

Endogenous depression = specific mental
disablement - claimant proved incapacity
for work.

ATH/SH/7/MD

Commissioner's File: CS/181/1986

C A O File: AO 4417/V/1920

Region: Wales & South Western

SOCIAL SECURITY ACTS 1975 TO 1986
CLAIM FOR INVALIDITY BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George Steven Thomas Mainwaring

Appeal Tribunal: Llanelli

Case No: 23/1

[ORAL HEARING]

1. I allow this appeal by the claimant. My decision is that for the period from 22 January 1986 to 19 May 1986, both dates included, the claimant was incapable of work by reason of some specific disease or bodily or mental disablement within the meaning of section 17(1)(a)(ii) of the Social Security Act 1975. Accordingly, I set aside the decision of the social security appeal tribunal dated 20 May 1986, and substitute my own decision.

2. The claimant was born in 1956. From 1 August 1985 the claimant was in receipt of invalidity benefit, firstly because of shoulder sprain and, as from 11 September 1985, because of depression. On 24 October 1985 the claimant was examined by a Divisional Medical Officer whose opinion, in form RM9, was that the claimant was not incapable of work. On 4 November 1985 the claimant's general practitioner signed a form Med 3 stating that the claimant should refrain from work until 6 November 1985 because of depression. On 26 November 1985 the claimant made a further claim for invalidity benefit as from 25 November 1985 because of depression. On 14 January 1986 the claimant was examined by a different Divisional Medical Officer whose opinion, in form RM9, was that the claimant was not incapable of work. By a decision issued on 22 January 1986 the adjudication officer decided that invalidity pension was not payable from 22 January 1986 to 6 February 1986 both dates included because the claimant had not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement. The claimant appealed and the adjudication officer referred to the tribunal for a decision whether the claimant had proved incapacity for work for the further period from 4(sic) February 1986 to 17 February 1986, both dates included. The claimant submitted further doctor's statements covering the inclusive period from 20 February 1986 to 19 May 1986 and the adjudication officer referred those claims to the appeal tribunal for their determination. [The date "19.8.86" in the last line of paragraph 2 of the adjudication officer's second supplementary submission (at page 49 of the file) is clearly a misprint for "19.5.86".] On 20 May 1986 the appeal tribunal disallowed the claimant's appeal and held that invalidity pension was not payable from 22 January 1986 to 6 February 1986, inclusive, and from 4 February 1986 to 17 February 1986 inclusive. The claimant now appeals with leave of another Commissioner.

3. On 20 November 1987 I held an oral hearing. The claimant was present and was represented by Mr Joseph of the Child Poverty Action Group, West Glamorgan. The adjudication officer was represented by Mr Johnson of the Chief Adjudication Officer's Office. I am grateful to them for their attendance and assistance.

4. At the oral hearing the claimant gave evidence. He said that he was one of eight children, he being the fourth child. When he was six his parents emigrated to Canada where his father had a job. At some stage they went to the United States and then in 1971 he, the claimant, came to the Channel Islands to stay with his grandparents. His parents were divorced and I understood him to say that his father had had a drink problem. He lived with his grandparents in Jersey for two years and went to school there. Then, as a result of a row between his mother and his grandmother, his mother brought him back to live with her in Wales. He did not want to leave Jersey and he was taken away from school before he had taken any CSE examinations or 'A' Levels. In Wales he obtained a few jobs principally as a building labourer in the construction industry. In about 1975 he took an overdose of drugs and received psychiatric treatment. Then in 1977 he married and he now had two children, one aged 10 and the other aged 5. He then obtained work in a steel works but they had a strike and in about 1981 the factory was closed and he lost his job. He had applied to Job Centres for a job but the only building work available was for a tradesman, which he was not. He had no qualifications for any other job although in about 1984 he did start a painting and decorating course which was due to last for six months but he was unable to continue for more than four weeks. He explained that for the last four years or so he had been unable to persevere at anything for more than a week at a time; that he took no pride in himself, that he had lost weight and did not have much sleep. Although he liked to keep fit and used to play rugby he had not done so recently, although he did spells of weight training and sometimes went running. He was now separated from his wife and living in and bed breakfast lodgings.

5. The benefit history sheet (at pages 2 and 4 of the file) shows that he received sickness benefit from 29 August 1979 to 9 October 1979 because of debility and depressive attacks and that he received invalidity benefit for a number of periods from October 1979 to December 1982 because of vertigo; that there was a further period of debility on 5 April 1983. In 1984 he received invalidity benefit for an injured shoulder and then from 14 May 1984 to 28 May 1985 because of headaches. From 1 August 1985 he received invalidity benefit first for a shoulder sprain and then from 11 September 1985 for depression and that benefit was paid until 22 January 1986 when invalidity benefit was disallowed as a result of the adjudication officer's decision issued on that date.

