



2025UT52

Ref: UTS/AS/25/0033

DECISION OF

Lady Poole

**ON AN APPEAL
IN THE CASE OF**

Social Security Scotland

Appellant

- and -

VH

Respondent

FTS Case Reference: FTS/SSC/AE/24/02251

Representatives

Appellant: Scottish Government Legal Directorate

Respondent: Party, assisted by C Barton, Moray Citizens Advice Bureau

25 July 2025

DECISION

The appeal is ALLOWED.

The decision of the First-tier Tribunal for Scotland (“FTS”), in a decision notice dated 17 January 2025 and a statement of reasons dated 4 February 2025, is quashed.



The decision of the FTS is quashed then re-made in the same terms, so that entitlement to the daily living and mobility components of ADP at the standard rate remains, but under deletion of the dates of the award at paragraph 4 of the decision notice and paragraph 3 of the statement of reasons, and substitution of a period from 11 January 2024 until 6 November 2024.

REASONS FOR DECISION

Summary

1. This is an appeal about Adult Disability Payment (“ADP”). Entitlement to ADP depends on meeting statutory requirements, including requirements about functional limitation as a result of a person’s physical or mental conditions. Because medical conditions and levels of functioning can change, ADP is structured so that entitlement may be reviewed and altered. This appeal is primarily about the effect of a later determination on an earlier determination of entitlement. Where there has been a superseding decision about entitlement, that can affect the period over which a tribunal may competently make an award of ADP. The decision finds that the FTS erred, in that it failed properly to apply the law governing the start date of the award it made, and the period for which the claimant was entitled to be given assistance.

Background

The decision under appeal

2. On 19 September 2023 the respondent (“VH”) underwent a coronary artery triple bypass. VH contacted Social Security Scotland (“SSS”) to make an application for ADP on 25 September 2023, providing her full name and date of birth. She signed a completed application form on 26 December 2023, which was received by SSS on 11 January 2024.
3. On 3 February 2024, SSS determined that VH qualified for the mobility component of ADP at the standard rate, but was not entitled to the daily living component (scoring no points for daily living activities). The start date of the award of ADP was 25 September 2023, and the date of 25 September 2024 was specified as the date on which VH’s needs would be reviewed. VH exercised her right to request a re-determination. On 19 April 2024, SSS re-determined the application, with the outcome that VH was still entitled only to the mobility component of ADP at the standard rate. However, this time SSS found VH qualified for 6 points towards the daily living component (rather than none). SSS also changed the start date of the award to 19 December 2023, and again stated it would be reviewed on 25 September 2024.



4. VH appealed SSS's re-determination to the First-tier Tribunal for Scotland ("FTS"). After a telephone hearing on 13 January 2025, the FTS found that VH was entitled to both the mobility and daily living components of ADP. The dates of the award made by the FTS were 26 December 2023 to 25 December 2025. The FTS issued its decision in a decision notice dated 17 January 2025, and gave fuller reasons in a statement of reasons dated 4 February 2025 (together, "**the Decision**"). The FTS subsequently granted permission to appeal the Decision to the UTS. This appeal before the UTS is about that Decision.

The Review Decision

5. The review date of 25 September 2024 (specified by SSS in its determination and re-determination) had arrived, before the FTS made the Decision. SSS invited VH to complete an online review. VH filled in a review document, entitled "change of circumstances form". She reported no change of circumstances, and submitted the form on 7 November 2024. Following receipt of that review form, and prior to the hearing of the UTS, SSS took a new decision in relation to VH's entitlement to ADP on 27 December 2024. It found she was entitled to the mobility component at the standard rate, but not the daily living component. The decision stated that the award started on 7 November 2024 and would be reviewed on 24 December 2027.
6. The panel of the FTS determining the appeal against the re-determination of 19 April 2024 could have been made aware of this development. SSS could have told the FTS it had instigated a review, received an online form from VH, and made a decision about it on 27 December 2024. VH could have informed the FTS of the submission of the online form by her. The tribunal administration could have told the panel about an email sent to the FTS by SSS after the hearing had started, informing it about the review decision of 27 December 2024. However, the panel deciding the appeal against the Decision was not made aware of the review determination of 27 December 2024, and accordingly did not take it into account.
7. VH was dissatisfied with the review determination of 27 December 2024, and again exercised her right to re-determination. On 13 June 2025, SSS made a re-determination, which is not before the UTS but was appealed to the FTS on 2 July 2025 (the "**Review Decision**"). That second appeal has not yet been heard. The second appeal will provide an opportunity for VH to provide evidence and argue that the Review Decision (which affects her entitlement to ADP from 7 November 2024) is wrong.

