

**DECISION OF**  
**THE HON. LORD FAIRLEY**  
**ON AN APPEAL**  
**IN THE CASE OF**

Social Security Scotland  
per Scottish Government Legal Directorate

Appellant

- against -

K M  
Per Ms Martine Ross

Respondent

FTS Case Reference: FTS/SSC/AE/25/02892

(Appeal decided on the papers)

22 December 2025

**Decision**

The appeal is allowed. The review decision of the First Tier Tribunal dated 27 February 2025 (and relative reasons dated 3 April 2025) are each set aside.

**Reasons**

**Introduction**

1. The respondent was born in November 1956. She reached the age of 66 in November 2022. In the period prior to 22 February 2023, she received Disability Living Allowance (“DLA”).
2. On 22 February 2023, the respondent’s entitlement to DLA transferred to an entitlement to Adult Disability Payment (“ADP”) pursuant to regulation 4(1) of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations, 2022. At the date of the transfer, the respondent had

been in receipt of DLA at the lowest rate for each of the mobility and care components since 2009.

3. On 22 May 2023, the respondent submitted a request in respect of a change of circumstances in 2021 which, she submitted, entitled her to an enhanced rate for both the daily living and mobility components. Social Security Scotland determined the request on 5 March 2024 and awarded the standard rate of the daily living and mobility components.
4. The respondent made a re-determination request on 16 April 2024. On 4 June 2024, Social Security Scotland determined that the respondent was entitled to ADP with an enhanced rate of the daily living component but only the standard rate of the mobility component. At that stage, Social Security Scotland took the view that the enhanced rate for the mobility component was not payable because the respondent had reached the “relevant age” in terms of regulation 22 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (“the Regulations”). Where regulation 25(3)(a)(i) applies, an individual who has reached the relevant age may only receive an award at the standard rate for the mobility component of ADP.
5. The respondent challenged that decision before the First Tier Tribunal (“FtS”). The appeal was not conceded by Social Security Scotland, and the FtS initially agreed that the respondent met the criteria for the enhanced rate of the mobility component. It issued a decision to that effect on 15 January 2025.
6. Thereafter, on 27 February 2025, and having been asked for full reasons, the FtS reviewed its decision of its own motion and found instead that the respondent was only entitled to the standard rate for the mobility component. That decision was confirmed in full reasons dated 3 April 2025. The basis for the review decision was the FtS’s interpretation of regulation 25(3)(a)(i) which reflected Social Security Scotland’s re-determination decision of 4 June 2024
7. Social Security Scotland now submits, however, that its re-determination decision of 4 June 2024 and those of the FtS in its decision of 27 February 2025 and reasons of 3 April 2025 were, in each case, wrong having regard to (a) regulation 24(d); and (b) the limitations upon the scope of regulation 25. It therefore appeals against the review decision of 27 February 2025
8. The appeal is not opposed, and parties agreed that it should be determined on the papers alone.

### **The Regulations**

9. Regulation 22 states, *inter alia* that ADP may be paid in respect of an individual who is at least 16 years of age (regulation 22(1)(a)) and who has not reached the relevant age (regulation 22(1)(b)). The relevant age is defined as meaning the higher of “pensionable age” in terms of paragraph 1 of schedule 4 to the Pensions Act, 1995 or 65. For the purposes of this appeal, the relevant age is 66.

10. Regulation 25, if engaged, provides that an individual who has reached the relevant age, is in receipt of the mobility component at the standard rate, and whose circumstances have changed is entitled only to the standard rate regardless of whether the award would otherwise have been for the enhanced rate. Regulation 25 applies, however, only to a determination made in circumstances where the Scottish Ministers are “under a duty to make a subsequent determination” of entitlement under regulation 48(a) and only then where a determination is in fact then made under regulation 48(a) without an application (regulation 25(2)).

11. Regulation 24 contains transitional provisions. It states *inter alia* that:

“Regulation 22(1)(b) does not apply where the individual has reached the relevant age, including for the purposes of any determination of their entitlement to Adult Disability Payment made after they have reached the relevant age, if they -

...(d) are a transferring individual in terms of the Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment)(Scotland) Regulations 2022”

### **The ground of appeal**

12. The two points taken by the appellant are that (a) the effect of regulation 24(d) is to dis-apply regulation 22(1)(b) in the case of the respondent; and (b) regulation 25 is not engaged because the determination of her entitlement was not made pursuant to regulation 48(a). If those submissions are correct, the original decision of the FtS dated 15 January 2025 should not have been reviewed on 27 February 2025.

### **Analysis and decision**

13. The appellant is correct in its first submission as to the effect of regulation 24(d). It dis-applies regulation 22(1)(b) in the case of those whose entitlement to ADP was transferred from DLA. That includes the respondent.

14. In relation to regulation 25, it is not disputed that the determination of the respondent’s entitlement was not, in fact, made under regulation 48(a). In terms of regulation 25(2)(b), therefore, regulation 25 (including the potential restriction of the award to standard rate) was not engaged.

15. In these circumstances, the original decision of the FtS on 15 January 2025 was correct. The review decision dated 27 February 2025 and the relative reasons dated 3 April 2025 were each wrong. The respondent is protected by the exception in regulation 24(d), regulation 25 was not engaged, and the FtS was in error in applying regulations 22(1)(b) and 25(3) to her.

16. I will therefore allow the appeal and set aside the review decision of the FtS dated 27 February 2025 (and, insofar as it is necessary to do so, the reasons dated 3 April 2025). The effect of that is that the decision of the FtS dated 15 January 2025 is restored. The

respondent is entitled to the enhanced rate of both the daily living and mobility components of ADP from 22 February 2023 to 4 June 2029.

*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.*

The Hon. Lord Fairley  
Member of the Upper Tribunal for Scotland