



DECISION OF

Lady Poole

IN AN APPEAL IN THE CASE OF

Social Security Scotland

Appellant

- and -

AM

Respondent

FTS/SSC/AE/24/00873

Representation

For the appellant: Social Security Scotland

For the respondent: no appearance

8 May 2025

DECISION

The appeal is allowed. The decision of the First-tier Tribunal for Scotland dated 16 October 2024 is quashed. The decision is re-made in the same terms, except that:

- (i) Paragraph 2 is substituted as follows:

“The appellant is entitled to the enhanced rate of the daily living component and the standard rate of the mobility component with effect from 20 September 2022.

The appellant’s award of Adult Disability Payment is for a fixed period until 20 September 2028”.

- (ii) The third sentence of paragraph 22 is deleted.



REASONS FOR DECISION

Summary

1. This is an appeal about the correct start date for an award of Adult Disability Payment (“ADP”). The context is an award of personal independent payment (“PIP”) which was transferred to ADP. That transfer from PIP to ADP was triggered by a report of a change of circumstances. The change had occurred over 13 months before it was reported. The decision finds that in this case the correct date for commencement of payments at a higher rate was the date on which the claimant notified the change in circumstances to the Department of Work and Pensions (“DWP”), 20 September 2022.
2. The appeal is the latest in a series of appeals brought by Social Security Scotland (“SSS”) in the Upper Tribunal for Scotland (“UTS”), where the First-tier Tribunal for Scotland (“FTS”) has erred in its approach to dates for the period of awards of ADP that it has made (*SSS v GK* 2024 UT 71, *SSS v BM* 2024 UT 58, *SSS v JS* 2025 UT 27, *SSS v AM* 2025 UT 28). The cases demonstrate that commencement dates for awards are not a matter of discretion for the FTS, but regulated by legislation. Examples of different provisions governing commencement dates of ADP awards, including where a higher rate is awarded, are regulations 35, 45, and 46, and paragraphs 12 of part 3 and 15H of part 3A of schedule 2, of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54) (“**the ADP Regulations**”). The need for these types of appeals to the UTS may reduce once SSS, in appeals before the FTS, provides submissions identifying key dates, the particular legal provisions applicable, and SSS’s suggestion about the correct commencement date for an award (*SSS v JS* 2025 UT 27 paragraphs 17-19). But that would not have obviated the need for this particular appeal, in which SSS suggested the correct commencement date to the FTS. The FTS, in error of law, did not properly apply the governing legal provisions when selecting an alternative commencement date.

Background

3. AM suffers from multiple sclerosis. She was in receipt of PIP. On 20 September 2022 AM told the DWP, which administers PIP, about a change of circumstances. That report initiated a process of transfer of AM’s PIP award to ADP, as a consequence of devolution of certain disability benefits to Scotland. On 22 September 2022 AM was informed by SSS, which administers ADP, that her award would be transferred from PIP to ADP.
4. Following that transfer, AM’s entitlement to ADP began on 30 December 2022. Initially the award was in line with AM’s previous PIP award, so that she received both daily living and mobility components at the standard rate. SSS sent out a “review pack” to AM, as a result of which she submitted a further change of circumstances form to SSS, dated 27



February 2023 and received by SSS on 2 March 2023. She gave 23 November 2010 as the date of the change of circumstances, when she had fallen and broken her ankle, leading to her needing a zimmer, and a decline in other abilities. SSS reviewed AM's application in the light of the reported change of circumstances, but considered that the appropriate award remained the standard rate for both components.

5. AM appealed to the FTS. The FTS decided that AM was entitled to an award of ADP at a higher rate. On 16 October 2024, the FTS issued its decision finding that AM was entitled to the daily living component of ADP at the enhanced rate and the mobility component at the standard rate, for a period of 6 years. The start date the FTS selected was 27 February 2023, which appeared to the FTS "a more accurate start date" than the commencement date SSS had suggested of 20 September 2022. 27 February 2023 was the date of the signature of the change of circumstances form AM had submitted to SSS, and 20 September 2022 was the date AM had reported a change of circumstances to the DWP which had triggered the transfer to ADP.
6. SSS appealed the decision of the FTS to the UTS. SSS does not dispute entitlement to a higher award, but submits that on the correct application of the governing law, AM was entitled to disability assistance at that higher rate from the earlier date of 20 September 2022. Permission to appeal to the UTS was granted by the FTS on 16 January 2025.
7. The case is determined by the UTS on the papers. AM did not exercise her right to provide a reply to the notice of appeal, nor did she request an oral hearing. SSS submitted that the appeal could be determined without an oral hearing, having provided a notice of appeal and a further reply dated 2 May 2025. There is sufficient information before the UTS to be able to determine the appeal justly and fairly.

Governing law

8. Migration of PIP awards to ADP is primarily governed by the ADP Regulations, and in particular part 3 of schedule 2. In essence, PIP award holders are issued with a notice of an impending transfer to ADP under paragraph 8 of part 3 of schedule 2 ("**transfer notice**"). SSS then makes a transfer determination of entitlement to ADP, without the need for an application. The transfer determination is ordinarily in line with the previous PIP award. PIP then stops, with ADP commencing on the next day, on dates specified by SSS.
9. If a PIP claimant living in Scotland reports a change of circumstances to the DWP before a transfer notice has been received as part of the overall process of migration, that may trigger a bespoke transfer from PIP to ADP. A transfer notice is issued, followed by a transfer determination, but then the report of the change of circumstances must also be dealt with. Under paragraph 12 of part 3 of schedule 2 of the ADP Regulations, as soon as reasonably practicable after the transfer determination, SSS must make a further



determination called a review determination, taking into account the change of circumstances. Paragraph 12(1), as in force at the date of the decision of the FTS (following its amendment by the Disability Assistance (Miscellaneous Amendment) (Scotland) Regulations 2023), provides:

“(1) The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment (the “review determination”), without receiving an application, where—

- (a) the individual, before a determination under paragraph 9(1) (the “transfer determination”) is made, reported a change of circumstances to the Secretary of State for Work and Pensions, which had not been taken into account for the individual’s entitlement to Personal Independence Payment,
- (b) the Scottish Ministers have made a transfer determination, and
- (c) the individual has not requested a re-determination under section 41 of the 2018 Act, or appealed under section 46 of the 2018 Act, in relation to the transfer determination.

