

*Alcoholism not mental/physical
disability: but see CSDLA/171/95.*

JJM/HJD/T/CH

Commissioner's File: CSDLA/268/95

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:

Disability Appeal Tribunal: Glasgow

Case No: D/51/131/94/1560

1. My decision is that the decision of the disability appeal tribunal of 16 February 1995 is erroneous in law and I set it aside. I remit the case for redetermination by a freshly constituted tribunal.

2. I have allowed this appeal with some hesitation. It is not clear to me that there is any basis upon which this claim could succeed, whether in respect of the mobility or care components (both of which are claimed) of disability living allowance.

3. So far as the care component is concerned, it is a pre-condition of entitlement under section 7 of the Act that the relevant requirements of the claimant for attention or supervision, or his inability to prepare a meal, are by reason of physical or mental disability. I ask, accordingly, what, if any, physical or mental disability the claimant may have. The claimant's position is that he suffers from chronic alcoholism and, in consequence it would seem, anxiety and depression. It does not seem obvious to me, however, that chronic alcoholism could properly be described as a physical or mental disability at all. If what is described is a condition brought on by the ongoing use of alcohol which a claimant could control if he wanted to and had sufficient strength of character, it could not be said as a matter of ordinary language, I think, that he suffered from any disability at all. Weakness of character, or lack of self control, are not mental disabilities. Before any question of entitlement could arise, it is necessary in my opinion to establish the condition of which the claimant complains is truly beyond his control; and in the ordinary way I do not think that either drug or alcohol abuse, or their effects, could be said to be beyond the control of a person who does not suffer from any recognisable and serious mental or psychological disorder. I can quite appreciate that a person who suffers from mental illness, one of the manifestations of which is substance abuse of some kind, may be said to be severely disabled; but if it is the ongoing abuse which has as one of its consequences some mental disturbance, and nothing more, that is not enough: see Commissioner's decision R(A)2/92 and *re H*, Court of Appeal, unreported, 17 February 1994.

4. Similar considerations apply to the claim for mobility component. It has never been suggested by the claimant that he is unable or virtually unable to walk; or that he

is blind or deaf; or that he is severely mentally impaired within the meaning of regulation 12(5) of the Disability Living Allowance Regulations. What is said, putting it at its highest (and so ignoring the recantation before the examining medical practitioner), is that due to panic attacks he becomes confused and disorientated; that he hallucinates and steps in front of traffic; and that he "takes umbrage at innocent bystanders and assaults them". This, rather elliptically perhaps, may come within the terms of section 73(1)(d) of the Act; but, again, it is a pre-condition that the need for guidance or supervision is a need occasioned by physical or mental disability.

5. It is not in dispute that the claimant is an alcoholic. I can see no evidence at present upon which it might be held that he is disabled, whether physically or mentally. It would however be unfair to dismiss his claim at this stage upon that basis. The decision under appeal to the tribunal asserted that the claimant's "needs are due to alcohol, which cannot be considered to be a physical or mental disability". At the tribunal, however, it appears the presenting officer accepted that the claimant suffered from acoholism and this is noted in language which suggests no issue was taken with the proposition that any needs he might have resulted from a physical or mental disability. The tribunal proceeded on that basis. Nothing is made of the point at all in the adjudication officer's present submissions, which indeed support the appeal. If the point had been taken, for all I know the claimant might have been able to meet it by the production of medical evidence which suggested, for example, that he had suffered brain damage which led to alcoholism. Accordingly, albeit with some hesitation, I have come as I say to the view that I could not fairly deal with this appeal on this basis but should leave these questions to later argument.

6. This appeal is supported by the adjudication officer on the basis that the tribunal failed to comply with its duty to state reasons and findings in fact to support its decision. Paragraph 9 of the adjudication officer's present submission goes, I think, too far: on no view could a requirement for help only in getting in and out of the bath entitle the claimant to succeed. Accordingly I cannot see that anything more than a straightforward assertion in terms of section 72(1)(a)(i) of the Act, which the tribunal made, is necessary if the only finding in fact as to a need for attention or supervision is that made by the tribunal here. I do however agree that something should have been said to indicate to the claimant why the evidence given by him by way of the claim pack was rejected. Very little, I think, was required. That evidence was totally inconsistent with the evidence he gave by way of his statement to the examining medical practitioner. When a tribunal has, as here, two very different accounts of the claimant's evidence and has no independent evidence to resolve the conflict (the examining medical practitioner having proceeded upon the version he had heard) it need, I think, do no more than indicate its preference for one account as having the ring of truth, or because of the circumstances in which it was given. It might, indeed, simply indicate that in view of such a conflict it was not prepared to accept any statement of the claimant which he himself had contradicted. Here, however, even this minimum is lacking; and the first sentence in box 4 suggests the tribunal was not indeed aware of the need to resolve this conflict between contradictory lines of evidence. I have grave doubts whether on any view of the evidence before it the tribunal could properly have made findings in fact which could establish any entitlement to the mobility component, or to the care component other

than made under section 72(1)(a)(ii); but so far as that latter provision is concerned the examining medical practitioner had given an opinion that the claimant could not safely cope with hot pans. At least so far as this question was concerned there was, subject to the issues I have raised in the preceding paragraphs of this decision, a real issue; and that is sufficient for present purposes.

7. For the sake of completeness I should add that I can see no merit in the ground of appeal in so far as it asserts that the decision was reached in breach of natural justice. That appears to be based upon the tribunal's decision to proceed in the absence of the claimant, which in the circumstances of this case was well within their discretion.

8. However, albeit not without hesitation, I allow the appeal.

(signed)

Jonathan J Mitchell
Deputy Commissioner
Date: 9 September 1996