

ENGLAND AND WALES / JUDGMENT

KB v Secretary of State for Work and Pensions

COURT
IN THE UPPER TRIBUNAL

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Appeal No. UA-2025-000456-ESA
IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between: K. B.
- v -
Secretary of State for Work and Pensions
Appellant
Respondent
Before: Upper Tribunal Judge Wikeley
Decided on consideration of the papers

Representation:

Appellant:

Respondent: Ms Caroline Gibson, South Tyneside Council
Ms Lauren Foody, Decision Making and Appeals, DWP
First-Tier Tribunal (Social Security and Child Support)

On appeal from:

Tribunal: Tribunal Case No: SC233/23/00432

Digital Case No:

Tribunal Venue:

Hearing Date:

Sunderland

8 January 2025

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the

Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh tribunal in accordance with this decision and the following directions.

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DIRECTIONS

- 1.
- 2.
- 3.
- 4.
- 5.

This case is remitted to the First-tier Tribunal for reconsideration at an oral hearing.

The new First-tier Tribunal should not involve the tribunal judge previously involved in considering this appeal on 3 April 2024.

The Respondent (the Secretary of State's representative) is directed to provide the First-tier Tribunal with a supplementary submission that addresses the points made in the Appellant's submission to the Upper Tribunal filed on 29 August 2025 (CMS case event 18) and issued to the parties on 8 October 2025; this supplementary submission should be sent to the HMCTS regional tribunal office within one month of the issue of this decision.

If the Appellant has any further written evidence to put before the tribunal and, in particular, further medical evidence, this should also be sent to the HMCTS regional tribunal office within one month of the issue of this decision.

The new First-tier Tribunal is not bound in any way by the decision of the previous tribunal. Depending on the findings of fact it makes, the new tribunal may reach the same or a different outcome to the previous tribunal.

These Directions may be supplemented by later directions by a Tribunal Legal Officer, Tribunal Registrar or First-tier Tribunal Judge.

Introduction

REASONS FOR DECISION 1. The Appellant's appeal to the Upper Tribunal succeeds and so there will need to be a completely fresh hearing of her Employment and Support Allowance (ESA) appeal before a new First-tier Tribunal (FTT). The Upper Tribunal's decision in summary and what happens next 2. I allow the Appellant's appeal to the Upper Tribunal, which has the support of the Secretary of State's representative. The decision of the First-tier Tribunal involves a legal error. For that reason, I set aside the Tribunal's decision. KB v SSWP (ESA) UA-2025-000456-ESA 3. The Appellant's case now needs to be reheard by a new and different First-tier Tribunal. I cannot predict what will be the outcome of the re-hearing. So, the new tribunal may reach the same, or a different, decision to that of the previous Tribunal. It all depends on the findings of fact that the

new Tribunal makes. The factual background 4. The Secretary of State's decision-maker decided that the Appellant was not entitled to the Severe Disability Premium (SDP) element of income-related ESA as from 24 May 2023 because she had non-dependent adults living at her address. The Appellant appealed to the FTT. The FTT, following a hearing 'on the papers', confirmed the DWP decision under appeal. The FTT found that the Appellant did not meet the criteria set out in paragraph 6 of Schedule 4 to the ESA Regulations 2008, which state that (in order to qualify for the SDP element) there must be no non-dependants aged 18 and over normally residing with the claimant. The FTT further found that none of the exceptions to this requirement applied to the Appellant. The grounds of appeal 5. The Appellant's grounds of appeal were as detailed in her Form UT1. In summary, she argued that the adults living with her were entitled to PIP and so she should have been found to be entitled to the SDP element on her ESA claim. I gave the Appellant permission to appeal, observing as follows: The Appellant's grounds of appeal are arguable. The observations of the Secretary of State's representative are sought especially on two issues. First, was the Appellant put sufficiently on notice as to what she needed to prove about the residency of her adult children and how that might be proven? Secondly, was it for the Secretary of State to show that none of the possible exceptions to the status of non-dependant (e.g. being a PIP claimant) applied to any of the adult children who still lived with the Appellant?

