



Commissioner's File:

CDLA/101/1997

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF A DISABILITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Disability Appeal Tribunal: Birkenhead

Case No: D/61/011/96/0023

1. This is an appeal by the claimant against the decision of the Birkenhead disability appeal tribunal given on 21 August 1996. The tribunal decided that the claimant was not entitled to disability living allowance.

2. The claimant is dyslexic. The tribunal found that she had no other disabilities. She is said to need a certain amount of assistance/attention because of her dyslexia. Apparently at the tribunal it was argued that "dyslexia, like blindness, involves attention in connection with bodily functions, in this case the function of reading". The tribunal did not accept that argument. Their reasons for rejecting it are not entirely clear, at least to me, from what they said in their decision.

3. At first the current adjudication officer submitted that this appeal should be dismissed principally on the ground, in relation to the care component, that reading could not be said to be a bodily function. Nothing was said by the adjudication officer about the mobility component though that has throughout been in issue. In a later submission, having taken medical advice about dyslexia, the current adjudication officer said -

"I understand that a person with dyslexia can see words on a page but is unable to interpret them. In the light of the advice quoted above it appears that such a person has an impairment of the cognitive faculty. If he or she requires another person to interpret written material, that may, in my submission, be attention in connection with the impaired bodily function of cognition. The tribunal were asked to consider the appeal on the basis

that the impaired bodily function was reading. They concluded that reading is not a bodily function. In my submission they were correct in so concluding, but erred in law in failing to consider whether the claimant is physically or mentally disabled, and if so which of the claimant's bodily functions is impaired. They ought then to have considered whether the claimant is so severely disabled that she requires attention in connection with that bodily function and if the attention is reasonably required."

The adjudication officer concluded by submitting that the case should go back to another tribunal.

4. Whether reading is a bodily function or whether, in relation to dyslexia, the relevant function is cognition seems to me to be a distinction without much difference. A form of shorthand has been allowed into the somewhat arcane world of "bodily functions" which admits as such a function what might be thought to be the end product of a more basic function. So for example what I might call the Denning list, in the Packer case, includes "getting in or out of bed", "dressing" and "undressing". In no absolute sense are they bodily functions but they have long been treated as such. Reading, it seems to me, is of the same nature. It is the end product of the bodily function of brain activity or cognition just as dressing might be said to be the end product of brain activity and movement of limbs. So I am not bothered by whether the correct word is reading or cognition. Either way, as it seems to me, a bodily function is involved and the tribunal were wrong not to recognise that.

5. The tribunal's decision is accordingly erroneous in law and I allow this appeal, set aside the tribunal's decision and remit the case for rehearing by a differently constituted tribunal.

6. No doubt the new tribunal will be assisted by the material supplied with the most recent submissions on behalf of the claimant.

(Signed) R A Sanders
Commissioner

(Date) 5 January 1998