

DECISION OF

Lord Duthie

**ON AN APPEAL
IN THE CASE OF**

R R
per GHSCP Welfare Rights

Appellant

and

Social Security Scotland
per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/00901

19 June 2026

DECISION

The appeal is allowed. The decision of the First tier Tribunal for Scotland dated 31 July 2025 is quashed. The case is remitted to a differently constituted Tribunal for reconsideration in accordance with this decision.

Introduction

[1] This is an appeal against the decision of the First tier Tribunal for Scotland (“FTS”) issued on 31 July 2025, which refused the appellant’s appeal against a redetermination by Social Security Scotland (“SSS”) that he was not entitled to Adult Disability Payment. I granted permission to appeal on 13 May 2026, having identified arguable errors of law relating to adequacy of reasons and failure to make sufficient findings in fact across several activities.

[2] SSS has lodged a written response stating that it does not oppose the appeal. It accepts that the grounds identified in the decision on permission disclose error, but quite properly notes that this Tribunal must nonetheless be satisfied that a well founded error of law exists: *McAllister v Secretary of State for Work and Pensions* 2003 SLT 1195.

Discussion

[3] A decision must give proper and adequate reasons addressing the substantial issues in an intelligible way and leaving the informed reader in no real and substantial doubt as to the basis of the decision: *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. This requires the making of sufficient findings in fact to provide a coherent platform for the application of the statutory tests governing entitlement.

[4] The FTS recorded evidence that the appellant experiences back pain, mental health problems and, perhaps most significantly for present purposes, chronic migraines occurring frequently, accompanied by fatigue and periods of recovery. The decision does not make sufficiently clear and specific findings on that evidence, nor articulate the extent to which the appellant’s evidence was accepted or rejected. In several respects the FTS records the evidence but does not clearly resolve it by making express findings directed to the appellant’s functional capacity. Where evidence bears directly on functional limitation, the FTS must

make clear and reasoned findings as to whether it is accepted or rejected. In the absence of such findings, it is not possible to understand how the FTS assessed the impact of the appellant's conditions on his ability to carry out the relevant activities. The determinative question is not the existence of a condition as such, rather, its functional consequences, assessed in accordance with the requirements of the Disability Assistance for Working Age People (Scotland) Regulations 2022. In particular, regulation 7 requires consideration of whether activities can be carried out safely, to an acceptable standard, repeatedly and within a reasonable time. The decision of the FTS does not contain any structured application of those criteria to the findings made on the evidence in relation to the appellant's migraines. The failure to apply those criteria to the findings made, in circumstances where the evidence plainly raised that issue, amounts to a material error of law.

[5] In relation to daily living activity 1, the FTS concluded that the medical evidence did not support restrictions impacting the activity and relied in part on the fact that his father undertakes cooking for the appellant. The decision contains no meaningful engagement with the appellant's migraine related fatigue in the context of this activity, and no explanation of how the reliability criteria were satisfied. Further, the fact that another person undertakes the activity does not address the statutory question, which is whether the appellant is able to carry it out and, if so, whether he requires an aid or appliance or other support to do so in accordance with the regulatory criteria. The absence of clear findings and reasoned application of the statutory criteria on these matters leaves the basis of the conclusion unclear.

[6] In relation to activities 4 and 6, the FTS rejected the appellant's evidence as inconsistent with other material and stated that greater weight was placed on the medical evidence. However, the decision does not identify with adequate specification the inconsistencies

material to the statutory test, nor does it explain why the medical material was to be preferred. The decision does not make clear and specific findings as to the extent of the appellant's pain, stiffness or fatigue, nor as to the time taken to complete the activities or the frequency with which difficulty arises. These are matters directly relevant to the statutory test. In the absence of such findings, the reasoning does not disclose an intelligible path from the evidence, through findings in fact, to the conclusions reached.

[7] In relation to activity 9, the reasoning proceeds largely by reference to the absence of diagnosis, specialist input, or medication, rather than by a focused assessment of functional impact. The statutory scheme does not require a clinically recognised diagnosis; what is required is a causal link between a physical or mental condition and the limitation in carrying out the activity. The decision does not contain any structured assessment by reference to the relevant statutory descriptors in light of the appellant's evidence of social withdrawal and psychological difficulty, nor does it explain how that evidence was evaluated against those descriptors. It is also unclear whether all relevant descriptors were considered. In these circumstances, the reasons are inadequate and disclose a failure to apply correctly the statutory test.

[8] In relation to mobility activity 1, the FTS records evidence suggesting difficulty in engaging with others and going out, but relies on instances of such activity without analysing their frequency, context, or the conditions under which they occurred, or whether they could be undertaken reliably for the purposes of regulation 7. There is no clear finding as to whether prompting was required. The decision therefore lacks the necessary findings in fact and reasoned application of the statutory criteria to support the conclusion reached.

The reasoning proceeds in substance by reference to an asserted absence of evidence to support an award. That approach is inadequate. The statutory question is not whether there is medical evidence of a particular diagnosis, but whether, on the evidence as a whole, the appellant has a physical or mental condition giving rise to functional limitation in carrying out the activity. The decision does not make clear findings as to the appellant's functional ability in relation to that activity, nor does it apply the statutory criteria to any such findings, notwithstanding its recognition at paragraph 12 that those criteria require to be applied. A bare statement of the applicable legal framework does not constitute its application to the facts of the case. In the absence of that analysis, the basis of the conclusion cannot be understood.

[9] In relation to mobility activity 2, the position is more stark. The appellant's ADP application puts that activity in issue and it was therefore before the FTS. The decision, however, contains neither findings in fact nor any substantive reasoning in relation to it. The absence of any determination of that live issue constitutes an error of law.

[10] Taking these matters together, the decision discloses a consistent pattern. The FTS recorded evidence but did not resolve material disputes in that evidence, failed to make findings necessary to apply the statutory tests, and did not provide reasons capable of explaining how the conclusions were reached. The informed reader is left in real and substantial doubt as to the Tribunal's reasoning on several central issues. These are material errors of law. The analysis advanced in the written response reflects these deficiencies and the concession by SSS is well made.

Conclusion

[11] The appeal is allowed. The decision of the FTS is quashed. The nature and extent of the errors identified are such that the necessary findings in fact have not been made. The assessment required is fact sensitive and involves evaluation of the appellant's evidence and application of the statutory criteria across multiple activities. In these circumstances it is neither appropriate nor possible for this Tribunal to remake the decision.

[12] The case is remitted to a differently constituted Tribunal for determination *de novo*. The Tribunal should make clear findings in fact on the appellant's conditions and their functional impact, apply the statutory tests including the reliability criteria, and provide proper and adequate reasons addressing the activities in issue.

Lord Duthie

Member of the Upper Tribunal for Scotland

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 identify the decision of the Upper Tribunal to which it relates, the alleged error or errors of law, and state what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.