



DECISION OF

Sheriff SG Collins KC

**ON AN APPEAL
IN THE CASE OF**

Social Security Scotland
per Scottish Government Legal Directorate

Appellant

- and -

ZC
per Autism Initiatives Scotland

Respondent

FTS Case Reference: FTS/SSC/AE/24/00632

3 August 2026

Decision

1. The appeal is allowed. Paragraph 5 of the decision of the First-Tier Tribunal for Scotland (“FTS”) dated 29 December 2025 is quashed and the following paragraph is substituted therefor: “5. The award is for a closed period from 10 November 2022 to 27 April 2025.”

Introduction

2. The procedural history is set out in my Order of 30 June 2026 and need not be repeated in detail. In summary the position is that Social Security Scotland (“SSS”) has appealed the decision of the FTS, dated 29 December 2025, to award the respondent Adult Disability Payment (“ADP”) for the period of five years from 10 November 2022 to 10 November 2027. On the authority of *Social*



Security Scotland v VH 2025 UT 52 (“VH”), the appellant submitted that this was an error of law, because the respondent reported a change of circumstances on 27 November 2024 resulting in a superseding decision with effect from 28 April 2025. Accordingly, as a matter of law, the appeal related only to a closed period between 10 November 2022 and 27 April 2025, and the FTS had no power to award benefit beyond the latter date. It was irrelevant that the FTS was unaware of the superseding decision.

3. Even accepting that *VH* was correctly decided, I was concerned about two matters. First, that the appellant had not provided the Upper Tribunal for Scotland (“UTS”) with evidence sufficient to establish the facts and circumstances of the change of circumstances application and the superseding decision. In particular, no copies of the relevant application and decision had ever been produced. Second, that the appellant had, in its appeal response to the FTS dated 4 April 2024, expressly stated that an award might be made for a period after 27 April 2025. Although this submission had been lodged before the superseding decision had been made, it had not been corrected thereafter. It was therefore liable to mislead the FTS when it later came to determining what the period of any award should be. This gave rise to a question as to what if any measures had been put in place by the appellant in the light of *VH* to seek to ensure that the FTS is made aware, at the time of the determination of an appeal, of any decisions superseding the decision under appeal and so closing the period within which benefit might be awarded. A supplementary submission from the appellant was therefore ordered on both these points.

Discussion

4. The appellant has now provided a supplementary submission dated 13 July 2026, together with copies of documentation relevant thereto. It submits that the award which was made on redetermination of 8 November 2023 was for a two year fixed period, expiring 10 November 2024, in terms of regulation 37 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (“the ADP Regulations”). Accordingly, the appellant now submits (contrary to the position advanced at paragraph 25 of its original submission to the UTS) that it made a scheduled review determination without application in terms of regulation 47 of the ADP Regulations, and not an unscheduled review on an application by the respondent in terms of regulation 48(a). But in any event, it is apparent that a review pack was sent to the respondent, who reported a change of circumstances via an online link on 27 November 2024. In due course the appellant made a determination on the review in the light of the information received. This was notified to the respondent in a letter dated 29 April 2025, and took effect from the previous day. No change to the level of the earlier award was made. But the award made pursuant to the review decision was again for a fixed period, with a date of 28 April 2028 set for a further scheduled review. This is all amply vouched by the documentation now provided.

Decision



5. At paragraph 5 of its decision of 29 December 2025 the FTS made an award of benefit to the claimant for the period 10 November 2022 to 10 November 2027. But as a consequence of a superseding decision, the jurisdiction of the FTS was limited to deciding the respondent's entitlement to benefit between 10 November 2022 and 27 April 2025. Accordingly, and for the reasons explained in *VH*, it was an error of law for the FTS to make an award of benefit to the respondent for any period after 27 April 2025. This is an error which the UTS can and should now correct. Paragraph 5 of the decision of the FTS dated 29 December 2025 will therefore be quashed, and the following paragraph substituted therefor: "5. The award is for a closed period from 10 November 2022 to 27 April 2025."