Procedural matters

8. Parties provided the UTS with written submissions and supporting documentation, all of which have been taken into account. Both parties have requested the UTS to determine



the appeal before it without a hearing. The appeal is determined on the papers, it being fair and just to do so.

9. There are two preliminary procedural orders sought by SSS, which are unopposed by VH. The UTS makes those orders, with the effect that the reply of SSS is permitted to be received although a day late, and the original notice of appeal is substituted by a notice in revised form dated 18 June 2025.

Grounds of appeal

10. There are two grounds of appeal by SSS against the Decision. Both concern the dates of the award made, rather than the making of the award itself. The first ground of appeal concerns the correct commencement date of the award, and the second ground concerns the correct end date. SSS argues that the correct period of the award of ADP is from 11 January 2024 (the date the completed application for ADP was received by SSS) to 6 November 2024 (the period after that being covered by the Review Decision). VH does not oppose the first ground of appeal about the commencement date of the award. However, she does take issue with the second ground of appeal, about the end date of the award, and suggests it should be 11 January 2026. VH questions whether SSS's determination of 27 December 2024 has any standing, when she did not know about it, until its existence was disclosed to her when SSS sought to appeal the Decision.

The start date of the award of ADP

11. The first ground of appeal, about the correct start date of the award, can be dealt with relatively briefly, as it is not in dispute. The FTS selected a start date of 26 December 2023, which was the date on which VH signed the completed application form for ADP. The selection of that date was in error of law, because it failed to apply the provisions of regulation 35 of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (the "**ADP Regulations**").
12. Regulation 35 provides, insofar as relevant (bold added):
 - “(1) An application for Adult Disability Payment is to be treated as made —
 - (a) **on the day it is received by the Scottish Ministers**, or
 - (b) if applicable, on the day identified by the Scottish Ministers in accordance with paragraph (2).
 - (2) If, before making a determination on the basis of an application, the Scottish Ministers consider that the individual in respect of whom the application is made —
 - (a) would not satisfy a requirement in —



- (i) regulation 5 (daily living component),
- (ii) regulation 6 (mobility component),
- (iii) regulation 11 (required period condition: daily living component),
- (iv) regulation 12 (required period condition: mobility component),
- (v) Part 5 (residence and presence conditions), or
- (vi) regulation 22 (age criteria), if the application were treated as made on the day it was received, and

(b) would likely be entitled to receive Adult Disability Payment if those requirements were satisfied within a 13-week period beginning on the day it was received,

the Scottish Ministers may choose the date within that 13 week period on which the application is to be treated as made.

(3) Where, on the basis of an application (other than where regulation 58(1) applies), a determination is made that an individual is entitled to Adult Disability Payment, the date on which entitlement begins is to be identified in accordance with paragraphs (4) to (6).

(4) Where an application is made within 8 weeks of the day on which the full name and date of birth of an individual ("the required data") is submitted by, or on behalf of, the individual to the Scottish Ministers for the purpose of an application for Adult Disability Payment, entitlement begins on whichever is the later of the day —

- (a) on which the required data was submitted, or
- (b) identified in accordance with paragraph (2).

(5) Subject to paragraph (6), where an application is made after the 8 week period described in paragraph (4), entitlement begins on the day on which the application is treated as made in accordance with paragraph (1).

(6) Where the Scottish Ministers are satisfied that there is a good reason why an application was made after the 8 week period described in paragraph (4), they may treat the application as having been made within that period.

(7) For the purposes of section 38(3) of the 2018 Act, the period covered by an application for Adult Disability Payment —

- (a) under paragraph (1)(a) —
 - (i) begins on the day on which the application is treated as having been made, and
 - (ii) ends on the day on which the determination of entitlement is made, and
- (b) under paragraph (1)(b) —
 - (i) is deemed to begin on the day before the determination of entitlement is made provided that the requirements are satisfied, and



(ii) ends on the day on which the determination of entitlement is made”.

