



2025UT33

Ref: UTS/AS/25/0030

DECISION OF

Lord Young

**ON AN APPLICATION TO APPEAL IN
THE CASE OF**

KK

Appellant

- and -

Social Security Scotland
Per Scottish Government Legal Directorate

FTS Case Ref: FTS/SSC/AE/24/03808

Respondent

22 May 2025

Decision

The appeal is allowed. The decision of the First-tier Tribunal for Scotland (“FTS”) dated 13 February 2025 is quashed. The decision is re-made in the same terms, except that:

- (i) A new paragraph 5 is substituted as follows: “The appellant is entitled to the enhanced rate of the mobility component of Adult Disability Payment for the period from 5 May 2024 to 5 May 2026.”;

(ii) A new paragraph 6 is substituted as follows: “The Appellant has severely limited ability to carry out mobility activities. He satisfies the mobility descriptor activity 1(f) and thus scores 12 points. This is sufficient to meet the threshold for an award at the enhanced rate in terms of regulations 6 & 9 of the Disability Assistance for Working Age People (Scotland) Regulations 2022.”; and

(iii) Paragraph 10 is amended by substituting “descriptor 1(f)” in place of “descriptor 1(d)”.

Introduction

1. The appellant submitted an application for Adult Disability Payment (“ADP”) on 5th May 2024. Social Security Scotland (“the respondent”) determined that application on 17 June 2024 and awarded the standard rate of daily living component but declined to make an award for the mobility component. The appellant asked for a re-determination which was issued on 23 July 2024. The re-determination made an award in the same terms as the original determination. The appellant appealed to the FTS. In their response to the appeal, the respondent argued that the re-determination decision was correct and, in particular, that only 4 points were awardable in respect of mobility descriptor 1(b) which was insufficient for an award of the mobility component.

2. The FTS issued its formal decision on 13 February 2025. The appeal was allowed in respect that the FTS awarded the standard rate for the mobility component. The FTS was satisfied that mobility descriptor 1(d) was established and that 10 points fell to be awarded in respect of that activity descriptor. Full written reasons for its decision were provided on 14 March 2025.

3. The appellant sought permission to appeal to the Upper Tribunal for Scotland (“UTS”) on the basis that 12 points ought to have been awarded by reference to mobility descriptor 1(f) with



the consequence that he would receive an enhanced rate of the mobility component. Permission to appeal was granted by the UTS on 10 April 2025.

Ground of appeal

4. The appellant's ground of appeal contends that the FTS's decision failed to give adequate reasons for indicating why mobility descriptor 1(d) applied as opposed to mobility descriptor 1(f). Reference is made to *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345. The appellant contends that he has provided evidence demonstrating that he is unable to follow the route of any journey the vast majority of the time due to overwhelming mental distress caused by stress and anxiety frequently leading to panic attacks. He contends that the FTS's decision does not adequately explain why, on the evidence, the FTS made the award under mobility descriptor 1(d) as opposed to 1(f).

5. In its response to the notice of appeal, the respondent has confirmed that the appeal is not now opposed. The respondent acknowledges that the FTS made findings suggesting that the appellant struggled to make both familiar and unfamiliar journeys, and the FTS's decision did not explain why descriptor 1(d) was selected rather than 1(f). In answer to a question raised by the UTS regarding descriptor 1(e) being a potential alternative to 1(f) in this case, the respondent confirmed that it did not consider that descriptor 1(e) was appropriate. The UTS will proceed on that concession. The respondent proposes that the matter is referred back for a further hearing before the FTS as to whether descriptor 1(d) or 1(f) is appropriate. The appellant's position is that the UTS should re-make the FTS's decision rather than order a re-hearing.

Discussion

6. The FTS heard oral evidence from the appellant in relation to his ability to travel from his house to his work, and also to attend counselling or similar meetings. Importantly, the FTS found his evidence to be credible in relation to his ongoing problems of leaving his house. The

appellant rarely leaves his house. In relation to his employment, prior to March 2024 the appellant's employer expected him to attend his place of work on 3 days per week but the appellant rarely managed to do so. His work pattern was then changed from 18 March 2024 requiring attendance on 1 day per week. The appellant produced print outs of his attendance records for June, August, September and October 2024. In each of June and August, he attended his office one day rather than the three days which were required for those months. In September, he ought to have worked one day in the office (a lower number due to annual leave) but he did not attend at his office in that month. In October, he ought to have worked from his office on two days but he only managed to attend once. The overall statistics for those four months confirm that he had 65 working days of which he ought to have worked in the office on 9 days but only actually attended on 3 days. The picture presented by the appellant's evidence before the FTS and confirmed by these statistics is that even a familiar journey such as to his normal place of work was one which he rarely managed to complete due to his mental health issues. The FTS also found that he was unable to follow an unfamiliar journey without the assistance of his partner as he would only attend counselling and AA meetings if his partner took him. In his response to the UTS dated 13 May 2025, which I have no reason to question the accuracy of, the appellant confirms that the vast majority of counselling or physiotherapy meetings required him to be accompanied by his partner. On a few occasions when his partner was not available, he would cancel the appointment; attempt but fail to attend; attend but require to be collected; or attend only with significant prompting and assurances from his partner.

7. The appellant's original application form for ADP drew no distinction between his ability to follow different types of journeys. He answered "yes" to the two questions asking if he needed help with a familiar route and with an unfamiliar route. In relation to each type of journey, he said that he always needed such assistance. The evidence before the FTS demonstrates that the appellant's mental health issues prevent him from leaving his house without assistance on the majority of days. There seems little to differentiate between the appellant's ability to complete "familiar journeys" and "unfamiliar journeys". As the respondent's response indicates, an



initially unfamiliar journey may become a familiar journey on a subsequent occasion so there is not a rigid distinction based purely on the ultimate destination. Taking his place of work as the best example of a “familiar journey”, the evidence indicates that his mental health condition prevented him from attending the office other than on 3 occasions over a 4 month period. In assessing whether a mobility activity can be carried out, regulation 7 of the 2022 Regulations directs attention to whether the activity can be carried out safely, to an acceptable standard, repeatedly and within a reasonable time period. Regulation 12 directs attention to the question of whether the individual’s ability to carry out the mobility activity is impaired on each day of the required period. Regulation 10(1)(a) of the 2022 Regulations provides that the relevant descriptor for an individual is one which is satisfied on over 50% of the days of the required period. Where the appellant rarely leaves the house at all and is only occasionally able to make familiar or unfamiliar journeys when accompanied or prompted by his partner, it is appropriate to find that mobility descriptor 1(f) applies. I do not consider that further delay is justified by sending this matter back to the FTS to hear further evidence on the appellant’s mobility issues. It seems very unlikely that any further evidence will go much beyond that which is already contained within the papers before the UTS. In these circumstances, I agree with the appellant’s submission that the appropriate course of action is to remake the FTS’s decision under the power contained in s.47(2)(a) of the Tribunals (Scotland) Act 2014 by finding that descriptor 1(f) is the appropriate descriptor for the mobility component. I accordingly re-make the FTS decision in the terms set out at the outset of this Decision.

*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.*

Lord Young

Member of the Upper Tribunal for Scotland