

Higher Rate Mobility Component
- Continuing Rate Blind's Date - (PAG)
DGR/SH/11 MEANING OF 'Blind's' (DATE)

★ 25/95

Commissioner's File: CDLA/192/1994

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992
CLAIM FOR DISABILITY LIVING ALLOWANCE
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the Disability Appeal Tribunal ("DAT") given on 2 November 1993 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the DAT of 2 November 1993. In view of the difficulty of construing what is meant by "blind" and "deaf" in section 73(2)(a) of the Social Security Contributions and Benefits Act 1992 and regulation 12(2) of the Social Security (Disability Living Allowance) Regulations 1991 [S.I.1991 No 2890], and the unpersuasive written submissions of the adjudication officer now concerned, I directed an oral hearing to allow argument on the meaning of the words in question. At that hearing the claimant, who was present, was represented by Mr John Le Cue, Manager of the Bristol Royal Society for the Blind, whilst the adjudication officer appeared by Ms Churaman of the Solicitor's Office of the Department of Social Security.

3. The question for determination by the tribunal was whether the claimant was entitled to the higher rate of the mobility component and/or the middle or highest rate of the care component of Disability Living Allowance. In the event, the tribunal, upholding the decision of the adjudication officer, determined these matters adversely to the claimant. The claimant appeals

on the ground that, as regards the claim for the higher rate of the mobility component, the tribunal failed properly to apply section 73(2) of the Social Security Contributions and Benefits Act 1992 and regulation 12(2) of the Social Security (Disability Living Allowance) Regulations 1991, and as regards the claim for the middle or highest rate of care component they dealt inadequately with the "continual supervision" question. As regards the latter, I can deal with this shortly. The adjudication officer now concerned has rightly pointed out that the tribunal "made insufficient findings of fact as to what supervision needs the claimant actually has, rather than what he receives." Manifestly, there has been a breach of regulation 26E(5)(b) of the Adjudication Regulations, and on that ground alone I must set aside the tribunal's decision.

4. However, the real issue with which I have been concerned in this case is whether the claimant was from the relevant date entitled to the mobility component of disability allowance within section 73 by reason of his falling within sub-section (2) thereof. He will fall within that provision if:-

"(a) he is both blind and deaf; and

(b) he satisfies such other conditions as may be prescribed"

Is the claimant both blind and deaf?
Regulation 12(2) provides as follows:-

" 12. (2) For the purposes of section 73(2)(a) of the Act (mobility component for the blind and deaf) a person is to be taken to satisfy -

(a) the condition that he is blind only where the degree of disablement resulting from the loss of vision amounts to 100 per cent; and

(b) the condition that he is deaf only where the degree of disablement resulting from loss of hearing amounts to not less than 80 per cent on a scale where 100 per cent represents absolute deafness."

I will deal first with what constitutes blindness.

5. Mr Le Cue sought to rely on the definition contained in section 64 of the National Assistance Act 1948. There a "blind person" is defined as meaning "a person so blind as to be unable to perform any work for which eyesight is essential". He contended that that definition was of general application, that the claimant in the present case was such a blind person, and that therefore regulation 12(2)(a) was satisfied. However that

is far too simplistic an approach. The definition of a "blind person" contained in section 64 of the National Assistance Act 1948 is for the purposes of section 29 of that Act. That provision provides for the making of welfare arrangements by the local authority for blind, deaf, dumb and crippled persons etc. It has no application to section 73 of the Social Security Contributions and Benefits Act 1992 or regulation 12(2)(a) of the Social Security (Disability Living Allowance) Regulations 1991, although like the social security legislation it is concerned with the welfare of the blind. But more important, regulation 12(2)(a) is not concerned with blindness as such (whether complete or partial), but with the degree of disablement resulting from the blindness. The 100 per cent relates to the degree of disablement, not to the extent of blindness. Provided a person is suffering from 100 per cent disablement as a result of his blindness, he satisfies the provision, notwithstanding that his blindness may only be partial. But what constitutes 100 per cent disablement arising out of blindness?

