



DECISION OF

Lord Ericht

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

Social Security Scotland
per Scottish Government Legal Directorate

Appellant

- and -

HL

Respondent

FTS Case Reference: FTS/SSC/AE/24/03500

13 August 2025

Decision

1. The Upper Tribunal

- (1) extends the date for the provision of the Notice of Appeal to the date on which it was provided
- (2) quashes the Decision of the First Tier Tribunal dated 10 March 2025 so far as it relates to the date entitlement begins, and thereafter remakes the Decision by specifying that the increase in the respondent's entitlement to ADP takes effect on 31 July 2022.

Introduction



2. By Decision dated 10 March 2025 the Tribunal determined that the respondent was entitled to an award of Adult Disability Payment as the enhanced rate of the daily living component and at the standard rate of the mobility component. The Decision did not set out the date on which the entitlement began. In this Appeal, the appellant does not seek to challenge the finding as to entitlement. The sole challenge is in relation to the start date.

Extension of time

3. The 30 day period during which the notice of appeal must be provided under sec 4(1) of the *Upper Tribunal for Scotland (Social Security Scotland Rules of Procedure) Regulations 2018* expired on 27 May 2025. Due to an administrative error in the appellant's case management system, the notice was not provided until 29 May.
4. The Upper Tribunal notes that the delay was only 2 days and was caused by inadvertence, and also notes that this appeal is of benefit to the respondent as without it no starting date has been identified for their benefit. In all the circumstances, the Upper Tribunal extends the date for lodging of the appeal.

Grounds of appeal

5. The appellant invites the Upper Tribunal to quash the Decision so far as it relates to the date entitlement begins, and thereafter to remake the Decision by specifying that the increase in the respondent's entitlement to ADP takes effect on 31 July 2022.

Submissions

6. The appellant submitted that the respondent's increase in entitlement to ADP began on 31 July 2022, pursuant to paragraph 12(4)(a)(ii) in part 3 of schedule 2 of the *Assistance for Working Age People (Scotland) Regulations 2022* ("the ADP Regulations"). The FTS erred in law by failing to apply paragraph 12(4) in order to specify the date on which entitlement increases. The date of the increased entitlement was 31 July 2022, for the following reasons.
 - The change in the respondent's circumstances began in May 2022. The respondent informed DWP of the change within 13 months of the change beginning, on 22 May 2023. The respondent had an 11-month lung infection from June 2022. The effects of this illness could constitute good reason for the respondent not informing DWP of the change within one month. Accordingly, it would be open to the Tribunal to apply paragraph 12(4)(a)(ii), with the result that the increase begins when the respondent first satisfies the requirements for a higher rate award. Applying the backwards test, this is 13 weeks after the change began – taken at its highest, this is 31 July 2022.



- The ADP Regulations came into force on 21 March 2022. It was submitted that paragraph 12(4)(b) was not relevant as the respondent notified DWP of the change after the date the ADP Regulations came into force.
- Paragraph 12(6) was engaged as the date on which the increase in entitlement has effect falls before the date of the transfer determination (15 September 2023). From 31 July 2022 until 14 September 2023, the respondent received PIP at the standard rate of the daily living component; this fell to be offset against the increased entitlement to ADP at the enhanced rate for the daily living component during the same period. While regulation 4 of the ADP Regulations would ordinarily prevent entitlement to ADP arising while an individual is in receipt of PIP, paragraph 14(d) of schedule 2 disapplies regulation 4 where paragraph 12(6) applies. Accordingly, it was the appellant's position that the respondent's entitlement to PIP (at the standard rate of both components) and their entitlement to ADP (at the enhanced rate of daily living and standard mobility component) ran in parallel between 31 July 2022 and 14 September 2023 when the respondent's PIP entitlement ended. Paragraph 12(6) offsets the value of PIP already given against the ADP to be given in order to avoid any element of double counting.

7. The respondent did not make a written response to the Notice of Appeal.

Decision

8. For the reasons advanced by the appellant, I am satisfied (a) that the Tribunal erred in law in not specifying the date on which entitlement increased and (b) that date of the increased entitlement was 31 July 2022 .
9. I shall quash the Decision so far as it relates to the date entitlement begins, and thereafter remake the Decision by specifying that the increase in the respondent's entitlement to ADP takes effect on 31 July 2022.

*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 Ericht
Member of the Upper Tribunal for Scotland