

File no: CDLA 4138 2001

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal.

2 The appellant is appealing with my permission against the decision of the Leeds appeal tribunal on 25 September 2001 that the appellant was not entitled to either component of disability living allowance from and including 29. 6. 2000.

3 For the reasons below, the decision of the tribunal is erroneous in law. I set it aside. I refer the appeal to a differently constituted tribunal for determination in accordance with the directions given in this decision (Social Security Act 1998, section 14(8)(b) and (9)).

4 I deal with the reasons for my decision briefly. I invited both parties to agree to a short decision on the grounds that I set out in my grant of permission to appeal only. The secretary of state's representative agreed with this. The representative for the appellant did not, but did not disagree with the grounds I gave. In my view, that being so, I should set aside the decision on those grounds and now do so. I deal with the additional matters raised by the appellant separately.

5 In granting permission to appeal, I gave as my reasons:
"Permission to appeal is granted because the applicant's grounds of appeal with regard to the lower rate of the mobility component are arguable. The statement "in the event that she suffers a short epileptic attack once per week it is not possible to say that she requires guidance and supervision..." is either applying the wrong test or stating the tribunal conclusions inadequately. The question is whether she reasonably requires supervision because she suffers grand mal epilepsy, when considered with her other problems. To decide if she needs supervision for that reason, given also her other problems including those causing falls and stumbles, requires a decision on the facts that the tribunal appears to have excluded without considering those facts. Alternatively, it has not recorded its findings as to those facts. Is the tribunal saying that the danger of her attacks causing harm is too remote in her circumstances even though she has attacks once a week? It is noted that there are no grounds of appeal raised against consideration of the care component.

I have not considered the ground of appeal relating to the way the hearing was conducted, as I do not need to do so if the parties agree that the appeal be allowed on the above ground. Otherwise, it should be investigated."

6 The further submissions of the appellant relate to the final paragraph of those reasons. One of the grounds of appeal was that the tribunal chairman refused to allow the named representative of the appellant (and the representative in this appeal) to speak during the tribunal. It is stated that he was only allowed to speak at the end of the hearing. The record of proceedings was also challenged.

7 As this case is being reheard the separate issues about the record of proceedings should become irrelevant, but I direct the new tribunal to ignore that

record in this case as the accuracy has been challenged and that issue has not been dealt with.

8 I also do not need to deal with the issue of the conduct of the tribunal hearing. Fairness would require that before I took the matter further I should invite the comments of the chairman. But to do so would delay the case with no net effect on the benefit entitlement of the appellant, as the tribunal decision is set aside in any event. While noting the reservations about the record of proceedings, I do note that the record starts with statements attributed to the appellant, without any remarks attributed to the representative. If the representative is (as he was, And as the record of proceedings formally records) duly notified and named, then it is for the appellant and representative to put the case in the way they wish, at least in opening it. If the chairman refused to let the representative speak on behalf of his client as the appeal opened then the appellant may have been denied a fair hearing. But there may be other explanations of which I am not aware. I draw this to the attention of the new tribunal, which will no doubt take it into account in conducting its rehearing.

David Williams
Commissioner

07 February 2002

[Signed on the original on the date shown]