

CWS 23/1983
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ERB/RC

SOCIAL SECURITY ACTS 1975 TO 1982
CLAIM FOR INVALIDITY BENEFIT
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: ~~David Russell~~

Local Tribunal: Llanelli

Case No: 9/1

[HEARING]

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1. My decision is that invalidity benefit is not payable to the claimant from 19 February 1983 to 21 June 1983 (both dates included).
 2. The claimant, who is aged 53 years, had been in receipt of sickness benefit followed by invalidity benefit from 12 October 1978 to 18 February 1983 (both dates included) when he submitted further claims to invalidity benefit on 24 January 1983 and 23 February 1983. The earlier of these claims was supported by a statement from his doctor to the effect that he should refrain from work for 13 weeks by reason of "Hypertension, Gouty arthritis, hiatus hernia", while the later claim was supported by a statement from his doctor to the same effect save that it referred to the following disorders: "1). Hypertension, 2). Gouty arthropathy, 3). polycythaemia having venesection, 4). nervous anxiety and claustrophobia". On 23 February 1983, the insurance officer decided that this benefit was not payable from 19 February 1983 to 21 June 1983 (both dates included) "because the claimant has not proved that he was incapable of work by reason of some specific disease or bodily or mental disablement". The claimant's appeal from this decision to the local tribunal was allowed by the tribunal on 3 May 1983, who awarded benefit to the claimant for the period referred to by the insurance officer. This decision has been implemented. The insurance officer then appealed to the Commissioner, having been granted leave to do so by the chairman of the tribunal. The appeal was heard by me on 6 September 1983. Mr. P.G. Phippard appeared for the insurance officer. The claimant, who was not represented, attended and was accompanied by his doctor, Dr. D.R. Russell.
 3. I was assisted by the following medical evidence in addition to that to which I have already referred;
 - (a) the report of a medical officer of the Welsh Office, who examined the claimant on 18 January 1983. In his description of the claimant he referred to "Controlled hypertension Hiatus Hernia Symptom free now Gout Anxiety in past NAD today" and added, "He does remunerative work as a councillor & is fit to do it". In his opinion the claimant was not incapable of this work;
 - (b) the report of another medical officer of the Welsh Office, who

examined the claimant on 16 February 1983. He expressed the following opinion: "Well controlled Hypertension He is fit to do the work of a councillor";

(c) the additional evidence provided by the claimant's doctor, Dr. Russell. He stated in a letter dated 23 September 1982 that "whilst the above named has retired from regular employment on grounds of ill-health, his continued fulfillment of duties as a councillor and member of Health Authority committees is approved by his medical practitioner as unlikely to be detrimental, indeed may even be therapeutic". In his evidence at the local tribunal he expressed the view that the claimant "is not fit for any form of employment". He also stated that "I do not regard council work as work". He indicated that the claimant's condition was permanent and was controlled by medication. In his evidence before me he pointed out that, as one who had the medical care of the claimant for a substantial period, he was in a position to provide an overall picture of the claimant's state of health. It was such that he was forced to retire in 1978 from his employment as a local government officer on health grounds at the age of 49 years. He suffered from 6 chronic conditions, from which he could not be cured. It was particularly important that he should avoid doing anything which gave rise to stress or anxiety. If he did not, then the conditions from which he suffered would deteriorate materially. He became agitated very easily. The dangers were such that he would not advise the claimant to undertake even light clerical duties. On the other hand, the claimant enjoyed performing the duties of a councillor and regarded being a councillor as a form of relaxation. His activities in this sphere undoubtedly had therapeutic value and the claimant carried them out with his approval and encouragement. But for them, he might well become more and more depressed and revert to the state he was in at the time he retired. Even if his activities involved attending council meetings every day of the week, he would not deter him unless there were clear indications (which he would not anticipate) that the extent of those activities was such as to be harmful. He did not agree with the description "controlled hypertension". The claimant was subjected to checks at intervals of approximately a fortnight.

4. In his evidence before me, the claimant asserted that his early retirement took place against his own wishes and on the advice and warnings of his doctor. He was advised and considered that he was incapable of any work. He did not regard his activities as a councillor as work. He had been a district councillor since 1976. He stated that, on average, he attended council meetings on 2 days a week. In addition, he attended the meetings of other bodies as the council's representative. These were not frequent occurrences. He considered that it was his council activities which kept him going and prevented him reverting to his condition at the time of his retirement. There was no pressure on him to go to or stay at a meeting. He went when he felt up to it. He agreed that he had been able to attend meetings regularly.

5. Councillor D. Clelland, the secretary of The Association of Councillors, gave evidence on the claimant's behalf at the local tribunal and also made written submissions to me. I have taken note of everything he had to say including, in particular, his arguments in favour of regarding attendances at council meetings as a councillor as an activity which should not be regarded as work.

