

SOCIAL SECURITY ACTS 1975 TO 1990  
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR SEVERE DISABLEMENT ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Newcastle-u-Tyne

Case No: [REDACTED]

1. This claimant's appeal succeeds. My decision is that the decision of the medical appeal tribunal (MAT) dated 27 July 1992 is erroneous in law. I set it aside and refer the case to another MAT for determination in accordance with my directions.

2. The claimant made a claim for severe disablement allowance on 30 May 1990. She was examined by an adjudicating medical authority (AMA) on 6 July 1990. The AMA assessed disablement at 80% for the period 1 November 1989 to 30 October 1991, that due to familial deafness being assessed at 55%. For the purposes of reassessment the claimant was seen by a further AMA on 11 September 1991 who assessed disablement at 67% for the period 31 October 1991 to 22 February 2002, that due to deafness being assessed at 50%. The claimant appealed against the decision of the AMA given on 11 September 1991 to an MAT.

3. The MAT held a hearing on 27 July 1992, when they examined the claimant. Their decision was:

"The decision of the Adjudicating Medical Authority is not confirmed.

The extent of the disablement is to be assessed at 57 per cent for the period from 31.10.91 to 22.2.95."

4. Their recorded findings of fact were:

"We have examined the claimant and her oral and scheduled evidence, and the medical reports of Dr McKinty (2).

EXAMINATION: Her blood pressure was 200/100. There was a full range of movement of both elbows without pain. She has a mild bilateral hallux valgus but nevertheless range of movement was satisfactory with little discomfort.

She was tender on palpation over the lower costo chondral junctions.

Fingers: She had early Heberden's nodes affecting the index and middle finger of the right hand and the index finger of the left. She exhibited a reasonable range of movement with little discomfort.

Condition diagnosed	Disability (if any)	% Disablement (if any)
Deafness		40%
Migraine		3%
Elbow disability (both)		6%
Hypertension		0%
Costa chondritis		3%
Anaemia		0%
Irritable colon		3%
Finger disability		2%
	Total Disability	57%"

5. Their recorded reasons for their decision were:

"We consider that the deafness was over-assessed by the previous Adjudicating Medical Authorities but it is still a considerable disability but helped by her hearing aids."

6. The claimant appeals against this decision on the principal ground that the MAT's reasons for their decision are inadequate. The Secretary of State, in a written submission dated 24 March 1993, supports the appeal submitting that it is erroneous in law in that it does not comply with regulation 31(4) of the Social Security (Adjudication) Regulations 1986 which requires the MAT to set out a statement of reasons for their decision, including their findings on all questions of fact material to the decision. The statement should be recorded, the Secretary of State submits, in such a way that the claimant will be able to understand and discern why the MAT reached the decision which they did reach: see R(A) 1/72 at paragraph 8. It was submitted that the MAT's reasons left a lot to be desired. In particular, they had not shown why the period of the assessment had been reduced by 7 years.

7. I agree with this submission. It should be added that the MAT recorded that the claimant had a considerable hearing disability but was helped by her hearing aids. They found as a fact that she wore a hearing aid in each ear with excellent conversational results. It is not clear how their 40% assessment for disablement for that condition relates to those facts. Was it for deafness with or without correction by hearing aids?

Further, the MAT have not considered the inconvenience factor arising from the use of hearing aids: see decision R(I) 7/63; R(I) 7/67 (both reported decisions) and CS/89/90 (starred as 66/91, unreported). The decision of the Court of Appeal in the cases of Kitchen & Others v Secretary of State for Social Services, judgment delivered on 30 July 1993 and a report of which is contained in the Times Law Report of September 14, 1993 reinforces my conclusion that the reasons given by the MAT are insufficient, (in particular for the specific reasons set out above) to comply with regulation 31(4) of the 1986 Regulations.

8. I set aside the decision of the MAT as erroneous in law and refer the case to another MAT which should be entirely differently constituted. That MAT should ensure that their decision covers the requirements laid down by the Court of Appeal in their judgment in Kitchen & Others v Secretary of State for Social Services relating to the reasoning in MAT decisions. A transcript (or, if fully reported, the law report) of the judgment of the Court of Appeal in that case should be before the fresh MAT. As regards the period of assessment, and the assessment in respect of deafness, see the remarks in paragraphs 6 and 7 above.

9. The MAT should ensure that their findings also cover all other relevant points raised by or on behalf of the claimant or the Secretary of State and that the record of their decision complies with regulation 31(4) of the 1986 Adjudication Regulations.

10. My decision is set out in paragraph 1.

(Signed) V G H Hallett  
Deputy Commissioner

Date: 2 December 1993