

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal. For the reasons below, the decision of the tribunal is wrong in law. It is set aside. I refer the appeal to a new tribunal to consider in accordance with the directions in this decision.

2 The claimant and appellant is appealing with my permission against the decision of the Bexleyheath tribunal on 11 03 2008 under reference 168 07 03681.

3 DIRECTIONS FOR REHEARING

A The rehearing will be at an oral hearing.

B The new tribunal should not involve any member who has previously been a member of a tribunal involved in this appeal.

C The claimant is reminded that the tribunal can only deal with the appeal as at the date of the original decision under appeal.

D If the claimant has any further written evidence to put before the tribunal, this should be sent to the tribunal within one month of the issue of this decision.

These directions are subject to any later direction by a district chairman.

REASONS FOR THE DECISION

4 The parties have agreed that I should set aside the decision of the tribunal, and refer it for rehearing, for the reasons given when I granted permission to appeal. These are:

“The Secretary of State awarded the appellant the lowest rate of the care component of disability living allowance. The tribunal reduced this award to a nil award. There was an oral hearing of the appeal, but there was no secretary of state's representative present. There is no indication in either the record of proceedings or statement of reasons that the tribunal gave the appellant any warning either at the start of the proceedings or at any other stage that it might reduce his benefit. The tribunal therefore put neither party on notice of its intention. In those circumstances, I agree with the grounds of appeal that the tribunal's approach is in breach of natural justice. I do not therefore need to consider any other ground of appeal. The case should be reheard.”

5 I put the appellant on notice that, if he continues with this appeal, the new tribunal will now be at liberty to reduce the award as well as to confirm it or increase it on any appeal without further notice to him. The appellant may wish to consider with his representative whether he should withdraw his appeal at this stage. That will not prevent the Secretary of State revising or superseding the original decision if there are grounds to do so, but any such revision or supersession will be subject to separate rights of appeal.

David Williams
Commissioner
24 06 2008

[signed on the original on the date shown]