13. Applying regulation 35, the starting point is regulation 35(3), which has the effect that entitlement is identified in accordance with paragraphs (4)-(6) of regulation 35. In this case, regulation 35(5) applies. The “required data” referred to in regulation 35(4), being the full name and date of birth of VH, were provided by telephone on 25 September 2023, but the application was not made within 8 weeks of that date (it is not argued there was good reason for the delay). Under regulation 35(5), the commencement date will be the date on which the application is treated as made under regulation 35(1), which in this case is the date it was received by SSS under regulation 35(1)(a), 11 January 2024.

The effect of supersession on the end date of the award by the FTS

The ground of appeal about the end date of the award

14. The FTS made a two year award of ADP ending on 26 December 2025. (That end date takes account of FTS’s correction of a “typographical error” in its statement of reasons, presumably made under rule 32 of the First-tier Tribunal for Scotland Social Security Chamber (Procedure Regulations 2018) (the “**FTS Rules**”). SSS argues the end date for the award, as a matter of law, should be 6 November 2024, because the decision under appeal had been superseded by a subsequent determination by SSS on 7 November 2024. SSS argues the result of supersession is that the period from 7 November 2024 is covered by a different determination, subject to its own appeal rights. VH on the other hand argues the end date should be the end of the 2 year period ordered by the FTS, starting from the correct commencement date of the award, so ending in January 2026.

Governing law

15. The Social Security Scotland Act 2018 (“**the 2018 Act**”) is primary legislation governing social security assistance, and the ADP Regulations are made under powers conferred in section 31 of the 2018 Act. The 2018 Act also contains provisions about the decision making process for entitlement to social security payments.
16. Section 37 of the 2018 Act imposes an obligation on SSS to make a determination of an individual’s entitlement either when an application has been made, or where regulations require them to do so. Regulation 47 of the ADP Regulations is headed “Consideration of entitlement after specified period” and provides:

“The Scottish Ministers must make a determination of an individual’s entitlement to Adult Disability Payment, without receiving an application, after the end of the period specified (if any) in—



- (a) the individual's notice of determination under section 40 or notice of re-determination under section 44 (as the case may be), or
- (b) a determination made by the First-tier Tribunal for Scotland under section 49, of the 2018 Act”.

Accordingly, a determination of entitlement to ADP can be made by SSS either on an application (for example, the process leading to the Decision under appeal in this case) or without an application (for example, the Review Decision, which arose because the review date specified in the re-determination of 19 April 2024 had been reached).

17. Section 40 makes provision for SSS to inform individuals about the determination it has made as follows:

- “(1) Having made a determination under section 37 of an individual's entitlement to assistance, the Scottish Ministers must inform the individual –
- (a) of the determination,
 - (b) of the reasons for it,
 - (c) of the individual's right under section 41 to request that the Scottish Ministers re-determine the individual's entitlement to the assistance,
 - (d) that the individual will have the right under section 46 to appeal to the First-tier Tribunal against the determination should the Scottish Ministers fail to deal with a request for a re-determination within the period allowed for re-determination, and
 - (e) if relevant, that the individual has the right to request a copy of an assessment report under section 60.
- (2) The Scottish Ministers must fulfil their duty under subsection (1) in a way that leaves the individual with a record of the information which the individual can show to, or otherwise share with, others”.

18. Section 41 of the 2018 Act gives a claimant a right to request a re-determination from SSS. Section 43 imposes a duty to make that re-determination, and section 44 a duty to inform the individual about the re-determination (containing provisions similar to those of section 40 already set out above). If SSS fails to inform the individual within the allowed period, then SSS must inform the individual they have a right to appeal to the FTS against the section 37 determination.
19. There is a right of appeal to the FTS. What will be under appeal will either be the re-determination decision, where that has happened timeously, or the determination decision if it has not (section 46). Under section 48, time for appealing to the FTS only starts to run once the individual has received specified information from SSS. In an appeal, a FTS may uphold SSS's decision, or make its own determination of the individual's entitlement to the assistance in question (section 49). The FTS remains bound by the statutory scheme for ADP, if making its own determination.



