

DAT - 'so severely disabled' - -

DGR/SH/10

Commissioner's File: CDLA/153/1994

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR DISABILITY LIVING ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: David Scheldt

Appeal Tribunal: Manchester

Case No: D/62/021/93/0255

1. For the reasons set out below, the decision of the disability appeal tribunal ("DAT") given on 28 September 1993 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the DAT of 28 September 1993.

3. The question for determination by the tribunal was whether the claimant was entitled to the mobility component of disability living allowance. In the event, the tribunal, upholding the decision of the adjudication officer, decided that he was not.

4. As regards the higher rate of component, the medical conditions are set out in section 73(1)(a)-(c) of the Social Security Contributions and Benefits Act 1992. Section 73(1)(a) requires the claimant to be suffering from physical disablement such that he is unable or virtually unable to walk. The factors to be considered in deciding this question are set out in regulation 12 of the Social Security (Disability Living Allowance) Regulations 1991.

5. The tribunal made, inter alia, the following findings of fact.

"The claimant is able to walk out of his house into his garden and is able to walk 100 yards down the road to take his dog for a walk and to walk back from that without discomfort."

The adjudication officer now concerned contends that such findings were not enough to justify the tribunal's refusal to

make an award of mobility component at the higher rate. She says as follows:-

" 15. I submit that the tribunal have not made findings on all of the four elements set out in regulation 12, which are distance, speed, manner of progress and time taken, and that they have also failed to make a finding of fact in relation to the question of whether the limitation in walking claimed is as a result of 'physical disablement'. I submit that this failure is in breach of reg 26E of the Adjudication Regs thus rendering the tribunal's decision erroneous in law."

I reject that submission.

6. If the restriction on the claimant's walking ability was not the result of physical disablement, then of course such limitation was irrelevant. However, I assume from the tribunal's decision that they accepted that the restriction on the claimant's walking ability did stem from physical causes. But, as regards the four elements set out in regulation 12, it is quite clear in the present case that the claimant could walk 100 yards without discomfort, and that there was no question that the quality of his walking was in any way impaired as regards speed, manner of progress or time taken. These were simply not issues in the case. There was nothing to suggest that the claimant could not walk 100 yards at an acceptable speed and in an acceptable manner within a reasonable time. It is unnecessary to make an incantation to this effect, where, as here, these matters are not in dispute.

7. The adjudication officer now concerned goes on in his submissions to criticise the tribunal's approach to the possible award of mobility component at the lower rate. The tribunal found that:-

".... the claimant's agoraphobia is not so severe as to prevent him walking the dog or walking out at all."

The adjudication officer now concerned has made in connection with this finding the following submission.

" 18. In their reason for decision, the tribunal appear to have directed themselves to the question of whether the claimant's condition amounted to a severe mental disablement and if so whether the claimant required guidance or supervision from another person as a result. They said:-

".... the claimant suffered from moderate mental disablement from his agoraphobia, rather than severe mental disablement .... [and] it was not so severe mentally that he could not take advantage of the faculty out of doors without guidance or supervision from another person most of the time .... If the claimant went to unfamiliar areas or ventured further

away from home, then he needed the companionship of another in order to keep going. The tribunal were not sure however whether the claimant actually needed guidance or supervision from that person but the decision of the tribunal was based on the fact that it was decided that the claimant was not so severely mentally disabled by his agoraphobia.

19. The claimant contends in his grounds of appeal .... that the tribunal have erred in law in their interpretation of section 73(1)(d), in treating the requirement of severe mental disablement as a separate question to the requirement for guidance or supervision when out of doors, and in deciding that the claimant falls at the first of these hurdles without deciding the question of the need for another person to prove guidance or supervision. It is contended that the two considerations are part of one question - is the claimant so severely disabled mentally that he requires guidance or supervision from another person out of doors. I support this ground of appeal. I submit that the question to be decided in considering section 73(1)(d) is unitary and must be answered as a whole, and that the tribunal have erred in law in their interpretation of this section and the decision reached as a result of that interpretation."

I reject that submission.

8. In my judgment, the tribunal have properly considered whether or not the claimant was suffering from severe mental disablement in the context of whether or not it was of a kind falling within section 73(1)(d). It is a misinterpretation of the tribunal's decision to say that they considered "severe mental disablement" as a separate question in isolation from the requirement that the only relevant severe disablement was that which called for guidance or supervision when out of doors. Manifestly, the tribunal applied one test and one test only, namely whether the severe mental disablement was of the kind which fell within section 73(1)(d). I agree that the test called for by section 73(1)(d) was "unitary and must be answered as a whole", but this is precisely what the tribunal did. Accordingly, I see nothing in the adjudication officer's submission.

9. In short, I see no respect in which it could be said that the tribunal erred in point of law, and I have no hesitation in dismissing this appeal. The tribunal were entitled on the evidence before them to reach the conclusion they did.

(Signed) D.G. Rice  
Commissioner  
(Date) 3 March 1995