



DECISION OF

Lord Lake

**ON THE APPEAL
IN THE CASE OF**

Social Security Scotland
per Scottish Government Legal Directorate

Appellant

- and -

LR

Respondent

FTS Case Reference: FTS/SSC/AE/23/01441

17 June 2025

Decision

The Upper Tribunal grants the appeal, quashes the decision of the First-tier Tribunal (Social Security Chamber) dated 18 November 2024 and remits the case back to a differently constituted Tribunal.

Reasons

1. This is an appeal from the decision of the First-tier Tribunal (Social Security Chamber) dated 18 November 2024. That in turn upheld an appeal from the decision of Social Security Scotland. As a result of the appeal being upheld, the Tribunal determined that LR was entitled to an award of ADP at the enhanced rate of the daily living component and the standard rate in respect of the mobility component. The commencement date was 11 December 2022 and the review date 15 November 2026.

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2. Although Social Security Scotland are the appellant, they are arguing that the decision made was defective and should have been more favourable to LR. They note that they have a statutory duty to see that applicants receive the funds to which they are entitled.
3. The parties were content that the appeal was determined without a hearing and I have therefore exercised the power in Rule 22 of the Upper Tribunal for Scotland (Social Security Rules of Procedure) Regulations 2016 to proceed without a hearing.
4. The appeal concerns the reasons stated by First-tier Tribunal for the decision. It is said the decision does not provide adequate findings in fact or reasons for the decision rejecting the application in relation to daily living activities 3, 5 and mobility activity 2. Reference was made to *Wordie Property Company v Secretary of State for Scotland*, 1984 SLT 345 and *AK v Social Security Scotland*, [2024] UT 5.
5. The crux of the appeal concerns a submission made to FTS by SSS at a late stage. The application had had an unfortunate history and the submission invited FTS to make its own determination of LR entitlement to assistance and noted that he was entitled to score points in respect of descriptors for daily living activities 3 and 5 and mobility activity 2. SSS note that within the decision, no reason is given for having rejected that position. On this basis, it is said that it is insufficient to enable the informed reader to ascertain the reasons for the overall decision. It was contended that because the matter of application of these descriptors was squarely put in issue by SSS in their submission, this was one of the substantial questions in the appeal in terms of *AK* and it therefore required to be addressed in the decision.
6. It is correct to say that the issue of the application of these descriptors was not dealt with in the FTS Decision and that that was one of the substantial questions in the appeal. An application was made to the FTS for review. The decision on that was dated 15 January 2025 and noted that, considering the additional material against the medical evidence in the bundle and LR's evidence, the Tribunal was not persuaded that any further descriptors applied. The medical evidence in question or the evidence from LR in question were not identified. The FTS decision on the review application states that they considered it irrational for SSS to be attempting to challenge the award.
7. It was not a relevant consideration that it was SSS rather than LR that sought to challenge the award. If there was an error in it, that was something that could have been put right. As SSS note, they have a statutory duty to see that applicants receive the correct benefit. No doubt, this appeal has been lodged in the fulfilment of that duty. Whether or not that is the case, even if it is read together with the review decision, there are no reasons stated in the decision which explain what it was that led to the submission for SSS being rejected. The reference to 'medical evidence' and LR's testimony leaves a real and substantial doubt



in the mind of the reader as to what it was that meant that this position was rejected. In this situation, the appeal must succeed.

8. I do not think that in the circumstances it would be appropriate for me to determine LR's entitlement so I shall quash the decision and remit the case to a different constituted First-tier Tribunal as requested by Social Security 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 (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 Lake
Member of the Upper Tribunal for Scotland