Further observations

6. In its supplementary submissions to the UTS the appellant advised that prior to *VH* submissions to the FTS about closed period awards were made on an ad hoc basis. In the light of *VH* a consolidated style of submission was agreed on 15 August 2025 and circulated to SSS staff, in particular to presenting officers. Separately, the appellant advised that from around the same date the criteria for assessment of written appeal responses were revised. Appeal writers were specifically instructed to consider whether the appellant had challenged any other determination of entitlement. This was intended to act as a prompt to consider whether closed period submissions might be required, whether in the appeal under consideration, or any other ongoing appeal. Finally, the appellant advised that in accordance with the observations of the UTS at paragraphs 17 to 19 of *JS v Social Security Scotland* 2025 UT 27, a new template for responses in ADP cases had been introduced. This includes wording which addresses the situation where a closed period is known about at the time of writing the appeal response.
7. In the present case a number of issues are likely to have led to the failure by the FTS to recognise that its jurisdiction was limited to determining entitlement to benefit within a closed period. The first issue is the delay in determining the respondent's application and appeal. Although her application was made with effect from 10 November 2022, the initial decision by SSS was not made until 21 June 2023. Although a redetermination application was made on 21 August 2023, a redetermination decision was not made until 8 November 2023. The respondent did not appeal against that determination until 8 February 2024. SSS did not produce an appeal response until 4 April 2024. Following various procedural decisions the appeal was not finally determined by the FTS until 29 December 2025, by which time the superseding decision notified on 29 April 2025 had been made. Where there is such a lengthy delay between the making of an award and final determination of an appeal against it, there is an increased risk that a superseding decision will have been made, and the relevant documentation is unlikely to be included in the FTS file.
8. The second issue is that the appeal was determined on the papers, not at an oral hearing. The consequence of this was that no presenting officer was assigned to review the case for such a hearing, and in particular to consider whether the terms of paragraph 8 of the appeal response of 4 April 2024 were - or remained - correct. Had a presenting officer been assigned to review the



case for an oral hearing on 29 December 2025, particularly in the light of the revisions to SSS practice after August 2025 as noted above, the FTS could have expected a check to have been made as to whether there was any other determination of entitlement which had the effect of closing the benefit period for consideration by the FTS.

9. The third issue is that it is now apparent that this was not a case where, during the period for which benefit had been awarded by SSS, the claimant had initiated a review decision on the basis of a claimed change of circumstances, leading to a superseding decision. In such a case it is easier to see why the claimant's application for review and the subsequent superseding decision might not be included in the papers before the FTS when considering an appeal against the initial decision. Rather, as the appellant now submits, it was a case where it was apparent from the terms of the redetermination decision of 8 November 2023 that the award would be reviewed on 10 November 2024 (see page 148 of the FTS file). From this it can be said that it would have been apparent that a scheduled review ought to have taken place on that date in terms of regulation 47 of the ADP Regulations, and that by 29 December 2025, when the FTS came to determine the appeal, that this would likely have led to a superseding decision closing the period of entitlement to benefit under consideration. However, I do not criticise the FTS in this regard. The issue was not obvious or straightforward, in fact or law. And it had before it an appeal response from the appellant which was, as noted, liable to mislead.
10. That all said, it should be apparent that there are lessons to be learned for the future. Legally qualified FTS members must be made aware of the issues which have arisen in *VH* and the present case. They must seek to ensure, as a preliminary issue when considering an ADP appeal, that they are made aware of any superseding decisions which may have closed the period in respect of which they have jurisdiction to make an award of benefit. They must of course consider what is said by SSS in its written response to the appeal in this regard. But in oral hearings they should also satisfy themselves that the presenting officer has checked to see whether there are any other such decisions, and require such a check to be made if it has not been. In paper hearings, particularly where a significant period of time has elapsed between the lodging of the appeal response and the date of determination, they should consider directing a supplementary response by SSS so as to obtain an up to date statement of the position. They can of course also ask the claimant, particularly where they have an experienced representative. But many if not most claimants are unlikely to appreciate the legal significance of a new decision for their existing appeal. The underlying point, as the appellant states in its supplementary submission in the present case, is that the period of time between lodging of appeal responses and the fixing of a hearing is increasing, and currently stands at around one year. This increases the prospect of a superseding decision being made in the intervening period, and so increases the need for vigilance by the FTS in this regard, so as to avoid further appeals **such as that which has** been made necessary in the present case.

Conclusion



11. The appeal is allowed to the extent and for the reasons stated above.

Further rights of appeal

12. 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.

Sheriff SG Collins KC
Member of the Upper Tribunal for Scotland