6. There is no definition in the Social Security (Disability Living Allowance) Regulations 1991 or, for that matter, in the Social Security Contributions and Benefits Act 1992. However, in Schedule 2 to the Social Security (General Benefit) Regulations 1982 [S.I.1982 No.1408] there is a list of "PRESCRIBED DEGREES OF DISABLEMENT". Item 4 of the "Description[s] of injury" in that list reads as follows:-

"Loss of sight to such an extent as to render the claimant unable to perform any work for which eyesight is essential",

and the degree of disablement prescribed against that condition is 100 per cent. There is, then, in Schedule 2 a convenient description of what constitutes 100 per cent disablement where loss of sight is involved. It is not in dispute that the claimant satisfies that definition. He cannot perform any work for which eyesight is essential. But is that condition sufficient to satisfy the 100 per cent disablement requirement of regulation 12(2)(a)?"

7. The problem is that Schedule 2 to the Social Security (General Benefit) Regulations 1982 was drawn up to enable the principles of assessment contained in regulation 11 to be applied, and such assessment related to "industrial injuries benefit" and nothing else. There is no statutory link between regulation 12(2)(a) of the Social Security (Disability Living Allowance) Regulations 1991 and Schedule 2 to the Social Security (General Benefit) Regulations 1982. But how was it intended that the 100 per cent degree of disablement referred to in regulation 12(2)(a) should be arrived at in the absence of resort to Schedule 2? Miss Churaman was unable to suggest anything other than leaving the question to a medical authority for determination. But that would seem to me to be an unsatisfactory situation in the extreme. What criteria was the doctor to apply? Such criteria had to be defined in order to ensure consistency of application, and to enable the adjudication officer and the

claimant to be satisfied that the doctor concerned had applied those criteria. Ms Churaman suggested that the matter might be ultimately resolved by building up a body of case law consisting of decisions made by doctors over the years on whether in each given case the claimant's condition constituted blindness. However, she agreed that this was a particularly clumsy way of dealing with an important issue. She also informed me that it was originally in contemplation that there should be some link between Schedule 2 and regulation 12(2)(a), but that the draftsman had simply failed to implement it.

8. In my judgment, it would be unsatisfactory in the extreme to allow the criteria of what constitutes a 100 per cent degree of disablement arising out of loss of vision to build up haphazardly over the years (with the inevitable inconsistency of approach) by leaving the matter to the determination of different doctors. In my judgment, the only sensible approach is to tie in the requirement of 100 per cent degree of disablement called for by regulation 12(2)(b), with Schedule 2, (and with the definition contained in section 64 of the National Assistance Act 1948), and if that approach is adopted in the present case, according to Mr Le Cue it cannot be disputed that the claimant has from the relevant date satisfied the condition.

9. The second matter that has to be determined is what constitutes deafness within paragraph 12(2)(b). Again, there is no statutory definition contained in the Social Security (Living Allowance) Regulations 1991. However, there is machinery for assessing deafness in paragraph 34 of, and Schedule 3 to, the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985. There, a formula is set out, and it would seem from what Mr Le Cue told me that, if that formula were applied to the claimant, the claimant would satisfy at least the 80 per cent disablement test. However, once again that formula was drawn up to deal with cases of "occupational deafness", not with the mobility component of Disability Living Allowance. But once again, unless resort is made to the Social Security (Industrial Injuries) (Prescribed Diseases) Regulation 1985, how is the 80 per cent degree of disablement arising from loss of hearing to be arrived at? The same considerations apply here as did those, already discussed, relating to the assessment of 100 per cent degree of disablement resulting from loss of vision. Once again, rather than allow over a long period of time a haphazard evolution of what constitutes a requisite degree of disablement, it would seem to me desirable to make a link between regulation 12(2)(b) and the formula contained in paragraph 34 of, and Schedule 3 to, the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985.

10. Unfortunately the tribunal did not even consider the possibility that the claimant might bring himself within section 73(2), and accordingly I must set aside their decision on that ground also. Again there was a clear breach of regulation 26E(5)(b).