DLA – Claimant Need Not Necessarily Sign DLA1

WMW/HJD/T/CH **Commissioner's File:** CSDLA/84/94

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A DISABILITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Disability Appeal Tribunal: Stirling

Case No: D/51/111/93/0006

---

1. This claimant's appeal fails. I find no error of law in the decision of the appeal tribunal dated 25 November 1993 such as to warrant my interference. This appeal is accordingly dismissed.

2. The claimant sought a disability living allowance in February 1992. An adjudication officer, in March 1993, awarded the lowest rate of the care component of the allowance. Following an application for review that award was not changed. The claimant appealed to the tribunal. Their unanimous decision was to allow the appeal by awarding the mobility component at the lower rate from 6 April 1992 for life. There was also recorded in their decision a requirement that -

> "There should be an offset in respect of DLA already paid from said date."

That must refer to the lowest rate of the care component awarded by the adjudication officer. But finding of fact 3 was this -

> "He already receives the lower rate of the Care Component of Disability Living Allowance with respect that he cannot cook a main meal. He was formerly a good cook but since 1981 he can no longer cook."

Since nothing else is said on the matter I must conclude that the tribunal were not intending to negative the award of the lowest rate of the care component on the appeal. For the avoidance of doubt, therefore, I direct the adjudication officer that the second sentence of the tribunal decision is without practical effect. The components are cumulative.

3. Nonetheless the claimant again appeals, with leave of the chairman. The grounds of appeal, as focused on the application contained in form OSSC1, is that the facts found by the tribunal were such that had it acted reasonably and interpreted the law correctly it could not have made the decision which it reached. Since the issue before the tribunal was whether the claimant qualified for the higher rate care component in addition to the lower mobility rate that contention must be focused upon the former: that is to say the contention must be read as being that the facts as found do not warrant the rejection of the case for the higher as against the lowest rate of the care component. I deprecate the use of the phraseology "higher rate" and "lower rate"

when dealing with the care component which has 3 rates. Such use gives only confusion as it has here.

4. The sole ground of appeal is elaborated in a 3 page submission, documents 91, 92 and 93 of the bundle together with a copy of the written submission as put before the tribunal and accepted and adopted as the claimant's submission by them. The adjudication officer now concerned does not support the appeal.

5. In the written submission the claimant's medical history is set out and his mobility problems and care needs, as contended to be necessary, are carefully detailed. In addition the tribunal received evidence from the claimant's wife dealing with the dangers which she considered the claimant to be most exposed to. These are set out in the second paragraph of the chairman's note of evidence as follows -

> "..she referred to his use of electrical tools and his use of an electric lawn mower when he tended to forget to use the circuit breaker. She also mentioned that he sometimes tends to stand too close to an electric fire. Sometimes he forgets to take his medication. Out of doors he tends to wander off the pavement and up the middle of the road without being aware of the danger and that she once lost him in Tesco. He sometimes gets up at night to have a smoke and goes out of doors and wanders but she was unable to say how often this is. He had never wandered far or come to the attention of the police. He sometimes leaves the electric blanket on. He also has a slight balance problem and that she worries if he climbs a ladder. He has never actually hurt himself from any of the dangers she mentioned."

The written submission elaborated upon that and included some further detail. I do not concern myself with the mobility questions which were answered in the claimant's favour by the tribunal. And in regard to the care question it is notable that the matters condescended on point to a need for supervision rather than attention.

6. The distinction between supervision and attention in this sort of case is important because the day and night conditions which provide possibly qualification for the care component are each split into attention and supervision provision. These are contained in section 72 of the Social Security Contributions and Benefits Act 1992 and are fully set out at document 71/e and f of the bundle. I need not rehearse them fully herein. It is enough to note that any attention to qualify must be "in connection with" a claimant's bodily functions. These have long been defined, formerly in connection with attendance allowance, as relating to such precise physical operations as eating, seeing, hearing, cleaning and waste elimination. Nothing within these categories is mentioned in this case and so I have no doubt that the tribunal were well entitled to ignore the attention condition.

7. Supervision by day requires to be both "continual" and "throughout the day" and must be "in order to avoid substantial danger to [the individual himself] or others". By night it must be because -

> "In order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him."

Although much has been sought to be made by the claimant's representative in respect of the night supervision condition I have to say that I find nothing in the papers to indicate that there was any requirement for anybody "to be awake for a prolonged period" nor indeed "at frequent intervals" - for the purpose of looking after the claimant. I accept, as I think the tribunal did, that there were occasional such requirements but they certainly could not satisfy the statutory conditions.

