

Upper Tribunal for Scotland



2025UT05
Ref: UTS/AS/24/0063

DECISION OF

The Hon. Lord Fairley

ON AN APPEAL IN THE CASE OF

SC

Appellant

- and -

Social Security Scotland

Respondent

FTS Case reference: FTS/SSC/AE/23/01331

Representation

For the Appellant: Mr H. McCourt, Glasgow City Council, Welfare Rights Team
For the Respondent: Ms H. Russell, Solicitor, Scottish Government Legal Directorate

22 January 2024

Decision

The appeal is allowed, and the case is remitted to the First-tier tribunal to consider the applicability of daily living descriptors 4b and 9b to the appellant

Procedural history

1. On 4 March 2023, the appellant made an application for Adult Disability Payment “ADP”. His application was refused by the respondent on 12 July 2023. The appellant requested a redetermination and provided additional information. The respondent did not issue a redetermination decision within 56 days, and the

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appellant therefore appealed the decision of 12 July 2023 to the First Tier Tribunal ("FTS").

2. On 17 May 2024, the FTS refused the appeal and subsequently issued written reasons dated 20 May 2024. The FTS considered that the appellant was a credible and reliable witness. It accepted his evidence that he has sciatica which had been exacerbated by a road traffic accident in February 2023. It also accepted his evidence that he has depression for which he takes medication. The FTS concluded that the appellant was entitled only to points under daily living descriptors 1b (2 points), 5b (2 points) and 6b (2 points). That gave him a total of 6 points which was below the necessary threshold of 8 points for an award of the daily living component of ADP at the standard rate.
3. By e mail dated 31 May 2024, the appellant requested a review of the decision of 17 May 2024. On 25 July 2024, the FTS refused the review request and also refused permission to appeal to the UTS.
4. The appellant then sought permission to appeal from the UTS. On 11 October 2024, following an oral hearing, I granted permission for the appellant to advance three grounds of appeal (numbered 3, 4 and 4 in his permission application). Parties thereafter agreed that the appeal on those three grounds could be dealt with on the papers alone.

Grounds 3 and 4

5. These two grounds can be dealt with together. The appellant submits (and the respondent agrees) that there was unchallenged evidence before the FTS that the appellant requires to use a long-handled sponge to wash / bathe his lower body. That evidence ought to have resulted in an award of 2 points under daily-living descriptor 4b. The FTS does not mention the unchallenged evidence in its reasons. The appellant therefore submits that the FTS has failed to consider the applicability of daily-living descriptor 4b to the evidence which it apparently accepted.

Ground 5

6. Within the appellant's redetermination application was unchallenged evidence that he cannot engage socially in groups without support and needs prompting to engage socially one to one. This relates to the appellant's condition of depression. The FTS does not mention this in its decision. The appellant submits that, had it considered this issue, the FTS would have awarded 2 points under descriptor 9b.

Respondent's written submission



7. The respondent does not oppose the appeal on any of these grounds. It submits that the appeal should be allowed and that the case should be remitted to the same tribunal to consider the applicability of daily living descriptors 4b and 9b to the appellant.

Reasons

Grounds 3 and 4

8. Within daily-living activity 4 (“washing and bathing”), the relevant descriptors are:
 - a) Can wash and bathe unaided.
 - b) Needs to use an aid or appliance to be able to wash or bathe.
 - c) Needs supervision or prompting to be able to wash or bathe.
 - d) Needs assistance to be able to wash either their hair or body below the waist.
 - e) Needs assistance to be able to get in or out of an unadapted bath or shower
 - f) Needs assistance to be able to wash their body between the shoulders and waist.
 - g) Cannot wash and bathe at all and needs another person to wash their entire body.
9. In his redetermination request, the appellant stated:

“Activity 4. Because of the nerve pain in my back which affects my lower body mobility I need the help of another person to wash my lower body. When I do not have this help, I need to use a long handled sponge to wash my lower body. I also suffer from depression and...feel that I need prompting and encouraging to wash or bathe more than half the time.”
10. The redetermination application was before the FTS and, as noted above, the FTS found the appellant to be both credible and reliable. In considering daily-living descriptor 4, the FTS stated (at paragraph 12 of its findings in fact):

“The appellant can wash and shower independently and does not need help to get in and out of a bath. The appellant describes times when he forgets to look after himself which happens two to three days a week.”
11. Whilst, therefore, the FTS appears to have considered descriptors 4c to 4g, it is not apparent that it considered descriptors 4a and 4b. There is a difference, between



being able to wash independently and being able to wash unaided. It is not apparent that the FTS considered the appellant's uncontradicted evidence that, without assistance from another person he needs to use an aid or appliance – a long handled sponge – to wash his lower body. That is a matter that could engage descriptor 4b.

12. I will therefore allow the appeal on grounds 3 and 4 and remit the case to the same tribunal for it to consider the applicability of daily living descriptor 4b to the appellant.

Ground 5

13. Daily living descriptor 9b is “needs prompting to be able to engage socially with other people.”

14. In the redetermination papers that were before the FTS the appellant stated *inter alia*:

“Activity 9. I cannot and do not engage socially in groups. I would need the support of someone with me to do so. If I have to engage socially one-on-one. I need prompting and encouraging to do so.”

15. The FTS considered daily living activity 9 and stated:

“The appellant describes being fearful of going out in places where he may come across friends or family of his ex partner. The appellant describes refusing to go certain places as he is fearful of reprisals.”

16. The FTS does not mention the quoted passage from the redetermination application. It did, however, find the appellant to be credible and reliable. The quoted passage is capable of engaging descriptor 9b. I will, therefore, allow the appeal on ground 5 and remit the case to the same tribunal for it also to consider the applicability of daily living descriptor 9b to the appellant.

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*

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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.