



FIRST-TIER TRIBUNAL

SOCIAL SECURITY

Held at

on

02/02/2018

Before

Appellant:	Tribunal Ref.
Respondent: Secretary of State for Work and Pensions	NI No
Second Respondent:	

STATEMENT OF REASONS FOR DECISION

This statement is to be read together with the decision notice issued by the tribunal

What the Tribunal decided

1. The Tribunal decided that [redacted] entitled to the daily living component of Personal Independence Payment (PIP) and the enhanced rate of the mobility component of PIP from 22/10/2014 to 21/10/2017.

Background to the appeal

2. [redacted] originally made a claim for PIP on 22/10/2014. By a decision dated 14/04/2015 a Decision Maker decided that [redacted] scored 0 points for Daily Living Activities and 0 points for Mobility activities and was not entitled to either component of PIP. This decision was reconsidered but not revised on 26/05/2015/2014. [redacted] appealed against the decision.
3. On 22/09/2015 a First Tier Tribunal heard [redacted] appeal and made an award of the standard rate of the daily living component of PIP (9 points) and the enhanced rate of the mobility component of PIP (14 points) from 22/10/2014 to 21/10/2017.
4. On 10/11/2016 [redacted] having been contacted by the Department for Work and Pensions with regard to a review of her PIP award, completed a PIP review form, indicating that her condition had either not changed, or in some respects, had worsened. She was subsequently examined by a Health Care Professional on 16/01/2017. Additional medical evidence was submitted by [redacted]

The Decision Maker considered all of the evidence and awarded [redacted] 0 points under Daily Living Activities and 10 points under Mobility Activities. She was thereby awarded the standard rate of the daily living component and the standard rate of the mobility component from 31/01/2017 to 30/01/2020. The decision was reconsidered but not revised on 07/04/2017. [redacted] appealed against the decision of 31/01/2017.

5. The matter came before the Tribunal on 02/02/2017. The appellant attended with her representative, and her husband, A Presenting Officer, was present on behalf of the Secretary of State.

The Tribunal's Findings in Fact

6. The original award was made by a First Tier Tribunal on 22/09/2015 and she was awarded the enhanced rate of the mobility component and the standard rate of the Daily Living component from 22/10/2014 to 21/10/2017. This decision was implemented by the Secretary Of State without appeal.
7. The decision of the Secretary of State dated 31/01/2017, although on the face of it purporting to be a planned review decision, was in effect a supersession as the original award was extant until 21/10/2017.
8. The decision of the Upper Tribunal in MR v SSWP (2017) UKUT 0046 (AAC) deals with similar circumstances as presented in this case. This Upper Tribunal decision stated that where a Tribunal's decision has been overturned (as in the case) regulation 31 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 is relevant. This provides that the Secretary of State may supersede a decision of the First Tier Tribunal or Upper Tribunal which-
- a) Was made in ignorance of, or was based upon a mistake as to some material fact; or
 - b) in a case where section 26(5) of the 1998 Act applies, was made in accordance with section 26(4)(b) of that Act.
9. The Secretary of State has no power to revise a decision by a First Tier Tribunal, only having the power to supersede a First Tier Tribunal decision in two circumstances:-

Firstly under Regulation 31 of the 2013 Regulations the Secretary of State could have attempted to show that the First tier tribunal had made its decision in ignorance of, or based upon a mistake as to a material fact. This was not put in issue in the submission by the Secretary of State in this case, which, as stated, purported to be a review of an existing award.

Secondly, under Regulation 23(1) of the 2013 Regulations where the Secretary Of State can make a supersession decision where there is a relevant change in circumstances since the decision to be superseded had effect. The Upper Tribunal decision referred to above states "It is well established that a new medical opinion – is not of itself a change of circumstances, although it might be evidence of underlying changes in a medical condition which could constitute a change of circumstances."

The appellant stated in her review form that her condition had not changed or had, indeed, worsened.

Reasons for the decision

10. The original First tier Tribunal decision awarding both PIP components at the levels stated was from 22/10/14 to 21/10/2017. The Secretary of State's submission identified no grounds for supersession of this decision, and as noted, the Secretary of State had no power to revise the original decision. All of the evidence within the papers pointed to this being a planned reward review.

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11. When the above findings in fact are considered the decision of the Secretary of State dated 31/10/2017 which reduced PIP award from that date was an error in law, as it did not base the decision on the required legal basis for supersession, and further, did not identify the decision as a supersession, simply as a review of an existing award. The Tribunal put this to the Presenting Officer at the Hearing who agreed that the decision was wrongly conceived, offering no further evidence.
12. The Tribunal allowed the appeal, setting aside the decision of 31/01/2017 and reinstating the original award. The appellant's representative had made submissions stating that the appellant should be entitled to the standard rate of the daily living component and enhanced mobility from 31/01/2017 but appeared to infer that her award should continue after the end date of the original award, 21/10/2017. Having set aside the decision of 31/01/17 it is for the Secretary of State to review award from the end date of the original award, and the case was therefore remitted back to the Respondent for consideration.

The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed Tribunal Judge:

Date:

Statement issued to

Appellant on:

11/01/18