



FIRST-TIER TRIBUNAL

SOCIAL ENTITLEMENT CHAMBER

Held at: [REDACTED]	Appellant: Mr K [REDACTED]
On: 04/07/2021	Tribunal ref. S21/21/0014/000
Before: Judge C. P. Mitchell, Mr T. J. Hillway and Dr A. P. [REDACTED]	
Respondent: The Secretary of State for Work and Pensions	

Decision Notice




Decision

1. The appeal is allowed.
2. The decision of the Secretary of State taken on 26/10/2018 and revised on or around 10/08/2021 is set aside.
3. [REDACTED] is entitled to the Daily Living component of the Personal Independence Payment at the standard from 28/04/2016 and on an indefinite basis.

Summary of reasons

4. During the hearing, the Department for Work and Pensions' Presenting Officer, [REDACTED], was asked about the decision-making chronology. In response, he said:
 - a. The 26/10/2018 decision was a decision on a renewal claim.
 - b. The DWP had subsequently revised this decision.
 - c. There was no contemporaneous record of the revision decision.
 - d. The revision decision date was unclear.
 - e. The revision ground was that "the decision dated 26/10/2018 erred in regard to awarding an indefinite award given [REDACTED] did not have leave to remain in the United Kingdom on a permanent basis" (page D).

5. The Tribunal allows the appeal because the DWP has failed to establish that there were grounds to revise the 26/10/2018 decision. In summary, the Tribunal reaches this conclusion for the following reasons:
 - a. There is no dispute between the parties that, medically, the decision on 26/10/2018 to make an indefinite award was correct.
 - b. The DWP has failed to establish that the decision-maker on 26/10/2018 was unaware of ██████████'s immigration status or overlooked his immigration status when deciding to make an indefinite award.
 - c. The fact ██████████ did not have leave to remain in the UK on a permanent basis on 26/10/2018 was not a decisive factor in relation to the issue of whether there should be fixed term award or an indefinite award.
 - d. As a result of sub-paragraphs 5.a to 5.c., the DWP has failed to establish that there were grounds to revise the 26/10/2018 decision.
6. Even if the DWP had established that there were grounds to revise the 26/10/2018 decision, the Tribunal would still have allowed the appeal. In summary, the Tribunal would have done so for the following reasons:
 - a. On 26/10/2018 ██████████ had limited leave to remain as a spouse of a British citizen. As such, he was likely to be granted indefinite leave to remain in due course.
 - b. Although ██████████'s leave to remain on 26/10/2018 was time-limited, if ██████████ applied for further leave before the expiry of his existing leave, then he would have an uninterrupted entitlement to PIP given s.3C of the Immigration Act 1971.
 - c. The likelihood of ██████████ not applying for further leave before the expiry of his existing leave was low given that a failure to do so would have been likely to have had serious adverse consequences for him.
 - d. Had ██████████ not applied for further leave before the expiry of his existing leave, then he would have been under a duty to notify the DWP that there had been a change in his circumstances.
 - e. As ██████████'s representatives highlighted, it would have been open to the DWP to contact ██████████ at around the time his leave was due to expire and to require him to provide evidence that he had applied for further leave before the expiry of his existing leave. It would also have been open to the DWP to suspend ██████████ PIP payments if he failed to respond.
 - f. The DWP's approach of making a fixed term award of PIP running until the end of the current limited leave to remain and then requiring ██████████ to make a new claim would have been likely to result in significant financial hardship to ██████████.

 District Tribunal Judge 	Date: 
Decision issued to:	Appellant on:
	Respondent on:

STATEMENT

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