8. That leaves the day supervision condition which is now the centre point of the case. It prescribes that an individual, because he is so severely disabled physically or mentally, must require -

> "continual supervision throughout the day in order to avoid substantial danger to himself or others."

There are three important considerations therein. Whilst I would have preferred that the tribunal dealt with the conditions more comprehensively in their findings of fact at box 2 of the form DAT 28, it is quite clear that all the considerations were dealt with albeit that the relevant findings are to be discovered in the reasons. That is not in accordance with best practice but, unhappily, it is a far from infrequent way whereby tribunals record their findings. The gravamen of the tribunal's reasons is to be found in two of their findings of fact. The first is number 4 -

> "He needs guidance or supervision from another person when walking out of doors most of the time and would benefit from enhanced facilities for locomotion."

and then this -

> "6. He does not need continual supervision by day ... any dangers to which he is exposed at present are not substantial and most could be easily avoided."

In their reasons the tribunal said this on the matter -

> "With regard to the Care Component the Tribunal was not satisfied that any of the dangers put forward were substantial dangers. His representative and his wife relied heavily on such dangers as possible electrocution from use of electric hand tools and lawn mower but the Tribunal considered that this difficulty could be avoided by getting rid of these tools or locking them up so that he cannot use them. Similarly it could be a simple matter to see that he does not climb ladders or leave electric blankets on. None of these dangers are of the type or degree where [sic] which would satisfy the conditions set out [in the legislation]."

Broadly, therefore, what the tribunal did was to consider the sort of dangers for which it was contended continual supervision throughout the day was required and have assessed that, even cumulatively, they did not warrant *continual* supervision nor, indeed, did they, so far as unavoidable, amount to a risk of *substantial* danger. These were all matters which were entirely within the tribunal's competence as the masters of the facts. It was for them to assess whether, for example, there was any danger and if so whether substantial or not. That the claimant and his representative may disagree raises no point of law. Much is made in the submission as to the remoteness of the danger because of course it is only those which are not too remote that require to be considered. Again that was essentially a matter for the tribunal and they have dealt with the matter adequately, in my view. Finally they were entitled only to take account of unavoidable

dangers and they have explained why they have discounted certain potential dangers by desiderating appropriate steps to remove them. These steps appear reasonable to the case and that is the test.

9. Lastly I should note that there was a check list about supervision and risks and needs set out as an attachment to the submission to the tribunal. I note that not all of the matters listed therein have been dealt with by the tribunal but it was for them to determine which they regarded as of sufficient importance to require determination. I see nothing incompetent about their determination thereon. It is not every item of evidence which requires to be dealt with. Here there were, for example, certain generalities involved as the use of tools. I think that the adjudication officer's submission to the Commissioner is substantially correct on this where it deals with certain of the detailed criticisms.

10. One matter is raised by the adjudication officer now concerned, however, on which I think she is in error. It is submitted that the initial claim may have been invalid because it was signed by the claimant's wife although she had not been appointed in accordance with regulation 33 of the Social Security (Claims and Payments) Regulations 1987. It has been noted that the letters of appeal to the tribunal and to the Commissioner were signed by the claimant himself. That, factually, appears to me to be correct. However regulation 4(1) of the Claims and Payments Regulations provides that every claim for benefit is to be -

> ".. made in writing on a form approved by the Secretary of State for the purpose of the benefit for which the claim is made, or in such other manner, being in writing, as the Secretary of State may accept as sufficient in the circumstances of any particular case."

The approved form, DLA1, is accompanied by notes which contain this -

> "Please fill in this claim pack. If you cannot fill it in yourself someone else can do it for you. Just ask a friend, relative or carer."

That wording is, at least in its sense, repeated in the opening part of section 1 of DLA1 and although it appears to require to be signed by the claimant I note that where at the end of the subsequent sections there is a requirement for signature it is said that -

> "If you have already ... signed section 1 for someone else please sign this form here."

These wordings seem to me to indicate that the form as approved by the Secretary of State may be acceptably signed by a friend, relative or carer or the like when it is necessary that they complete the form rather than the individual concerned. Since the sufficiency of the form is for determination by the Secretary of State it is not open to me to say that the claim was invalid. If the forms, for administrative reasons require to be tightened up to make sure that they are initially at least signed by claimants in person that is a matter again for the Secretary of State.

(signed) W M Walker
Commissioner
Date: 27 February 1995