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WRB 147

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Commissioner's File:

CDLA/13853/1996

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF A DISABILITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Disability Appeal Tribunal: Liverpool

Case No:

1. My decision is that the decision of the disability appeal tribunal ("DAT") given on 4 December 1995 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 4 December 1995.

3. The claimant had been awarded by the adjudication officer the care component of disability living allowance at the lowest rate. The claimant was content with this award as regards care component, but dissatisfied with not having been given an award of the mobility component. He therefore appealed on this issue, and on this issue alone. In the event, the tribunal proceeded on the basis that the appeal was at large, and that it was open to them to consider whether or not the claimant was entitled to either the care component or the mobility component. In the event, they decided that the claimant was entitled to neither. The claimant now complains that the tribunal should never have interfered with the award of the care component that had already been made to him by the adjudication officer, and which was not the subject matter of his appeal.

4. The relevant statutory provision is section 33 of the Social Security Administration Act 1992. This reads as follows:-

"33. (4) Where a person who has been awarded a disability living allowance consisting of one component alleges on an appeal that he is also entitled to the other component, the tribunal need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

.....

(6) The tribunal should not consider -

(a) a person's entitlement to a component which has been awarded for life;

(b)

(c) unless -

(i) the appeal expressly raises that question; or

(ii) information is available to the tribunal which gives it reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue."

5. Unfortunately, the regional adjudication officer who made the award of the care component at the lowest rate did not state for what period it was made. Unless it was for life, the restricting effect of sections 33(6) had no application. In those circumstances, the tribunal should first have investigated whether or not the existing award was for life, but unfortunately they failed so to do. In the absence of an answer to the question whether or not the existing award was for life, the tribunal were not entitled to disregard section 33(6), and decide that the claimant was not entitled to the care component. Moreover, if they took the view that, even on the basis that the award was for life, there was nevertheless fresh evidence to show that the award should never have been made, then they should have identified that fresh evidence.

6. But, in any event, even if the tribunal took the view that there was fresh evidence to overturn the existing award, they should have adjourned the matter to enable the claimant to the claimant to deal with it. Manifestly, the claimant was taken by surprise, in that his appeal only related to the

mobility component. If the tribunal were minded to consider also the care component, they should have adjourned the hearing to enable the claimant to assess the position and bring whatever evidence he wished.

7. Accordingly, for the reasons given above, I am satisfied that the tribunal erred in point of law, and that the decision should be set aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have to first decide whether or not the existing award was for life, and if they wish to overturn it, identify the fresh evidence on which they rely. The claimant will by now be alerted to the need to deal with this issue if the tribunal wish to pursue it. When this issue has been disposed of by the tribunal, they will need to consider the undoubted subject of appeal, namely whether or not the claimant is entitled to the mobility component of disability living allowance.

8. I allow this appeal.

(Signed) D G Rice
Commissioner

(Date) 1 October 1997