



**THE SOCIAL SECURITY COMMISSIONERS**

*Commissioner's Case No: CSIB/404/05*

**SOCIAL SECURITY ACT 1998**

**APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW**

**COMMISSIONER: D J MAY QC**

*Appellant:*

*Respondent: Secretary of State*

*Tribunal: Irvine*

*Tribunal Case No: U/05/105/2004/00822*

## DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal given at Irvine on 5 January 2005 is erroneous upon a point of law. I set it aside. I remit the case to a freshly constituted appeal tribunal for a rehearing.

2. The claimant has appealed to the Commissioner against the decision of the tribunal which is set out at page 56.

3. The grounds of appeal include the following ground:

“In both the representative's submission and [the claimant's] IB50 difficulties with mental health are expressed and in the interests of natural justice she should have been given the opportunity to explain these difficulties”.

The Secretary of State has supported the appeal though it is not clear from the way in which the submission is framed as to why this is, although the Secretary of State has referred to a number of authorities, namely CIB/16493/1996, CIB/804/2002 and CIS/1986/2004, without setting out what I was being asked to draw from them.

4. What the tribunal said in relation to the mental health descriptors was:

“The representative then asked the tribunal to consider mental health descriptors. However, [the claimant] had advised the doctor that she had no mental health problems and accordingly no mental health examination had been carried out. As [the claimant] did not attend the hearing it was not possible for the tribunal to investigate further”.

I do not accept that the tribunal erred in law by not adjourning the hearing. It is clear from the statement of reasons that the representative had confirmed to the tribunal that he had had a message from the claimant indicating that she would not be attending but wished the hearing to proceed in her absence. In these circumstances, the tribunal were entitled to accept this and were under no obligation to adjourn. If the claimant was prepared to peril her case on evidence and submissions already placed before the tribunal, that was a matter for her and those who advise her. Claimants cannot have it both ways by indicating to tribunals that they are prepared to continue with the case in circumstances such as the present and then advancing grounds of appeal to the Commissioner that the tribunal erred in law by not adjourning the hearing upon receipt of an adverse decision.

5. However I do consider that the tribunal erred in law by virtue of a failure to deal with the mental health descriptors. They were an issue in the case. They were focussed in a written submission which was presented to the tribunal and which is recorded at pages 53 and 54. The claimant also dealt with her mental health at pages 18 and 19. It may well be that, having regard to its sparseness, the claimant's evidence was of little value. Further in the absence of the claimant at the hearing, which disabled the tribunal from exploring her mental health condition further, the evidential content of the submission may also have been rendered of little value. However the evidence and submission before the tribunal and they were bound to deal with it. In that I am in agreement with the proposition set out by the Commissioners in CIB/16493/1996 and CIS/1986/2004 that they should have applied the

mental health test. Paragraph 31 of CDLA/0902/2004 does not support the proposition that the tribunal were bound to adjourn in the circumstances of this case.

6. Having taken the view that I have, I set the tribunal's decision aside. It is not necessary for me in the circumstances to deal with the other grounds of appeal. I would have given a decision without reasons but in the event did not do so as I wished to make it clear that I considered the ground of appeal I have dealt with to be of no merit. Having regard to the nature of the appeal I have no specific directions to give the freshly constituted tribunal.

7. The appeal succeeds.

(Signed)  
D J MAY QC  
Commissioner  
Date: 28 July 2005