JMH/SH/IW

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CIB/2913/2001
CIB/2918/2001

SOCIAL SECURITY ACT 1998

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER J M HENTY

Claimant	:	Mrs Beverly Catherine Vincent
Tribunal	:	Cwmbran
Tribunal Case No.	:	U/03/191/2000/00382

> "The representative argued that the question on incontinence is whether or not she loses control of her bladder not whether the cause is stress or any other form of incontinence. She claimed that coughing bouts caused her to wet herself everyday and that she wore incontinence pads which she changed twice a day. She was not wearing a incontinence pad at the hearing. The tribunal concluded that her account was exaggerated and that she suffered occasional leakage or dribbling (amounting to a loss of control). Descriptor 13(g) was applied."

The cause of the incontinence does not seem to me to be relevant: what is relevant is the seriousness of the incontinence, and it seems to me that the tribunal have properly addressed this point.

10. The appeal is therefore dismissed.

(Signed) J M Henty
Commissioner

(Date) 17 May 2002

1. These appeals are dismissed.

2. These are two appeals from a single decision of an appeal tribunal dated 3.1.01. CIB/2913/2001 concerns an appeal from a decision maker's decision of 10.10.2000 that, on her PCA, the claimant scored 10 points only, and was not, therefore, entitled to incapacity benefit. CIB/2918/2001 concerns an application to reconsider the decision of 10.10.2000. Both appeals thus are dependent on similar considerations. Both appeals were dismissed by the appeal tribunal.

3. The claimant suffers from chronic bronchitis. She made a claim for incapacity benefit and, on 7.9.99, the EMP certified that she was suffering from an exempt category specified in the General Regulations of 1995, regulation 10(2)(e)(iv) viz a progressive impairment of cardio-respiratory function which severely and persistently limited effort tolerance. However, the doctor added that the condition would, in his view, be likely to improve in six months. Accordingly, benefit was awarded.

4. Some six months later, the claimant was required to undergo a fresh test. On that occasion, the doctor could not certify that she was in any exempt category and, accordingly, she had to undergo a PCA. The questionnaire (IB50) can be found at pps.39-58. The claimant clearly considered all the descriptors, confidently ticking the boxes which she herself thought appropriate. They were walking – 7 points, stairs - 7 points and incontinence - 3 points. Walking and stairs double up, so that there was a net claim of 10 points. The claim as regards incontinence was that she lost control at least once a month.

5. The EMP examined her on 20.6.00, agreeing with walking – 7 points but disagreeing with stairs for which she awarded 3 points only. He noted that she goes up the stairs and holds on. However, he added 3 points for bending stating – "assessment, some difficulty bending because of breath" – based on his observation at the hearing. However, he disallowed the 3 points for incontinence. I will deal with that specifically later on. This achieved the same score of 10 points. She therefore did not pass the PCA.

6. The claimant then sought the assistance of a representative from a local welfare rights body, who prepared the submissions for the appeal to the tribunal to be found at pps.7-10. That listed no less than 11 separate items, and put the following descriptors in issue:-

walking - 50 metres not 200 – 15 points.

rising from sitting

bending and kneeling

lifting and carrying a 2.5k bag of potatoes in either hand – 8 points

stairs including a stop 7 points. (This last in fact makes no significant difference since it doubles up with walking for which there is an agreed assessment of 7 points.)

The representative also made the point that some of the activities could not be repeated with reasonable regularity.

7. This account painted a vastly different picture from that described by the claimant herself when completing the questionnaire. In particular, I find the misunderstanding of walking distance, 20 metres not 200, frankly incredible. Rightly or wrongly there has, I have noted, been an apparent trend that when a case is later considered by some semi-professional body, it is very often put on a stronger basis. A mere statement by the representative concerning the claimant's capabilities or disabilities which is significantly different from the claimant's original own assessment of his or her condition, requires some supporting evidence. The original questionnaire is expressed in pretty plain and simple language, and, doubtless, it has been drafted with that in mind. It makes the gist, although not necessarily the detail, of the questions to be answered fairly clear. In those circumstances, I think that a decision-maker is normally entitled to accept the answers as prima facie truthful, subject to the result of the medical examination. I would note that in this case there is, in fact, a large measure of agreement between the claimant's own assessment of her condition and that made by the EMP . The only differences were that the EMP awarded 3 points for bending and kneeling, and refused any points for incontinence. The fact that he awarded 3 points rather than 7 for stairs is, for practical purposes, insignificant. When faced, as in this case, with a very significant amendment of the claimant's alleged capabilities it seems to me that some further corroborative evidence is required. In R v. Kilbourne 1973 A.C. 729, Lord Reid helpfully addressed the question of corroboration generally at p750 thus:-

> "There is nothing technical in the idea of corroboration. When in the ordinary course of affairs of life one is doubtful whether or not to believe a particular statement one naturally looks to see whether it fits in with the other statements or circumstances relating to the particular matter; the better it fits in, the more one is inclined to believe it. The doubted statement is corroborated to a greater or lesser extent by the other statements or circumstances with which it fits in."

That dictum is, I think, in point in the present case.

8. It, therefore, seems to me to be altogether expected that the tribunal were somewhat sceptical of the representative's submissions. What they said was:-

> "The main issue was whether the appellant's account in the IB50s and the Examining Medical Practitioner was more accurate than that given to the tribunal. The tribunal considered that the evidence given to it by the appellant was less likely to be reliable because she would have had the benefit of discussing the descriptors with her representative whereas in the IB50s and before the examining medical practitioner she gave her own account. It is true that the examining medical practitioner allowed a limitation on bending and kneeling which was not in the IB50s but that was based on observed difficulty during the examination."

Accordingly they regarded the submissions of the representative and the evidence at the tribunal as exaggerated. I see no reason to interfere with that finding.

9. I think, however, I should make a point concerning incontinence. In the questionnaire, the claimant asserted that she lost control of her bladder at least once a month. The EMP commented "No true incontinence. Some stress".

The tribunal stated:-