, rule 2(2)(d)). The FTS clearly took into account the appellant's criticisms (paragraphs 8 and 13). Nevertheless, the FTS did not consider it required further information to be able to make its decision, and was entitled to take that approach. In all the circumstances, it is not arguable that the FTS erred on a point of law when making its decision without calling for further evidence.

*Inadequate reasons*

7. The second ground of appeal on a point of law the appellant wishes to take is that the FTS failed to give adequate reasons for its decision. In the grounds of appeal the suggested inadequacies suggested are in relation to daily living activity 2 and mobility activity 2 in Schedule 1 Parts 2 and 3 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the "**ADP Regulations**"). The respondent also raised issues about daily living activity 9.

8. 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]

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.

9. The correct score under mobility activity 2, moving around, was a substantial question in issue. However, the FTS expressly addressed that activity in its decision. The distance an appellant can walk within the meaning of the ADP Regulations is a matter for inference from all of the information available to the FTS. The facts to find are ultimately a matter for the FTS. The FTS adequately explained its finding that the appellant could stand and then move more than 50m but no more than 200m, either aided or unaided, by its findings of pain and medication in paragraph 12, but also its findings in paragraph 20 that the appellant could walk for 3-4 minutes without having to stop, was able to work as a mortgage advisor from home without taking sick leave, and the contents of the information from the appellant's GP. In the context of the rest of the decision, those reasons were adequate to explain the decision of the FTS in respect of moving around, even if the appellant disagrees with that decision.

10. The FTS also gave reasons for its decisions about other activities in the ADP Regulations which were substantial questions in issue at paragraphs 18 and 20; it found that the appellant was not entitled to points in respect of daily living activities 1 and 6, for reasons it gave.

11. The FTS did not give detailed reasons for awarding points under daily living activities 3, 4 and 5. On the information before the FTS these were not matters in dispute, so were not substantial questions in issue. The FTS simply adopted the findings of SSS without providing further reasons, as it was entitled to do (paragraph 21 with paragraph 5). The FTS also did not give reasons for not awarding points under daily living activity 2 and 9 (or for that matter other activities, but those were the two mentioned by the appellant and respondent respectively). However, daily living activities 2 and 9 (and various other activities) were not substantial questions in issue before the FTS upon which reasons required to be given as a matter of law. It does not follow from reliance having been placed on a particular descriptor when the SSS was making its decisions, that the same descriptor is still a substantial question in issue before the FTS. Evidence was taken from the appellant at the oral hearing about problems that he had (paragraphs 12 to 15), to assist in focusing what was in issue. He raised a number of problems, but nothing significant about taking nutrition or about socializing. The other facts before the FTS did not support daily living activities 2 and 9 being substantial questions in issue. Taking nutrition under daily living activity 2 is a defined term, and covers problems with cutting food, conveying it to the mouth, chewing and swallowing it, or use of a therapeutic source to ingest it. Daily living activity 9 concerns engaging socially. Given that the tribunal had evidence before it that the appellant was able to drive a car, work as a

mortgage advisor from home (in the course of which it would be a reasonable inference he engaged from time to time with clients and colleagues), walk at least some distance with his wife, dress, peel, slice and chop ingredients for a meal, and had interacted with the tribunal, there was no need for the FTS to treat daily living activities 2 and 9 as substantial questions in issue requiring express reasons in its decision.

12. It is therefore not arguable that the FTS erred in law by failing to give adequate reasons.

**Conclusion**

13. Under Section 46(4) of the Tribunals (Scotland) Act 2014, where there are no arguable grounds of appeal, permission falls to be refused. Permission to appeal to the UTS is therefore refused.

Lady Poole
12 February 2024