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MJG/EA

CS 700/1981

SOCIAL SECURITY ACTS 1975 TO 1981

CLAIM FOR SICKNESS BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S. 4/82

1. My decision is that sickness benefit is not payable to the claimant for the inclusive period from 2 June 1980 to 3 December 1980 because the claimant has not proved that for that period he was incapable of work: Social Security Act 1975, sections 14(1) and 17(1) and the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975, S.I. 1975 No 564 regulation 3(1). The claimant's appeal against the decision of the local tribunal is therefore dismissed.

2. The claimant is a young man now aged 20, whose claim (made on 5 June 1980) for non-contributory invalidity pension has been treated as a claim for contributory sickness benefit as he has sufficient contributions for that purpose. The test of eligibility is the same for either benefit, namely it must be shown by a claimant on a balance of probabilities that for any day for which he claims benefit "he is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement" (Social Security Act 1975, section 17(1)(a)(ii) - compare section 36(1) of the 1975 Act as to non-contributory invalidity pension). The claim was supported by a "Special statement by the doctor" (form MED 5) signed by the claimant's own doctor on 5 June 1980. There the doctor stated "I have not examined you but, on the basis of a recent written report from a doctor at the Dyslexia Institute, Sheffield ... I have advised you that you should refrain from work for 26 weeks". The doctor added that the diagnosis of the disorder causing absence from work was "Dyslexia" and remarked "Starting one year's training at P Training College".

3. Dyslexia is defined in Disablement Resettlement Officer's guide number 16 as follows:

"Dyslexia, literally 'difficulty with words', is the term often used to describe the disorder whereby children and adults, for no apparent reason, experience problems in

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learning to read and write. The World Federation of Neurologists agreed in 1968 to the following definition:

'Specific developmental dyslexia - a disorder manifested by difficulty in learning to read despite conventional instruction, adequate intelligence and socio-cultural opportunity. It is dependent upon fundamental cognitive disabilities which are frequently of constitutional origin'.

This is a somewhat narrow definition which does not take account of the fact that not all reading problems stem from dyslexia, nor that people with dyslexia may often have trouble with writing, spelling and with spatial perception. They may also find it difficult to interpret mathematical symbols or progression (dyscalculia). The term 'dyslexia' is used to cover a wide range of handicaps, from mild spelling difficulties to complete illiteracy. Many organisations, however, now prefer terms such as 'specific learning disability'.

4. There is no doubt that the claimant suffers from dyslexia to a marked degree as is apparent from a consultant psychologist's detailed report (dated 19 September 1979) on the claimant following intelligence etc tests. The claimant is stated in that report to be of average intellectual ability but nevertheless to have marked problems with writing, reading etc. On 3 June 1980, the consultant psychologist signed a form of certificate,

"To whom it may concern.

This is to certify that [the claimant] was assessed at the Institute on 19 September 1979. I believe him to be dyslexic in the sense intended in the Disabled Persons Act, 1970".

5. As a result of his dyslexia, which I hold does constitute "disablement" within section 17(1)(ii) of the 1975 Act (cited in paragraph 2 above) the claimant was admitted for a one year's (possibly 2 year's) course at a special training college for the disabled, for remedial treatment and education for the disability of dyslexia. In this connection there has been put in evidence before me a report from the British Dyslexia Association on the special problems and educational needs of young people suffering from dyslexia, which the report describes as "the hidden handicap". It appears that the claimant is sponsored on the course by his local education authority in the sense that they arrange for free board and lodging at the college during the week (the claimant goes home at weekends) and his fees there are paid for him. However, the claimant receives no form of maintenance grant from his local authority though he does receive supplementary benefit from the Department. In his grounds of appeal, the claimant makes the point that allegedly many of his fellow students suffering from dyslexia and attending a course at the college do in fact receive sickness or invalidity benefit.

I do not know whether this is the case or not, though the local insurance officer appears to have indicated, in his evidence to the local tribunal, that that was the position. However, that of course is in no way persuasive of the legal and factual issues which have to be determined in each individual case by the statutory authorities (including the Commissioner) on the law applicable, as enacted or sanctioned by Parliament.

6. Prior to starting his course at the college for the disabled, the claimant's 'employment' history was that he had been unemployed from 25 July 1978 to 16 September 1978; had worked from 18 September 1978 to 3 March 1979 under a work experience scheme administered by the Manpower Services Commission, and from 5 March 1979 to 30 May 1980 was employed as a full-time motor mechanic. He could not, however, do a skilled job as a motor mechanic because he could not make out a job card and he also asserts that he was unable in fact to do the job of motor mechanic because contact with certain chemicals used on cars body work had produced eczema. However there is no medical evidence as to that before me but, even if there were, it does not vitiate the reasoning of my decision which is of a general nature and does not relate to the particular employment that the claimant had pursued with motor cars.

7. The local tribunal clearly held a careful hearing of the claimant's appeal, at which the claimant was not present but was represented by his mother. The local tribunal found as a fact,

"[The claimant] has worked full time for over twelve months prior to going to college. The job was non-sheltered but unskilled. There is no deterioration in his condition since going to college. Dyslexia is a specific disablement".