6. In his submission on appeal to the Commissioner the adjudication officer pointed out in paragraph 5 that in their decision the appeal tribunal stated, in form AT3, box 3, that invalidity pension was not payable from 22 January 1986 to 6 February 1986 and from 4 February 1986 to 17 February 1986 and that they had made no decision in respect of the subsequent referral periods from 20 February 1986 to 19 May 1986 overall. He submitted, therefore, that the period at issue in the appeal comprised only the period 22 January 1986 to 17 February 1986. However at the oral hearing before me Mr Joseph and Mr Johnson agreed that I should deal with the overall period from 22 January 1986 to 19 May 1986.

7. The claimant between August 1985 and April 1986 submitted a number of forms Med 3 signed by his general practitioner. In those dated 7 August and 14 August 1985 the doctor certified that the claimant should refrain from work because of "shoulder strain" and "shoulder injury" respectively; and then in those dated 11 September, 9 October and 4 November 1985 the diagnosis was "depression". The claimant was signed off on 4 November by his doctor but on 3 December 1985 the doctor signed a further form Med 3 in which the doctor diagnosed "depression" and that was the diagnosis in the forms dated 9 December 1985, 7 January and 4 February 1986; in the form dated 20 February 1986 the diagnosis was "acute depression" and in the form dated 10 March 1986 it was "anxiety state"; finally in the forms dated 26 March and 22 April the diagnosis was again "depression".

8. On the other hand, the Divisional Medical Officer who examined the claimant on 24 October 1985 stated in form RM9 that the claimant complained of depression, headaches and occasional pain in the left shoulder and the DMO added "No depression today". In his opinion the claimant was not incapable of work. Similarly, the different Divisional Medical Officer who examined the claimant on 14 January 1986 stated in form RM9 that the claimant complained of feeling "run down" and added "No evidence of depression today". In his opinion the claimant was not incapable of work.

9. After the date of the hearing before the appeal tribunal, the claimant was referred to a consultant psychiatrist whose report is dated 13 October 1987. As this appeal is not restricted to an appeal on law only, and I can decide questions of fact as well as of law, I can, of course, consider that report even though it was not before the appeal tribunal. I have found the report very helpful. In it the consultant has described the claimant's symptoms and states:

"Both in his personal appearance and in his description of his clinical symptoms, [the claimant] exhibits a picture typical of an endogenous type of depressive illness. It is of a relapsing and remitting type and the cycle seemed to have been occurring for at least the past 8 years. The phases of depression seem to last several months whilst the periods [of] euthymia are much shorter lived. The longest phase of normal energy, interest and mood that [the claimant] has experienced in the past 8 years has lasted but 8 weeks."

The consultant then refers to the treatment by the general practitioner which "has been frustrated by [the claimant's] view that all tablets were prone to be addictive" and the consultant concludes:

"The patient tells me that at the time under dispute... he was suffering from symptoms very similar to those that he is experiencing at this time. I have no reason whatsoever to doubt his truthfulness and if his illness at that time had the same characteristics and severity as his present depressive state, he could not have been expected to sustain any regular working effort."

10. Mr Johnson has submitted that that report was of only limited value since the consultant relied heavily on information obtained from the claimant himself and that the consultant had seen the claimant on only that one occasion - namely, as is stated in the report, the afternoon of 9 October 1987. Mr Joseph in answer to that submission points out that the two Divisional Medical Officers had not seen the claimant before the date of their respective examinations and suggested that their examinations were likely to have been very much shorter than the examination by the consultant psychiatrist.

11. Mr Johnson further submitted that for the purpose of proving incapacity within the meaning of section 17(1)(a)(ii) of the Act of 1975, the claimant had to prove that he was incapable of work by reason of some "specific disease" or bodily or mental disablement. Mr Joseph in response submits that endogenous depression is a specific mental disablement. He submitted that it was a clinical depression which was not caused by nor consequent upon any rational or external influences. Having heard a little of the claimant's life from the claimant in his evidence, I would not have been surprised to hear that the consultant psychiatrist had diagnosed a reactive depression. The consultant psychiatrist has, however, diagnosed an endogenous depression and, in my judgment, that does constitute a specific mental disablement for the purpose of section 17(1)(a)(ii).

12. Having considered all the evidence and having heard the claimant himself, I am satisfied that he has proved that he was incapable of work during the period in question by reason of "some specific... mental disablement". I note that the consultant psychiatrist in her report refers to the severity of the claimant's then present depressive state and Mr Joseph concluded his submission with the vivid phrase that the consultant psychiatrist

"has allayed the fears which had crippled the claimant". There is no doubt that a severe depression, while it lasts, is, or can be crippling. While it lasts it is unlikely to be cured or helped by any exhortation to "pull yourself together".

13. Accordingly, I allow this appeal. My decision is as set out in paragraph 1 above.

(Signed) A.T. Hoolahan
Commissioner

Date: 18 January 1988