(2) The review determination is to be made as soon as reasonably practicable after the transfer determination”.

10. If, on a review determination, SSS considers that criteria are met for a higher award of ADP, the commencement date of the higher rate is governed by paragraph 12(4) of part 3 of schedule 2 of the ADP Regulations which provides (bold added):

“(4) Where a transferring individual’s entitlement to ADP is determined in the review determination to be at a higher rate than the transfer determination, entitlement will begin -

- (a) if the individual notifies the change—
 - (i) within one month of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the daily living or mobility component,
 - (ii) within more than one month but not more than 13 months of the change occurring, the date when the individual first satisfies the requirements for a higher rate of the daily living or mobility component, but only if the Scottish Ministers consider that the individual had good reason for not notifying the change within one month, (iii) **in any other case, from the date of notification of the change...**”

11. Because the application of paragraph 12 of part 3 of schedule 2 of the ADP Regulations may result in an individual becoming entitled to higher disability assistance payments at a time



PIP was still in payment, provision is made for the claimant to receive arrears (paragraph 12(6) of part 3 of schedule 2 to the ADP Regulations).

“(6) Where an individual has previously received PIP or ADP for a period and a review determination is subsequently made that the same individual is entitled to ADP at a higher rate for that period by virtue of this paragraph, that individual will be entitled to the difference between the value of entitlement to ADP under the review determination and the value of PIP or ADP to which that individual was previously entitled for that period.”

Application of governing law in this case

12. The outcome of this appeal is a happy one for AM, as she is likely to become entitled to arrears under paragraph 12(6) of part 3 of schedule 2 to the ADP Regulations. That is because her entitlement to a higher rate should have commenced earlier than the FTS decided.
13. AM reported a change of circumstances to the DWP on 20 September 2022. The administrative processes for transfers of PIP to ADP between the DWP and SSS do not include the DWP providing a copy of the change of circumstances information. Instead, SSS sent out a “review pack” to AM. In response, AM completed a change of circumstances form, signed it on 27 February 2023, and it was received by SSS on 2 March 2023. It is possible that in some cases it might be necessary to ascertain what was reported to the DWP, because the governing provisions aim to ensure claimants receive what they are entitled to, rather than found entitlement if conditions of entitlement are not satisfied. However, in this case there is no dispute that the relevant change is as documented in the form received by SSS on 2 March 2023, which was before the FTS. That document reported the change as happening on 23 November 2010.
14. The report to the DWP on 20 September 2022 was over 13 months after the reported change had occurred (stated by AM in her form to be 23 November 2010). As a result, paragraph 12(4)(a)(iii) of part 3 of schedule 2 to the ADP Regulations applied to govern when entitlement began. Entitlement to the higher rate of ADP found by the FTS to be due began “from the date of notification of the change”.
15. The FTS may have assumed this meant notification to SSS. But, while paragraph 12(4)(a)(iii) of part 3 of schedule 2 to the ADP Regulations does not specify who must be notified of the change, when read in context, it is clear it is referring to the date of notification to the DWP, not any subsequent notification to SSS. The conditions for entitlement to PIP and ADP are broadly similar. Paragraph 12 aims to set out the arrangements between DWP and SSS for the proper operation of the transfer process from PIP to ADP where there has been a change of circumstances. It specifies which public body



will make a decision about a reported change of circumstances, and put it into effect. If an individual is entitled to a higher award as a result of a reported change of circumstances, it would be unfair for a period of entitlement to be lost due to time taken up by administrative processes to effect a transfer from PIP to ADP. The process under paragraph 12 starts with a report of a change of circumstances to the DWP (paragraph 12(1)(a)). The rest of the provisions in paragraph 12 follow on from that starting point, and regulate its consequences. The word “reported” rather than “notified” is used in paragraph 12(1)(a). But read in context, the reference to “notification of the change” in paragraph 12(4)(a)(iii) means the notification or report to the DWP of the change of circumstances under 12(1)(a).

16. Accordingly, the date of notification of the change in AM’s case was 20 September 2022, the date she notified the DWP of the change of circumstances. That is the date on which, applying the ADP Regulations to the facts of this particular case, entitlement to a higher rate began.

Outcome

17. The FTS erred in law by failing to apply the provisions of paragraph 12(4)(a)(iii) of part 3 of schedule 2 of the ADP Regulations to determine the start date of the higher rate of entitlement it found to be due. However, no further fact finding is necessary to be able to apply the governing legal provisions correctly. In those circumstances, the appropriate disposal of this appeal is to quash the decision of the FTS of 16 October 2024, and re-make it in the terms set out at the beginning of this decision (section 47 of the Tribunals (Scotland) Act 2014). The decision in its re-made form reflects the correct commencement date of the higher rate of disability assistance to which the FTS found AM entitled.

Lady Poole

*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.*