

DACs Do not do 'Entitlement' GPAG

★ 46/95

JBM/SH/6

Commissioner's File: CDLA/027/1994

SOCIAL SECURITY ACTS 1975 TO 1990  
SOCIAL SECURITY ADMINISTRATION ACT 1992  
CLAIM FOR DISABILITY LIVING ALLOWANCE  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Cardiff Disability Appeal Tribunal (hereinafter called DAT) dated 17 May 1993 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted DAT.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the decision of the DAT in respect of the decision of the adjudication officer first involved in these appeals. I directed an oral hearing at Cardiff Crown Court on the grounds which hereinafter appear in my direction dated 7 February 1995. Accordingly on 25 May 1995 I held an oral hearing at Cardiff Crown Court. The claimant was not present and was not represented. Mr Huw James the Regional Solicitor for the Department represented the adjudication officer. To him I am indebted.

3. The facts are shortly dealt with by the adjudication officer first involved in these appeals at box 4 of his written submission to the DAT as follows:-

"Mr Cutting suffered a fractured left toe and swelling.

Dr. Sabir said that Mr Cutting could walk on a level indoors, get in and out of bed, dress and undress, attend to his own toilet needs."

The facts are further dealt with in the submission of the adjudication officer now involved in these appeals dated 11 April 1994 in particular at paragraphs 3 and 4 which I set out as follows:-

" 3. Mr Cutting claimed disability living allowance .. on

5 February 1992. He already had an award of mobility allowance for life. His claim for the care component of DLA was disallowed by an adjudication officer. He appealed against the decision and a review was made but the decision was not revised . . . Mr Cutting appealed against that decision on 17.3.93. There was a DAT on 17.5.93 that adjourned requesting that the claimant or his carers attend the next hearing. His case was heard by the Cardiff Crown Court on 17.5.93.

4. The issue before the tribunal was whether the claimant satisfied the conditions of entitlement for a care component of a disability living allowance."

The claimant appealed to the Commissioner setting out his grounds.

4. In regard to the above matters and to the submissions of the adjudication officer now involved in these appeals dated 11 April 1994, 13 August 1994 and 25 February 1995 the claimant has had the opportunity to comment and I have contained in the case papers his observations regarding those submissions. No useful purpose is to be served (save as I do in this decision) by my setting out these matters afresh here.

5. The relevant statutory provisions are:-

"Regulation 17 of the Social Security (Introduction of DLA) Regulations 1991.

Regulations 31(4) of the Social Security (Adjudication) Regulations 1986.

Section 33 of the Social Security Administration Act 1992 and

Regulation 26E(5)(b) of the Social Security (Adjudication) Regulations 1986."

6. Mr Huw James in his able address to me at the oral hearing adhered to the three submissions of the adjudication officer now involved.

7. In my judgment the decision of the DAT is erroneous in point of law as they have breached the statutory requirements imposed upon them by regulation 26E(5)(b) that is to make adequate findings of fact and give adequate reasoning to support the conclusions to which they came.

As to the first submission dated 11 April 1994 apart from paragraph 10 which I deal with below which refers to a somewhat technical issue the adjudication officer submitted that the DAT had not erred in point of law.

Following that submission the nominated officer by a direction dated 14 July 1994 referred the adjudication officer to the

decision of the Commissioner being Decision CDLA/002/93 - a copy of which has been helpfully added to the case papers at pages 156 and following.

In response to that direction I have the helpful submission of the adjudication officer now involved in these appeals dated 13 August 1994 to the effect (which I accept) that the DAT breached the statutory requirements of 26E(5)(b). I set out paragraphs 3, 5 and 6 of that submission (which I regard as rightly made) as follows:-

"It is now agreed that where, as in this case, an appeal arises following an adjudication officer's review decision made under section 30(1) of the Social Security (Administration) Act 1992 a DAT has the power to treat the whole period involved as a rehearing and can therefore treat a person as satisfying the medical conditions for an award at any time during that period.

5. The DAT have not made any findings on Mr Cutting's care needs before 1.12.92. Dr. Edwards stated that his day and night care needs had been present since 1.9.68. The tribunal were required to make findings on the claimant's medical condition for the whole of the period from the date of claim to the date of the hearing.

6. Further for the night time attention requirements the DAT have made their conclusions from Mrs Cuttings evidence that Mr Cutting could help himself for the 6 to 7 hours for which she is in bed. However in the chairman's notes of evidence it is recorded that Mrs Cutting is woken 3 to 5 times during the night by her husband. The DAT's findings are inconsistent with the record of evidence."

Following that submission I made the following direction dated 7 February 1995:-

"I direct an oral hearing at Cardiff Crown Court. .. I require oral argument generally on the issues and in particular as to paragraph 10 of the submission dated 11 April 1994.

The adjudication officer there submits:-

".. technically by expressing their decision as one relating to entitlement the DAT have erred in law (CM/34/93).

Presumably this is a reference to CSM/34/93. CSM/34/93 was concerned with a claim made for mobility allowance, not mobility component of disability living allowance. In the present instance the adjudication officer made a decision which was directed to entitlement, and the DAT determined the appeal to them from that decision. Were not the DAT concerned with entitlement?

I require a written submission by the adjudication officer as to paragraph 10 above such submission to be made available to the claimant and myself at the oral hearing. The claimant may wish to seek representation at the oral hearing. He will be aware that his local Citizens Advice Bureau is skilled in the preparation and presentation of cases such as the present in the Tribunal Jurisdiction. Further the Cardiff Bar operates a Free Representation Unit."

In response to that submission I received the following submission of the adjudication officer dated 25 February 1995 which to my mind correctly encapsulates the issues involved and which I regard as rightly made:-

" 1. In paragraph 10 I submitted that:-

"10. The DAT was therefore accepting that the medical conditions for award of middle rate care component was satisfied from these dates and not before. However, technically by expressing their decision as one relating to entitlement the DAT have erred in law (CSM/34/93)."

It can be seen that the Commissioner in CSM/34/93 was dealing with a mobility allowance claim that had been appealed and heard by a DAT. This differentiates the point made by the Commissioner in that decision from the point raised in my submission of 11 April 1994 and I submit that I wrongly made the point that a DAT hearing a disability living allowance appeal could not express a decision as to one relating to entitlement.

2. A DAT hearing a mobility allowance case was hearing an appeal purely on a medical question. A matter relating to entitlement on a mobility allowance case would have been heard by a Social Security Appeal Tribunal.

3. Section 33 of the Social Security Administration Act 1992 allows an award on disability living allowance to be made under this section following a decision of an adjudication officer.

4. The DAT was therefore concerned with entitlement and did not err in law when recording their decision as one of entitlement."

I am always reluctant to take technical points in this jurisdiction but a submission on the lines of paragraph 10 set out in full above has been frequently made by the adjudication officer in a number of cases quite wrongly. Accordingly I made the direction dated 7 February 1995 (again set out above) to draw attention to this issue and to ensure that in future such submissions no longer featured.

8. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I draw the newly appointed DAT's attention to what I have said in paragraph 7 above. Further they shall observe the relevant statutory requirements and make and record their findings of fact giving adequate reasoning to support their decision.

I again draw the claimant's attention to the final paragraph of my direction dated 7 February 1995 reproduced above. It is a matter for the claimant's consideration but in this somewhat complex jurisdiction involving difficult medical matters and issues of law the presence of the claimant at the actual hearing with representation (which as I have indicated has been provided by the Cardiff Bar in many other cases) can be of assistance both to the claimant and to the court.

9. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner  
(Date) 8 June 1995