20. It is clear from all of these provisions that there may be a multiplicity of determinations about entitlement, when an application is initially made and on subsequent reviews. The 2018 Act section 27 makes provision to assist in working out which determinations (or periods of them) still have effect, and which have been superseded. Section 27 of the 2018 Act is headed “Later determination supersedes earlier” and provides:

“(1) The latest determination of an individual's entitlement to a particular type of assistance in respect of a given period or event supersedes any earlier determination insofar as it deals with the individual's entitlement to that type of assistance in respect of the same period or event.
(2) Accordingly the individual is not entitled, and is not to become entitled, to be given any assistance in respect of that period or event by the earlier determination insofar as it has been superseded”.

The words “given period or event” in section 27(1) leave room for there to be successive and separate decision making processes in relation to entitlement for ADP, covering different periods. Further, the words “insofar as it has been superseded” in section 27(2) imply that a determination may be partially superseded. Entitlement to ADP may be governed partly by a previous decision about entitlement, and a partially superseding decision.

Application of governing law to the Decision in this case

21. ADP is a payment from public funds, and is a creature of statute. The FTS requires to apply the governing legislation to the facts it finds, when making decisions about ADP. A failure properly to apply the statutory provisions bearing on start and end dates of awards will be an error of law.
22. That is so even if, as in this case, the panel of the FTS deciding an appeal before it was not made aware of a Review Decision at the time of the hearing. Clearly, it is not ideal if a panel of the FTS has not been given relevant information, and observations at the end of this UTS decision return to that matter. But entitlement to ADP depends on statutory requirements, which include provisions about the effect of supersession. If entitlement does not arise due to application of statutory requirements, it cannot be generated because there is an issue about timeous provision of information. Similar considerations apply to VH's argument that she only became aware of the review determination of 7 November 2024 after the FTS hearing. The 2018 Act separates out the duty on SSS to determine and re-determine in sections 37 and 43, and the duty on SSS to provide information about those decisions in sections 40 and 44. VH's position is protected by time periods for her to challenge the review determination, and re-determination,



commencing once she has been informed of relevant information, rather than on the dates of determination and re-determination (regulation 54 of the ADP Regulations and section 48 of the 2018 Act). But VH's entitlement to ADP remains subject to the statutory scheme governing ADP.

23. A review date of 25 September 2024 was specified by SSS, in both the initial determination of 3 February 2024 and the re-determination of 9 April 2024. That information was before the FTS. The effect of regulation 47 of the ADP Regulations was to place an obligation on SSS to make a new determination, without receiving an application, after 25 September 2024. SSS complied with its obligations under regulation 47 of the ADP Regulations, by inviting VH to complete its online process, and making a review determination of 27 December 2024.
24. Section 27(1) of the 2018 Act meant that the effect of SSS's review determination of 27 December 2024 was to supersede any earlier determination, insofar as it dealt with VH's entitlement to that type of assistance in respect of the same period or event. The determination of 27 December 2024 specified that it took effect from 7 November 2024. It therefore partially superseded the earlier re-determination of 19 April 2024 which was under appeal to the FTS, to the extent that the re-determination dealt with entitlement from 7 November 2024 onwards. The FTS was bound to apply the provisions of section 27(2), with the effect that VH had no entitlement to assistance in the appeal before it in respect of the superseded period of ADP, which was the period from 7 November 2024 onwards. Although regulation 37 of the ADP Regulations (made under section 51 of the 2018 Act) makes provision about continuing eligibility, regulation 37(2) makes that subject to the person satisfying eligibility rules, which include section 27(2) of the 2018 Act. Put another way, the period under consideration by the FTS ended on 6 November 2024, as a result of the decision of 27 December 2024 and section 27 of the 2018 Act.
25. That did not leave VH without any remedy. The FTS panel in this case was entitled to decide entitlement to ADP for the period prior to 7 November 2024. Entitlement after that period attracted its own, separate, appeal rights to the FTS under section 46 of the 2018 Act. VH has exercised those rights. She will be entitled to give evidence in separate appeal proceedings before the FTS, and submit she remained entitled to components of ADP after 6 November 2024.
26. The FTS in this particular appeal erred in law when it made an award for a two year period ending on 26 December 2025. Its award of both the mobility and daily living components of ADP at the standard rate ought to have ended on 6 November 2024. The decision under appeal had been partially superseded after that date, and under section 27(2) of the 2018 Act, VH was not entitled to be given any assistance as a result of the decision of the FTS in respect of the superseded period.