6. If one ignores the claimant's activities as a councillor then, in my judgment, the claimant should be regarded as having been incapable of any work throughout the relevant period. The evidence of Dr. Russell (who, if he will allow me to say so, was a most impressive witness) is strongly in favour of this conclusion, while that provided by the medical officers of the Welsh Office refers solely to his capacity to perform the duties of a councillor. Mr. Phippard suggested he could follow employment involving light clerical duties. This suggestion was not supported by any medical evidence and appears to have been based on the theory that the demands of this employment were similar to those made on a councillor. This theory was rejected by Dr. Russell and is rejected by me. As far as his activities as a councillor are concerned, the position is that all the medical evidence is in favour of the conclusion that he is perfectly capable of indulging in those activities. There is evidence, which I accept, that he carried out those activities with the approval and encouragement of his doctor, who regarded them as having therapeutic value. The claimant has demonstrated his capacity in this context by undertaking those activities and performing them satisfactorily. If those activities were enlarged, for example so as to involve daily meetings throughout the working week, I have no doubt that the claimant could cope.

7. The question which now arises is whether the claimant's activities as a councillor and, in particular, his attendances at meetings of the council and at others on the council's behalf, have to be regarded as work within the meaning of section 17(1)(a)(ii) of the Social Security Act 1975. There have been many Commissioners' decisions on this point over the last 7 years. To the best of my knowledge, they have all been to the effect that such activities should be regarded as work in this context and that attendance allowances paid in respect of attendances at meetings have to be regarded as earnings. Reference is made to a number of these decisions and to the basis on which they were arrived at in the insurance officer's submission to the Commissioner. I do not find it necessary to repeat those references in this decision. I have no doubt that, for the reasons given, those decisions are well founded. Accordingly, I hold that the claimant was not incapable of work on any of the days in the relevant period.

8. The question which now arises is whether the claimant may, nevertheless, be deemed to have been incapable of work during the relevant period by reason of the provisions of regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1975 (which are accurately set out in paragraph 16 of the insurance officer's submission to the Commissioner). In view of the evidence of Dr. Russell, I accept that the work done by the claimant was work for which he had good cause for doing. Regrettably, I was not supplied with up to date information as to the number of meetings attended by the claimant in respect of which he was entitled to be paid an attendance allowance, or as to the expenses incurred by him in attending those meetings (see regulation 4(c) of the Social Security (Computation of Earnings) Regulations 1978). It follows that I am unable to determine whether this is work from which his earnings do not ordinarily exceed £20 a week (regulation 3(3)). If I considered that it would be of assistance to the claimant, I would defer giving a decision until this information was obtained. However, I have very reluctantly come to the conclusion that, in any event, the claimant cannot derive assistance from the provisions of regulation 3(3). This is because it is provided that the regulation only applies to a claimant who has been found to be not incapable of work "by reason only of the fact that he has done some work" (my underlining) while suffering from some specific disease.

or bodily or mental disablement. My finding that the claimant was not incapable of work was not based solely on the fact that he had done the work of a councillor. It was based, in the main, upon the medical evidence to the effect that he was capable of this work (see paragraph 10 of Decision R(S)4/83).

9. It follows, from the conclusions to which I have come, that my decision has to be that set out in paragraph 1. However, the claimant is not required to repay the benefit paid to him pursuant to the decision of the local tribunal of 3 May 1983. There are 2 other matters to which I should make reference. At the time the insurance officer gave his decision, the claimant had not claimed benefit in respect of the period 25 May 1983 to 21 June 1983 (both dates included). Accordingly, his decision as to entitlement in respect of this period was a nullity. However, I was informed at the hearing that by the time the case came before the local tribunal a claim in respect of this period had been made. I am prepared to accept that this was so, despite the fact that the customary documentary evidence was not produced. I also infer that the local tribunal dealt with this period following an invitation to do so and accept that, in the circumstances, they were entitled to do so. It was said at the hearing that for some time the claimant had deliberately abstained from claiming attendance allowance for more than 1 day in the belief that his weekly "earnings" would thereby be within the statutory limit of £20 provided for in regulation 3(3). He is said to have been advised that this was so. It would appear that this belief was ill founded. There are conflicting views as to whether this is so (see the observations in paragraph 12 of the decision on Commissioner's File C.S.19/83 dated 15 July 1983 and compare them with the observations in paragraph 9 of decision C.U.1/80). Mr. Phippard undertook to make enquiries as to what in fact occurred. It would also appear to me that, in any event, the claimant should make enquiries of the local authority concerned as to whether he is now in a position to claim the allowances he has abstained, to date, from claiming.

10. The insurance officer's appeal is allowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 9 September 1983

Commissioner's File: C.W.S.23/83
C.I.O. File: I.O.3211/V/83
Regional File: Wales and South West:
Unregistered Papers