6. Ms Lauren Foody, the Secretary of State's representative in these proceedings, supports the appeal. Her analysis runs as follows (note that SOR is an abbreviation for 'statement of reasons'; also note that I have given the Appellants' children pseudonyms (Simon and Naomi) to protect both their privacy and the Appellant's privacy):
9. I submit that the FTT have erred in law by failing in their inquisitorial duty to make findings of fact on whether the appellant had non- KB v SSWP (ESA) UA-2025-000456-ESA dependants living with them when they made the claim to SDP. The IS10 form completed 18/03/2021 (pages 29-33, FTT Bundle), refers to only 1 dependant. Both the Secretary of State and FTT when making their decision used evidence from the UC build of [Simon and Naomi]'s claims to Universal Credit (UC) showing they lived at the appellant's address. However, they failed to make further findings of fact on this matter. It is noted in para xi of the SOR that the appellant was unaware their children used their address purely as a correspondence address. It does not appear that the appellant was given the opportunity or directed on how they can provide evidence that their non-dependent children had moved out and were no longer resident at the appellants address.
10. As such, the FTT should have used their inquisitorial duty to explore whether the appellants children normally resided at the property by considering factors such as whether [Simon and Naomi] were living full time at the property, how much time they stayed at the property and if they had any liabilities for services. Additionally, the FTT (and the Secretary of State) should consider whether any of the exceptions for the non- dependants set out under Schedule 4 Paragraph 6 of the Employment and Support Allowance Regulations 2008 would be applicable if the appellant's children were found to be still living at the appellants property. From the evidence bundle attached there is no evidence to suggest this was

considered, it would be for the Secretary of State to provide evidence that none of the appellants children satisfied any of these exceptions, they failed to do so in the case at hand.

11. South Bucks District Council v Porter (No 2) [2004] UKHL 33 sets out: “The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved”.
12. It is unclear from the SOR why the FTT solely relied on the evidence provided by the Secretary of State of [Simon and Naomi]’s address found at pages 58-69 of the FTT Bundle. Also, it is uncertain whether the FTT made any additional findings of fact in regard to how frequently the appellants children were staying at her address or if the children fit into any of the exceptions details in Schedule 4, if they did this was not KB v SSWP (ESA) UA-2025-000456-ESA recorded in the SOR. If these factors had been considered, the outcome could have arguably been different and could have changed the effective date for the appellants entitlement to SDP. This amounts to an error of law.
13. Furthermore, the FTT could have considered that the completion of the IS10 form was the appellant reporting that the 2 non-dependants, [Simon and Naomi], no longer lived at the address. Although the appellant did not contact the appropriate office to specifically disclose that their non- dependent children had moved out, the FTT failed to consider whether the completion of the IS10 could be treated as such a notification.
14. As such, I request that the decision made by the FTT is set aside and remitted to the FTT so they can make further findings of fact on whether [Simon and Naomi] were present at the appellants home address at the time that the appellant submitted their claim to SDP. 7. The Appellant’s representative has made further detailed observations on the substance of the appeal by way of her reply, and has provided copies of PIP decision letters for the Appellant’s children. Analysis: a summary 8. 9. I agree with the analysis of the Secretary of State’s representative in her written submission supporting the appeal to the Upper Tribunal. I am accordingly satisfied that the First-tier Tribunal erred in law for those reasons. I therefore allow the Appellant’s appeal to the Upper Tribunal and set aside (or cancel) the Tribunal’s decision. 10. I therefore remit (or send back) the original appeal for re-hearing to a new tribunal, which must make a fresh decision. What happens next: the new First-tier Tribunal
11. There will therefore need to be a fresh hearing of the appeal before a new First- tier Tribunal. Although I am setting aside the previous Tribunal’s decision, I should make it clear that I am making no finding, nor indeed expressing any view, on whether the Appellant is entitled to the SDP element on her ESA claim. That is a matter for the good judgement of the new Tribunal. That new Tribunal must review all the relevant evidence and make its own findings of fact. KB v SSWP (ESA) UA-2025-000456-ESA

12. The reply by the Appellant's representative (referred to above at paragraph 7) to the Secretary of State's response to the Upper Tribunal appeal makes a number of submissions on the merits of the underlying SDP appeal. The Respondent (the Secretary of State's representative) is accordingly directed to provide the new First-tier Tribunal with a supplementary submission that addresses the points made in the Appellant's submission to the Upper Tribunal filed on 29 August 2025 (CMS case event 18) and issued to the parties on 8 October 2025; this supplementary submission should be sent to the HMCTS regional tribunal office within one month of the issue of this decision.

Conclusion

13. I therefore conclude that the decision of the First-tier Tribunal involves an error of law. I allow the appeal and set aside the decision under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. The case must be remitted for re-hearing by a new tribunal subject to the directions set out above (section 12(2)(b)(i)). My decision is also as set out above. Nicholas Wikeley Judge of the Upper Tribunal Authorised by the Judge for issue on 15 October 2025 6

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Prepared on 22 October 2026 · Esheria