

DLA - DATES INQUIRY TO DEACAS
WITH JOHN CAMPBELL



JGMi/HJD/T/CH

Commissioner's File: CSDLA/180/94

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: William McMANUS

Disability Appeal Tribunal: Glasgow

Case No: D/51/131/93/1007

1. My decision is that the decision of the disability appeal tribunal dated 23 February 1994 is erroneous in law and is set aside. The claimant's case is referred to another tribunal for reconsideration.
2. This is an appeal by the claimant, with leave on a question of law, against the above-mentioned decision of a disability appeal tribunal. In that decision the tribunal unanimously upheld the decision of an adjudication officer made on review who held that the claimant was not entitled to the mobility component of disability living allowance in pursuance of a claim made on 30 October 1992.
3. The tribunal made the following findings of fact:-
 - "1. Claimant is aged 64 and lives with his wife at 45 Dunrobin Street, Parkhead, Glasgow. Claimant was refused the mobility component of DLA.
 2. Claimant's doctor confirmed that his condition was claudication. It restricted his walking ability because he was in pain and it would be limited to about 50 yards. It would cause severe discomfort when walking. The exertion would not endanger his life or his health.
 3. DLA medical report states claimant suffers peripheral vascular disease and lumbago.
 4. Claimant is not severely physically or mentally disabled, he can get about by himself.
 5. Claimant can go out of doors himself and does not require supervision but does not like to do so.
 6. No medical evidence to support serious deterioration in claimant's health."

The tribunal's reasons for their decision were stated in the following terms:-

"In order to satisfy the conditions for the mobility component of DLA the claimant must satisfy one of the conditions set out in Section 73(1) of the Social Security Contributions & Benefits Act 1992. The relevant conditions applying to the claimant are that he must be so severely disabled, physically that he is unable to walk or virtually unable to walk, or have such a physical condition that exertion would endanger his life or lead to a

serious deterioration of health. The other conditions refer to being severely mentally disabled or being an amputee or being deaf or blind.

To qualify for the lower rate of the mobility component a person must be so severely disabled physically or mentally that disregarding any ability to use familiar routes, the claimant cannot go out by himself without guidance or supervision from another person most of the time. Although claimant suffers from claudication and from peripheral vascular disease, he does not qualify for the mobility component either the higher or lower rate, accordingly the decision of the Adjudication Officer is upheld."

4. The adjudication officer in her written submission dated 21 December 1994 has made the following submission in paragraph 5:-

"5. In the first paragraph of box 1 of form DAT 28 (page 83) it is stated that although the care component is mentioned in the appeal papers (specifically, at page 80), the appeal is confined to the mobility component. I submit that DLA is not a component specific benefit and the tribunal were obliged to consider entitlement to both the care and the mobility components. In CDLA/21/94 (starred 61/94) the Commissioner held:

".....Disability living allowance consists of two components, a care component and a mobility component. Section 71 of....(the Act) makes it clear that there is both a care component and a mobility component and that a person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.....I agree with the adjudication officer now concerned that it was necessary for the tribunal to reach a decision on both the mobility component and the care component. The failure to deal with the care component makes their decision erroneous in point of law and I have to set it aside."

It is therefore my submission that the tribunal erred in law in not making any findings of fact or giving a decision on the care component."

5. I do not accept that the present tribunal erred in that respect. The observations by the Commissioner in CDLA/21/94 - with which I entirely agree - were made in a case raising issues on both components. The tribunal in question were dealing with an adjourned appeal in which the previous tribunal had received evidence from the claimant as to her care needs. In these circumstances it was obviously necessary for the tribunal to deal with both components of the benefit. Similarly in case CSDLA/19/94 where the claim for disability living allowance included information regarding the claimant's care needs as an epileptic the Commissioner held that the tribunal erred in dealing only with the mobility component notwithstanding that the main thrust of the appeal had been on the issue of mobility. The Commissioner pointed out also that the provisions of section 33(4) to (6) of the Social Security Administration Act 1992 restricting consideration of an un-appealed component only applied where there was already an award of that component.

6. Section 33(4) to (6) provides as follows:-

"33. - (4) Where a person who has been awarded a disability living allowance consisting of one component alleges on an appeal that he is also entitled to the other

component, the tribunal need not consider the question of his entitlement to the component which he has already been awarded or the rate of that component.

(5) Where a person who has been awarded a disability living allowance consisting of both components alleges on an appeal that he is entitled to one component at a rate higher than that at which it has been awarded, the tribunal need not consider the question of his entitlement to the other component or the rate of that component.

