

DLA - DAF (Miss) (Commissioner) (CPAG)  
Lower Commissioner Appeal (Innocent) (Poa) (3021)  
Decision, (Innocent) (Commissioner) (Poa)

JGMi/HJD

Commissioner's File: CSDLA/128/94  
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**SOCIAL SECURITY ADMINISTRATION ACT 1992**

**APPEAL TO THE COMMISSIONER FROM A DECISION OF A DISABILITY APPEAL TRIBUNAL UPON A QUESTION OF LAW**

**DECISION OF SOCIAL SECURITY COMMISSIONER**

**Name:** Alison MELDRUM (Miss)

**Disability Appeal Tribunal:** Glasgow

**Case No:** D/51/131/94/0129

1. My decision is that the decision of the disability appeal tribunal dated 22 February 1994 is erroneous in law and is set aside. The claimant's case is referred to another tribunal for reconsideration.

2. This is an appeal by the claimant with leave on a question of law against the above-mentioned decision of a disability appeal tribunal who found the claimant entitled to the lower rate mobility component and the lowest rate care component of disability living allowance from 1 July 1993 to 31 December 1994.

3. Unfortunately the tribunal failed to note that although the case came before them, as it must, by way of appeal from a review decision of an adjudication officer made "on any ground" under section 30(1) of the Social Security Administration Act 1992, what was under review in that decision was not, as is usually the case, an original decision refusing a claim for disability living allowance, but was in this instance an intervening decision of 13 October 1993 on an application for review of the original adverse decision, made on the limited review grounds available under section 30(2) in cases where the application for review is made outwith the period for 3 months (prescribed by regulation 26E(1) of the Social Security (Adjudication) Regulations 1986) from the date of the intimation of the original decision refusing benefit.

4. Section 30(2) contains the following material provisions:-

"(2) On an application under this section made after the end of the prescribed period, a decision of an adjudication officer under section 21 above which relates to .. a disability living allowance may be reviewed if -

- (a) the adjudication officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been any relevant change of circumstances since the decision was given; or
- (c) it is anticipated that a relevant change of circumstances will so occur; or
- (d) the decision was erroneous in point of law; or ...."

5. The result of the procedural complication mentioned above was, as the adjudication officer now concerned with the case points out, that the tribunal required first to consider and deal with the question whether the original decision of an adjudication officer refusing the claimant's claim for disability living allowance should have been reviewed on one or other of the above-mentioned statutory grounds of section 30(2). Only if the tribunal were able to answer that question in the affirmative were they entitled to reconsider the merits of the claimant's case for disability living allowance. I have considered whether the terms of the tribunal's decision are such that it can be inferred that they considered that there were such grounds for review which should have been entertained by the adjudication officer in October 1993. There is a reference in the tribunal's reasons to the claimant's condition having fluctuated and to increased care needs having arisen in 1993. It is not however possible to regard that as constituting review grounds under section 30(2)(b) quoted above as the tribunal go on to refer to the claimant being able to satisfy the 3 month qualifying period by the beginning of July 1993. If she did so, the increased needs must have arisen around or shortly before the date of the original decision of 17 April 1993 refusing the claim for disability living allowance. I am unable to discover in the tribunal's decision any other findings or reasons which would enable it to be implied that any of the other grounds of review were found to have been applicable as at 13 October 1993.

6. I have accordingly no alternative but to set the tribunal decision aside as erroneous in law in this respect. I do so without enthusiasm as the failure to apply for the first review within 3 months appears to have arisen as a result of a misunderstanding between the claimant and her representative and the prescribed period of 3 months cannot be extended. I refer the claimant's case for reconsideration by another tribunal. That tribunal will require to reconsider whether there is evidence to support a conclusion that the original decision of 17 April 1993 refusing the claim for disability living allowance was reviewable on the grounds:-

- (a) that it was given in ignorance of or based on a mistake as to some material fact; or
- (b) that since that decision there had been a relevant change of circumstances; or
- (c) that it should have been anticipated that a relevant change would occur; or
- (d) that the decision of 17 April 1993 was erroneous in law.

It is obviously essential, particularly for the purposes of (d) above, that the original decision of the adjudication officer, intimated on 17 April 1993, refusing the claim for disability living allowance should be produced to the new tribunal (as it should have been to the first tribunal).

7. If the new tribunal can be satisfied on that matter they will of course proceed to consider whether revision of the original disallowance decision is appropriate as regards either or both components of disability living allowance from whatever date is appropriate. In that connection regard will have to be had to (a) the ground of review sustained, (b) the 3 month qualifying period for this benefit, and (c) the limitations expressed in regulation 65 of the Social Security (Adjudication) Regulations 1986. That regulation, so far as material for the purposes of this case, includes the following provisions:-

"65. - (1) Where on a review a decision relating to benefit ... is revised so as to make benefit payable ... then subject to the following provisions of this regulation, the decision given on the review shall have effect from ... a date not earlier than -

- (a) - (d) ...

(f) in the case of ... disability living allowance, where the decision is reviewed -

- (i) under section 100A(1) of the 1975 Act and paragraph (ii) of this sub-paragraph does not apply, the date of claim,
- (ii) under section 100A(1) of the 1975 Act as that sub-section is applied by sections 100B(2) .. of that Act, 3 months before the date of the application for review made under section 100A(2) .. which preceded the application for review under section 100A(1),
- (iii) under section 100A(2) ..., 3 months before the date of the application for review.

(2) Where in any case to which paragraph (1) applies ... a claimant proves -

- (a) that on a date earlier than the date on which the application for review was made, he was (apart from satisfying the condition of making a claim for it) entitled to benefit; and
- (b) that throughout the period between the earlier date and the date on which the application for review was made, there was good cause for delay in making the application;

subject to ... [inapplicable], he shall not be disqualified by virtue of paragraph (1) for receiving any benefit to which he would have been entitled in respect of that period."

8. The references in regulation 65 to section 100A(1) and (2) and to 100B(2) are now references to sections 30(1) and 30(2) and 31(2) respectively of the Social Security Administration Act 1992. The provisions of regulation 65 would therefore limit backdating in the present case to 3 months prior to the date of the application for review on 5 August 1993, but subject to a possible limited extension under regulation 65(2) to an earlier date on proof of entitlement and of good cause for delay in seeking review between the date of issue of the disallowance decision and the date when the application for review was made. The forward period thereafter for consideration will continue up to 31 December 1994. The latter terminus is necessary in these proceedings on this claim since another award of disability living allowance has been made to the claimant under a fresh claim as from 1 January 1995.

9. Assuming that the tribunal reach the merits of the claim to disability living allowance they should separately consider both the care component and the mobility component. They should deal with the salient features of the claimant's condition, explaining the view taken by them where there is conflict of evidence. They should have regard to paragraphs 8 to 15 of the adjudication officer's written submission dated 22 November 1994 relating to the evidence that the claimant suffered from blackouts and a tendency to fall and also relating to the proper test applicable to the lower rate of mobility component as specified in section 73(1)(d) of the Social Security (Contributions and Benefits) Act 1992.

10. To the extent indicated above the appeal of the claimant is allowed.

(signed) J G Mitchell  
Commissioner  
Date: 19 January 1995