



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/3484/2007

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992
SOCIAL SECURITY ACT 1998**

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

COMMISSIONER: MR J MESHER

Claimant:

Tribunal: Middlesbrough

Tribunal Case No: 234/07/00044

Date of tribunal hearing: 5 April 2007

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The claimant's appeal to the Commissioner is allowed. The decision of the Middlesbrough appeal tribunal dated 5 April 2007 is erroneous in point of law, for the reasons given below, and I set it aside. The case is referred to a differently constituted appeal tribunal for determination in accordance with the directions given in paragraph 10 below (Social Security Act 1998, section 14(8)(b)).

2. In this case, the representative of the Secretary of State has suggested in a reasoned submission that the case be remitted to a new appeal tribunal for rehearing. The claimant's representative did not object to that suggestion when replying. In the circumstances there is no need to set out all the details of the case, but I should give brief reasons for setting aside the appeal tribunal's decision.

3. The appeal tribunal was concerned with the claim for disability living allowance (DLA) treated as made on 15 March 2006. In the claim pack the claimant's illnesses and disabilities were identified as "Severe asthma, COPD, arthritis (multiple joints, depression and anxiety, memory problems". She stated that her walking outdoors was limited to 100 yards before the onset of severe discomfort because of breathlessness. She stated that she needed someone with her outdoors and described her problems as follows:

"Need someone to show me the way. Also I may forget where I am going and get lost. I suffer from memory loss and confusion, sometimes my mind goes blank when I am in places I don't know well. I also suffer from anxiety."

The claimant also recorded needs for help with several activities, but for the purposes of this decision I do not need to go through them.

4. A questionnaire was sent to the GP named on the claim pack, Dr Contractor, who signed the completed form on 15 May 2006. He confirmed the diagnosis of depression, with anxiety, and that the claimant remained under the care of a psychiatrist. In the section on details, if known, of the effects of the disabling condition on day to day life, he wrote OK against "Ability to get around including pain, gait, balance, breathlessness and visual loss" and against "Insight and awareness of danger". A questionnaire was also sent to the consultant neurologist dealing with the claimant's memory problems, answered by a Mr Young on 14 June 2006, but not to the psychiatrist who had been named on the claim pack. Mr Young confirmed the diagnosis of memory problems, cause unknown, but with possibilities including depression or mild dementia. Question 9 asked first whether the claimant's concentration and ability to walk out of doors without risk was affected by her condition. The No box was ticked. The second question, only to be answered if the answer to the first question was Yes, was whether help was needed from someone else to enable the claimant to get around in familiar and/or unfamiliar surroundings. Neither box was ticked.

5. On that evidence, the decision was given on 20 June 2006 that the claimant was not entitled to either component of DLA from and including 15 March 2006. She asked for a

neuropsychological assessment reported in a letter dated 19 July 2006 and the results of a forthcoming examination by a consultant to be taken into account. A questionnaire addressed to the consultant was completed by a specialist registrar in respiratory medicine and dealt with the claimant's breathlessness. But there was a suggestion that her significant anxiety and depression might be contributing to that problem.

6. The claimant appealed. She attended the hearing on 5 April 2007 with her representative, Mr Watson of Stockton & District Advice & Information Service, and gave quite extensive evidence. The appeal tribunal disallowed the appeal. In relation to the lower rate of the mobility component it said this in its statement of reasons:

"The claimant says that she has panic attacks, that her mind goes blank and she has no sense of direction and times. However, the claimant presented well at the Tribunal hearing and gave clear evidence to us. She has a history degree and is obviously an intelligent lady. Dr Contractor records that the claimant gets bouts of depression and anxiety but he considers that she has insight and awareness of danger and Dr Young, the Consultant Neurologist in his report of the 14 June 2006 states that the claimant's concentration and ability to walk out of doors without risk is unaffected by her condition. We accept Dr Young and Dr Contractor's opinions as regards the claimant's psychiatric condition. The claimant goes out seemingly on her own in the car and for our part we do not accept that the claimant has any difficulty walking out of doors in familiar or unfamiliar places most of the time. We moreover do not accept that she is either physically or mentally disabled as to require guidance or supervision and we do not accept that she satisfies the criteria for lower rate mobility."

7. The claimant now appeals against the appeal tribunal's decision. When granting leave to appeal to the Commissioner, I said this:

"It is arguable that the appeal tribunal failed to give adequate reasons for its conclusion on the lower rate of the mobility component. The question on the GP's factual report form completed by Dr Contractor (pages 44 to 48) does not adequately direct a GP's attention to the conditions of entitlement to the lower rate. The form completed by Mr Young (pages 51 to 57) seems positively misleading and mistaken on a point of law in asking the question about a need for help to get around out of doors only if the claimant's concentration and ability to walk out of doors without risk are affected by her condition. Then intelligence and level of educational attainment are no necessary protection against problems of anxiety, panic attacks etc. Nor does an ability to present well at a tribunal or to drive on some routes necessarily indicate an absence of problems when walking out of doors. When problems are in their nature irrational, a person may be able to function perfectly well in some areas of life, but not be able to in areas that from the outside look similar."

8. In the submission dated 28 December 2007 the representative of the Secretary of State supported the appeal. It was submitted that, while the fact that medical evidence was not given in terms that precisely reflected the terms of the statutory conditions of entitlement did not render that evidence irrelevant, an appeal tribunal would have to explain how it related

that evidence to the terms of the statutory conditions. The reasons of the appeal tribunal of 5 April 2007 were said to be inadequate in that respect. The claimant's representatives had no further comments in reply.

9. I was asked on behalf of the Secretary of State to note the decision of Mrs Commissioner Brown in Northern Ireland in R 1/07 (DLA), which I do. The Commissioner said there an ability to plan a journey, drive a car and therefore react to road conditions can be indicative of clear headedness and competency, which is obviously relevant to the ability to walk on unfamiliar routes without guidance or supervision. I respectfully agree, but note that such matters were merely said to be relevant, not decisive. Everything depends on the circumstances of particular cases. In cases where psychological problems like anxiety or depression play a part a claimant may feel safe and secure in a car, but not when walking. Abilities to perform competently in some areas do not necessarily translate across to other areas and the fact that the difference cannot be rationally explained does not mean that it is not genuine.

10. For the reasons given when I granted leave and for the reason accepted by the Secretary of State, I now conclude that the appeal tribunal's decision was erroneous in point of law and I set it aside. The claimant's appeal against the decision of 20 June 2006 is referred to a differently constituted appeal tribunal for determination in accordance with the following directions. There must be a complete rehearing of the appeal on the evidence presented and submissions made to the new appeal tribunal, which will not be bound by any findings made or conclusions expressed by the appeal tribunal of 5 April 2007. I do not need to give any directions of law on the conditions of entitlement to DLA beyond the reminders to take account of the points made in paragraphs 7 to 9 above about the lower rate of the mobility component and that the statutory test is not in terms of risk or of needs for supervision to avoid substantial danger, but in simple terms of ability to take advantage of the faculty of walking without guidance or supervision (see Commissioners' decisions CDLA/42/1994 and R(DLA) 4/01). Although I have concentrated in this decision on the lower rate of the mobility component, all potentially applicable rates of both components must be considered afresh. The evaluation of all the evidence will be entirely a matter for the judgment of the members of the new appeal tribunal. The decision on the facts in this case is still open.

(Signed) J Mesher
Commissioner

Date: 17 April 2008