



2025UT32

Ref: UTS/AS/24/0135

**DECISION OF**

Lord Young

**ON THE APPEAL**

**IN THE CASE OF**

RC,  
per Money Matters

Appellant

- and -

Social Security Scotland,  
Per Scottish Government Legal Directorate

Respondent

FTS Case Reference: FTS/SSC/AE/24/00384

19 May 2025

**Decision**

The appeal is allowed. The decision of the First-tier Tribunal for Scotland (“FTS”) is quashed so far as relating to activity 2 of the mobility component. The case is remitted to the FTS for a new hearing of the appeal confined to the question of the appellant’s entitlement in relation to activity 2 of the mobility component. The FTS may, but need not, be differently constituted from the panel that heard the original appeal in this case.



## **Introduction**

1. The appellant applied for Adult Disability Payment (“ADP”) on 25 May 2023. His application was amended on the 16 July 2023. The application was refused by Social Security Scotland (“SSS”) on 2 October 2023. At that time, SSS assessed him as being entitled to 4 points for the daily living component and 4 points for the mobility component. The appellant sought a redetermination after which his daily living component increased to 6 points but his mobility component remained at 4 points.

2. The appellant appealed to the FTS. On 14 November 2024, the FTS issued its decision refusing his appeal. The FTS found that he was entitled to 6 points for daily living activities based on preparing food (2 points); washing/bathing (2 points) and dressing/undressing (2 points). In relation to mobility activities, the FTS found him entitled to 4 points for moving around.

3. The Upper Tribunal for Scotland (“UT”) granted permission to appeal in relation to one ground of appeal which was in the following terms:-

“At paragraph 19 the Tribunal explain that the Appellant could stand and then move more than 50 metres but no more than 200 metres either aided or unaided during the relevant period. The reason for this finding in fact is that the Appellant completed Stage 1 of an Exercise Tolerance Test at Cardiac Clinic in early 2024. The Medically Qualified Member was able to advise the Tribunal that a patient would have to walk for 140 metres to complete Stage 1 of such a test. We believe that the Tribunal failed to apply the law correctly as to the Appellant’s ability to complete this distance safely, reliably, and repeatedly. We believe that if the law had been applied correctly the Appellant would have been awarded descriptor C.”

## **Discussion**



4. In their response to this appeal, SSS have confirmed that they do not oppose the appeal. SSS do however, with reference to *McAllister v Secretary of State for Work & Pensions* 2003 SLT 1195, observe that the UT must be satisfied that the ground advanced for allowing the appeal is well founded and the basis on which the lower tribunal's decision is set aside must be made clear.

5. In his appeal request to the FTS dated 11 January 2024, the appellant stated that he walked at a slow pace and suffered from a shortness of breath causing him to stop. He said that he typically did not walk further than 50 metres. Aside from medical records, the FTS was provided with a Medical Report dated 15 June 2023 prepared for the appellant's Universal Credit claim which described the appellant walking at a slow pace to his local shop; stopping half way for a 2 minute rest; sitting at the shop for 5 minutes to recover; walking round the shop but stopping at each aisle for a rest; resting for 5 minutes outside the shop; returning home carrying a single bag; and then having to rest for the remainder of the day. This document is contained in the FTS case file (vol. II at p125). In a written submission for the FTS prepared by the appellant's Welfare Rights Officer (FTS case file, vol I, pp180-182), she notes that a description of the appellant walking for 15 minutes needs to be clarified as to whether that is continuous walking or the overall time to walk a particular distance including stops. The written submission observes that the SSS's decision on re-determination includes "*no consideration given to his ability to cover the distance in a reasonable time period or to an acceptable standard.*" That submission argued that mobility descriptor 2(c) applied to the appellant.

6. The reasoning of the FTS on mobility activity 2 is set out in paragraph 19 of the Decision. A single reason is provided for finding that descriptor 2(b) applies. That reasoning being that the appellant completed stage 1 of an exercise tolerance test in early 2024 which would have involved the appellant's walking a distance of 140 metres. The FTS have fallen into error by, on the face of the decision, failing to recognise that the mobility activities set out in the table in schedule 1 require to be determined by reference to regulation 7(2)(b) of the Disability Assistance for Working Age People (Scotland) Regulations 2022. Regulation 7(2)(b) provides that the appellant must be able to



carry out the particular activity (i) safety, (ii) to an acceptable standard, (iii) repeatedly, and (iv) within a reasonable time period. These four concepts being further defined in regulation 7(3). In the present case, the appellant's representative undoubtedly raised the question whether his walking to the local shop met all or some of these standards. On the face of its decision, the FTS did not ask itself whether the distance which the appellant could walk was completed within a reasonable time period and could be carried out repeatedly. The ability to walk 140 metres during a single clinical test does not *prima facie* provide a sufficient practical assessment of the appellant's mobility under the 2022 Regulations. The FTS failed to properly direct itself on the correct legal question in relation to the appellant's mobility. The FTS required a fuller consideration of the circumstances in which the appellant could walk particular distances followed by an assessment of which descriptor was then the most appropriate one for the appellant.

7. The appellant invited the UT to make an award for the mobility component of ADP which failing to remit for a new hearing before the FTS. The SSS invited the UT to remit for a new hearing to the FTS. I have re-considered the factual material contained with the FTS papers but have concluded that it is not appropriate for me to re-make the decision on the appropriate mobility descriptor. The papers reference various different walking distances and times taken by the appellant. The approximate rest periods required by the appellant are not uniform. This is a nuanced assessment which is best taken by the FTS on the basis of oral and documentary evidence placed before it.

8. I am satisfied that the outstanding matter of the appellant's entitlement to a mobility descriptor should be remitted for a re-hearing by the FTS. I agree with the observations of Lady Carmichael in *SSS v AH & Others* 2024 UT 63 at para 31 that there will be many occasions in which the originally constituted FTS can deal with the matter sent for a re-hearing. I consider this to be one such instance. The original constituted FTS misdirected itself on the legal test but there is nothing within the original decision to cause any concern that the appellant would not obtain a fair re-hearing before the same FTS. The direction which I make will be in the same terms as Lady



Carmichael made in *SSS v AH & Others* so that the re-hearing may be before the originally constituted FTS or a different constituted FTS. As the appellant's original application for ADP was made in May 2023, an important factor is securing an early date for the re-hearing. The form of the re-hearing will be for the FTS to determine but I would expect that the FTS would provide each party with an opportunity to submit any further evidence on mobility activity 2 relevant to an assessment of the appellant's ability to carry out that activity in accordance with the tests set out in regulation 7(2)(b).

## **Directions**

1. The new hearing may, but need not be, by a differently constituted tribunal.
2. That hearing should be confined to the appellant's entitlement in relation to activity 2 of the mobility component.

Lord Young

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 (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.*