



DECISION OF

Lady Carmichael

**ON AN APPEAL
IN THE CASE OF**

MM
per Money Matters

Appellant

- and -

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/23/01191

Appellant: Gemma Stewart-Cowie, Money Matters

Respondent: Samuel Bingham, Scottish Government Legal Directorate

17 June 2025

Decision

The appeal is allowed. The Upper Tribunal for Scotland quashes the decision of the First-tier Tribunal for Scotland (“FTS”) dated 21 June 2024, and remits the appeal to a differently constituted panel of the FTS.

Reasons



1. The appellant applied for Adult Disability Payment (“ADP”) under the Disability Assistance for Working Age People (Scotland) Regulations 2022 (“the ADP Regulations”). The respondent determined that her claim attracted a score of 6 points in respect of the daily living component, and 0 points in respect of the mobility component. The FTS upheld that determination. The FTS refused permission to appeal against its decision. Following a hearing on permission, and having listened to the recording of the hearing before the FTS, I granted permission to appeal and directed that either party wished to listen to the recording of the hearing before the FTS in order to advance their respective cases in the substantive appeal they must make a request for access to it within seven days of the decision on permission. I granted permission in relation to the treatment by the FTS of the claims for daily living activities 1 and 3, and mobility activity 1. Both parties submitted that the appeal could be decided without a hearing.
2. The respondent sought access to the recording, and having listened to it conceded that the appeal should be allowed. In particular it submitted that the FTS had not provided adequate reasons for:
 - (a) its conclusion for daily living activity 1, when the definition of “simple meal” in paragraph 1 of Part 1 of schedule 1 of the ADP Regulations is taken into account;
 - (b) its conclusion that the use of the appellant’s phone does not constitute an “aid or appliance” for the purposes of daily living activity 3b(i); and
 - (c) its conclusion that descriptor (a) applied in respect of mobility activity 1.
3. In relation to daily living activity 1, the FTS failed to engage with the appellant’s oral evidence, given in the context of her ability to chop vegetables, that she felt “really down and low”. The respondent submitted that this evidence was capable of being relevant to her ability to prepare a simple meal, having regard to the definition of a simple meal as being “a cooked one-course meal for one using fresh ingredients”: ADP Regulations, Schedule 1, paragraph 1. The respondent submitted that references by the FTS to the ability of the appellant to use an oven appeared to be irrelevant, given that the definition of “cook” was “heat food at or above waist height”: ADP Regulations, Schedule 1, paragraph 1; *RH v SSWP (PIP)* [2015] UKUT 281 (AAC).
4. The respondent submitted that the FTS had failed to explain why it had concluded that the use of a reminder on a telephone to take medication did not fall within the scope of an “aid” under regulation 2 of the ADP Regulations. “Aid or appliance” is defined as:
 - “(a) ... any object or device which—
 - (i) the individual needs to be able to perform an activity, and
 - (ii) improves, provides or replaces the individual's impaired physical or mental function,
 - (b) includes an object or device which a person without a disability might choose to use for the same function. [...]”



The conclusion reached by the FTS appeared to be contrary to the definition of “aid or appliance” in the ADP regulations, and no reasons had been given for reaching it.

5. So far as mobility activity 1 is concerned, the respondent submitted that whilst the FTS had referred to the 50% rule (paragraph 25 of its decision), it was unclear from the decision how often the appellant took the children to school and drove to and from work, particularly because there appeared to be a degree of overlap between those activities. The appellant referred to feeling overwhelmed when making unfamiliar journeys, but the Tribunal had not addressed in its reasons whether this was sufficient to constitute overwhelming psychological distress or not, although it did observe that not using public transport due to anxiety was “insufficient to meet the threshold”. It might be implicit that the FTS had rejected the appellant’s account, but it was entirely unclear why it had done so.
6. I am satisfied that each of these submissions made by the respondent in conceding the appeal is properly made, and that each reflects a material error of law on the part of the FTS. The respondent submitted that in the circumstances of this case, given the number of errors identified, and in particular the approach to the evidence about mobility activity 1, it would be appropriate to quash the decision and remit to a differently constituted tribunal. I am satisfied that that is the appropriate disposal in this case.

*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.*

Lady Carmichael
Member of the Upper Tribunal for Scotland