

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Derby Disability Appeal Tribunal (hereinafter called DAT) dated 30 June 1995 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing by a differently constituted DAT.

2. This is an appeal by the claimant to the Commissioner with the leave of the chairman of the DAT against the decision of the DAT in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in the written submission of the adjudication officer first involved in these appeals to the DAT. In respect of those matters and of the submission of the adjudication officer now involved in these appeals dated 17 January 1996 the claimant has had the opportunity to comment and I have through his representatives their observations dated 5 February 1996. No useful purpose is to be served by my setting out these matters afresh here other than I do in this decision.

4. The relevant statutory provisions as also the guidance afforded by the decisions of the Commissioner are referred to in paragraph 2 of the submission dated as aforesaid. Nothing is to be gained by my setting out those references afresh here. I would however state that regulation 29(5) of the Social Security (Adjudication) Regulations 1995 consolidates the provisions of regulation 26E(5) of the Social Security (Adjudication) Regulations 1986. These are reproduced at paragraph 12 of the submission dated 17 January 1996 and imposed the duty upon the DAT of making adequate findings of

fact and giving adequate reasoning to support the grounds of their decision.

5. In my judgment the decision of the DAT is erroneous in point of law as they have breached the statutory requirements imposed upon them by regulation 29(5)(b) referred to in paragraph 4 above. To my mind the submission of the adjudication officer dated as aforesaid at paragraphs 7 to 12 inclusive is rightly made. No useful purpose is to be served by my setting out in other words what is there adequately dealt with. Suffice it to say that I adopt those paragraphs of that submission as part of my judgment. In addition the DAT have failed to deal with the issue of the speed the claimant walks and in this regard I refer to CM/145/1988. As indicated in paragraph 6 below all issues of fact are at large before the newly appointed DAT and this of course is one of them.

The case has in any event to be remitted to a newly appointed DAT which I do in accordance with paragraph 6 of this decision. The issue of natural justice is in dispute. It has been raised by the claimant's representatives in their application for leave to appeal, referred to in paragraph 6 of the submission dated as aforesaid and again raised at the commencement of (in the first two paragraphs thereof) the observations dated 5 February 1996 of the claimant's representatives. The adjudication officer at the conclusion of paragraph 6 submits:-

"I further submit that if the Commissioner is so minded, it is open for him, on the issue of a possible breach of natural justice, to direct that comments from the tribunal chairman and members be obtained via the regional chairman."

As the case has in any event to go back to a newly appointed DAT I can see no useful purpose to be served by my accepting the above - there would certainly be a measure of delay and in my experience no certainty thereafter - the alternative course would be for an oral hearing at which the parties who were before the DAT were cross-examined as to what actually occurred. This to my mind would be an entirely time-wasting procedure as in the instant case the case has to be remitted in any event. Accordingly I can see no useful purpose to be served in pursuing this issue further. One further matter arises as to the point raised in the observations dated 5 February 1996:-

"I submit that if a claimant is in severe discomfort or severe pain whilst seated and his pain or discomfort is not eased by walking, they should be judged able to walk no distance at all, regardless of how many yards they can progress on foot."

I do not accept this as a proposition of law. As indicated at the conclusion of paragraph 6 hereof all issues of fact are at large before the newly appointed DAT.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the newly appointed DAT as the arbiters of fact in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions in the light of the guidance afforded by the decisions of the Commissioner referred to in paragraph 4 hereof and make and record their findings on all the material facts and give reasons for their decision. All issue of fact are at large before the newly appointed DAT.

7. Accordingly the claimant's appeal is allowed.

(Signed) J. B. Morcom
Commissioner

(Date) 17 October 1996