(6) The tribunal shall not consider -

- (a) a person's entitlement to a component which has been awarded for life; or
- (b) the rate of a component so awarded; or
- (c) the period for which a component has been so awarded,

unless -

- (i) the appeal expressly raises that question; or
- (ii) information is available to the tribunal which gives it reasonable grounds for believing that entitlement to the component, or entitlement to it at the rate awarded or for that period, ought not to continue."

6. In the recent case CSDLA/169/94 (starred 19/95) an initial claim for disability living allowance had been made in respect of both components and an award of the lowest rate of the care component had been made. At 2 hearings before tribunals only the mobility component was put in issue. The tribunal who gave the decision under appeal rejected the appeal on that component and affirmed the decision on the care component. The Commissioner held that the tribunal in exercising the discretion available to them having regard to section 33(4) should not in those circumstances have dealt with the care component in the absence of any point of substance arising before them upon it.

7. In the present case the claimant completed and signed only section 1 of the Disability Living Allowance form headed "About help with getting around". There was an earlier medical report negating care needs. In applying for a review on refusal of his claim the claimant again referred only to his mobility problems and said he required "assistance even around the house." That was the "mention" of care component referred to by the adjudication officer in paragraph 5 of her submission quoted above. The claimant was present and represented before the disability appeal tribunal. The tribunal very properly noted that possible reference to the care component and recorded confirmation that the appeal was confined to the mobility component. In these circumstances I am satisfied that the tribunal were fully entitled to proceed on the restricted basis put before them. There was no requirement for the tribunal to deal with the care component and they were entirely correct not to do so. I am equally satisfied that the Commissioner who gave the decision in CDLA/21/1994 made his observations in relation to the case before him and did not intend them to be of universal application. It is only necessary in that connection to refer again to the provisions of section 33(4) to (6) of the Administration Act 1992 to demonstrate that this must have been so.

8. The varieties of circumstances in which the question of the proper scope of a disability living allowance appeal may arise are not as yet exhausted in the cases above referred to and this

case. In my judgment however the Commissioners' decisions thus far, taken with section 33(4)-(6), do establish the following propositions:-

- (1) Disability living allowance is a single benefit with 2 components.
- (2) Both components should in general be considered and dealt with by disability appeal tribunals.
- (3) Both components must be considered if there is evidence of substance relevant to both components, unless there is an unappealed award relating to one of the components, in which case the tribunal must have regard to section 33(4) to (6), noting the difference between the discretionary provisions of section 33(4) and (5) and the peremptory provision in section 33(6).
- (4) In a case coming within section 33(4) but not (6) the tribunal should not deal with the component already awarded unless some evidence of substance arises upon it.
- (5) If the claim under appeal relates only to one component and there is no award of the other component and no evidence of substance relating to that other component, a tribunal may safely accept, record and proceed upon a restriction of the appeal to the component claimed.

9. I turn now to other matters. The claimant's appeal is supported by the adjudication officer on the issue of the adequacy of the tribunal's findings and reasons to deal with the evidence before them and to explain their conclusions on the question of the claimant's virtual inability to walk or otherwise in terms of section 73(1)(a) of the Social Security Contributions and Benefits Act 1992 and regulation 12(1)(a)(ii) of the Disability Living Allowance Regulations 1991 relative to restriction of outdoor walking ability by reason of severe discomfort. The second finding of fact by the tribunal quoted above in paragraph 3 is the only finding made by the tribunal which deals with the claimant's outdoor walking ability and thus, although there was also other less favourable medical evidence, it presumably represents an acceptance of that doctor's evidence. If so, it does not deal with all of the elements of regulation 12(2)(a)(ii) and the tribunal's reasons do not advance matters in this connection. The finding that:-

"[Claudication] restricted his walking ability because he was in pain and it would be limited to about 50 yards. It would cause severe discomfort when walking."

leaves unclear to what extent, if any, the claimant was held to be able to walk out of doors without severe discomfort. The findings and reasons are in any event unsatisfactory in another respect. Finding 4, as expressed, appears to be based on a *non sequitur* and it is not explained how the first part of the finding (which if well founded would itself suffice to exclude entitlement to the allowance) is consistent with findings 2 and 3.

10. In these circumstances I have no option but to hold the decision of the tribunal to be erroneous in law and set that decision aside. The claimant's case must be referred to another tribunal. That tribunal should make proper findings and give adequate reasons on the issues relative to the mobility component of disability living allowance. It would be wise to obtain fresh confirmation that the appeal remained confined to that component. The tribunal will of course be entitled to consider the questions arising on that component up to the date of their hearing.

Since there are clearly a number of conflicts in the medical and other evidence as to the claimant's disabilities and their effect on his mobility the tribunal should make clear what evidence they regard as acceptable as the basis for their findings.

11. The appeal of the claimant is allowed.

(signed)

J G Mitchell
Commissioner

Date: 19 April 1995