8. The local tribunal unanimously dismissed the claimant's appeal on the ground that he had not shown that he was incapable of work. The claimant's mother (who has made the appeal to the Commissioner on his behalf) states in the grounds of appeal, "This appeal seems to have been turned down mainly due to fact that [the claimant] was able to work whilst waiting to be admitted to [the college for the disabled]. This is unjust and unfair as it seems he was penalised for not being a lay-about, but preferring to work until such time as he could go to [the college for the disabled]". In that connection I note that the insurance officer told the local tribunal "It would have been more difficult to disallow a claim if [the claimant] had gone to college straight from school". I ought therefore to say at once that I do not consider the fact that the claimant very commendably had worked and taken every job opportunity he could before going to college for the disabled bears in any way on the general principles inherent in my decision, which principles cause me to hold that the claimant cannot show that he was "incapable of work" within the meaning of the legislation. The matter must in my view be determined on general principles and, although clearly the fact that a claimant has worked does in an appropriate case bear on the question of whether or not he is capable of work I prefer in

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this case to give a decision on principles applicable generally to a situation where it is said that severe dyslexia, of the kind suffered by the claimant in this case, makes a claimant incapable of work.

9. There is no question, as I have already indicated, but that the claimant suffers from a "specific disablement" within the meaning of section 17(1)(a)(ii) of the 1975 Act (cited in paragraph 2 above). The question in dispute is whether that disablement makes him "incapable of work" within the meaning of that section. The expression "work" is in fact defined in section 17(1) as meaning "work which the person can reasonably be expected to do". In the case of a young man starting out on his career I do not consider the matter as necessarily concluded by such short period of work as he had already done. That is why I have stated above that I prefer to decide this case on general principles. The above definition of "work" clearly involves a subjective consideration of the claimant's own capabilities. But, in the case of a young man just starting his career, it would not be right in my view to say that he was incapable of work which objectively he could reasonably be expected to do, simply because he had high career aspirations and wished to undergo a period of educational training before seeking employment. To have such aspirations is of course highly commendable but in my judgment sickness and invalidity benefits are not the proper sources of funding for persons undertaking such education, even if the effect or purpose of the education is to remove or ameliorate a specific disablement or its effects, as in this case.

10. I have no independent medical evidence in this case, but it is clear to me from the detailed assessment of the claimant's capabilities dated 19 September 1979 by the consultant psychologist that the claimant is of average intellectual ability and, as stated by the consultant; "although he does suffer from severe problems with reading and spelling it is a phase of his development which may still enable him to improve these skills to a major extent". In my judgment, there is no difference in principle between this case of the claimant naturally wishing to improve his reading, writing and spelling abilities and the case of a young man of average intellectual ability, without dyslexia, who wishes to undertake a course of further education in order to acquire specific skills so that he is not reduced to merely taking unskilled work. Such a young man could not be said to be incapable of all work which he might reasonably be expected to do, since one can say in the abstract (without any reference to work actually done as in this case) that such a young man could undertake a number of different unskilled tasks. In my judgment, certainly for a young man "of average intellectual ability", it cannot be said, in the context of sickness or invalidity benefit, that unskilled work is not work which he "can reasonably be expected to do". As the learned Commissioner said in reported Decision R(S) 2/74 (paragraph 7), "There are many kinds of 'work' which a man may be capable of doing even if he suffers from some disablement. Disablement must be distinguished from incapacity".

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the claimant should attend the college for disabled. "Precautionary" in my view refers to a certificate by a medical practitioner that a claimant should abstain from work as a precaution against his disablement (or for that matter disease) becoming worse or deteriorating in some way. It would not in my view extend to a statement by a medical practitioner that in order for a claimant better to educate himself and cope with the effects of a learning disability such as dyslexia, the claimant should attend a college, albeit for the disabled.

14. I have felt compelled on the statutory provisions and the general principles applicable thereto to hold that the claimant is not entitled to sickness (or for that matter invalidity) benefit. That does not mean however, that I do not have sympathy for the claimant and for the efforts that he and his parents have made. I would not wish my decision to be a discouragement to the claimant's continuing progress.

(Signed) M J Goodman
Commissioner

Date: 8 April 1982

Commissioner's File: C.S. 700/1981
C I O File: I.O. 8052/S/81
Region: East Midlands and East Anglia

I consider that that general principle applies here and although the claimant undoubtedly has what is in many ways a distressing disablement, he nevertheless is not incapable of all work which he can reasonably be expected to do.

11. I emphasize that my decision is given in the context of the statutory rules relating to sickness and invalidity benefit and I in no way intend to disparage the claimant's efforts to mitigate the effects of his disability by attendance for possibly two years at a College for the disabled, where his income is low. If his income is to be supplemented, then in my view the proper source for such supplementation may be the local education authority, though of course I express no opinion on whether the local education authority has in fact the power to make any kind of maintenance grant in circumstances such as these. That is not strictly a matter for me, but clearly maintenance at a College which is in effect educating the claimant is more the prerogative of the local education authority than of the social security authorities.

12. Although the matter has not been the subject of submissions to me, I have given some consideration to the question whether the claimant can be deemed to be incapable of work within the meaning of regulation 3(1) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 [S.I. 1975 No 564, as amended by S.I. 1978 No 394]. Regulation 3(1) provides, so far as is material to this case, as follows,

"3(1) A person who is not incapable of work may be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement for any day on which ...

(a) (i) he is under medical care in respect of a disease or disablement as aforesaid,

(ii) it is certified by a registered medical practitioner that for precautionary or convalescent reasons, consequential on such disease or disablement he should abstain from work, and

(iii) he does not work ...

(b) ..."

13. The claimant could possibly be said, while he is at the College for the disabled, to be "under medical care" in respect of his disablement of dyslexia, but I cannot hold that the statement given by the claimant's doctor on form MED 5 (set out in paragraph 2 above) comes within the requirement, for certification, of regulation 3(1)(a)(ii). It cannot be said in my view that the claimant's doctor has certified that the claimant should abstain from work "for precautionary ... reasons consequential on such ... disablement". There is nothing "precautionary" about the medical authorities' recommendations that