Conjoining

27. VH argued that, if the FTS had been informed of SSS's review determination of 27 December 2024 prior to deciding the appeal on 13 January 2025, it could have made a procedural order under rule 4 of the FTS Rules. That order could have conjoined the proceedings challenging the re-determination of 19 April 2024 with a challenge to the subsequent determination of SSS of 27 December 2024. The FTS would then have had jurisdiction over a longer period, which would have included the 2 year period it made an award for.
28. If there are two sets of appeal proceedings before the FTS relating to the same social security payment and the same claimant, raising common issues, then conjoining may be sensible. However, the case management powers under rule 4 of the FTS Rules apply to procedure before the FTS, not to procedure before SSS, and rule 4(3) governs conjoining "proceedings". Read in context, that means proceedings before the FTS. At the time of the FTS's Decision, there were no proceedings before the FTS relating to the Review Decision. Instead, the 2018 Act made provision for any alleged errors in the review determination to be looked at again by SSS in a re-determination. The re-determination stage may obviate the need for subsequent tribunal proceedings, saving public funds, so is an important part of the statutory scheme. VH was dissatisfied with the outcome of the review by SSS, and has now brought further appeal proceedings before the FTS, as is her right. But those FTS proceedings only came into existence after 2 July 2025. They could not have been conjoined with the proceedings before the FTS leading to the Decision, which took place in January 2025. The time period of the award made by the FTS in the Decision under appeal is not validated by the bringing of this subsequent appeal. Rather, entitlement from 7 November 2024 will be considered by the FTS in the second, separate appeal against the Review Decision.

Outcome

29. The decision of the FTS was in error of law because it failed properly to apply legal provisions governing the start and end date of the award it made. The decision of the FTS, in its Decision Notice of 17 January 2025 and statement of reasons dated 4 February 2025, is quashed under section 47 of the Tribunals (Scotland) Act 2014. There is no challenge to the finding of entitlement to ADP up to 6 November 2024. No new findings in fact are required to determine the correct start date and period of award the FTS made. The decision of the FTS can therefore be remade, with the effect that VH is entitled to both components of ADP at the standard rate for the period from 11 January 2024 until 6 November 2024. Entitlement after that date falls to be considered in separate proceedings which have now been brought in the FTS against the Review Decision.



Observations

30. Under rule 2(4) of the FTS Rules, parties have an obligation to co-operate with the FTS. Accordingly, when it is reasonably possible, parties should make the FTS aware of any further determination process that has been instigated. That might happen, for example, if the claimant has intimated a change of circumstances to SSS or submitted a review form, or if SSS has instigated a further determination because a specified review date has arrived. That information is of assistance to the FTS, because of the effect the statutory supersession provisions may have on the duration of any award the FTS may competently make. The FTS will ordinarily have the decision under appeal before it, which may contain a review date alerting the FTS to potential issues about the period of time under consideration by it. However, it is likely to be of particular assistance to the FTS if appeal responses by SSS contain dates it suggests would be appropriate if an award is made, together with brief reasons for those (*SSS v JS* 2025 UT 27 para [17] to [19]), and is kept updated about any subsequent review procedure.
31. It may seem complicated that there can be more than one decision about entitlement to the same benefit, and different appeal processes before the FTS about successive decisions by SSS. However, that is a consequence of a system set up to recognise that the state of people's health, and their level of disability, may change throughout their lives. Conditions may resolve or develop, and people may get better, or they may get worse. The legislature is entitled to set up a system that targets public funds towards people with particular levels of functional limitation, and who have impairments with significant and not short-term effects (*SSS v FK* 2024 UT 23). It is to be expected that SSS, when reviewing entitlement to social security assistance, will give due respect to relevant decisions of the FTS about a particular claimant's entitlement. The decisions of the FTS are taken with the benefit not only of evidence and often a hearing, but also with expertise of a disability, medical and legal member. Nevertheless, the system of ADP is designed so that there are provisions entitling SSS to look again at a claimant's case, and make further decisions, on the basis of all of the evidence before it at the time it makes any fresh determination. If subsequent determinations have been made by SSS in accordance with the statutory scheme, that may have an effect on the period for which the FTS may make an award in a case before it.

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*

Upper Tribunal for Scotland



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.