

Commissioner's Court Report
at 3:00 (Wednesday) to SSA

RAS/4/LM

Commissioner's File: CDLA/487/94

SOCIAL SECURITY ACTS 1975 TO 1990
SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR DISABILITY LIVING ALLOWANCE

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]
Appeal: [REDACTED]
Case No: [REDACTED]

[ORAL HEARING]

1. This is an appeal by the claimant against the decision of the London North disability appeal tribunal, given on 3 February 1994, whereby the tribunal decided that the claimant was entitled to the lower rate mobility component and the middle rate care component of disability living allowance from 18 January 1993 for life. The claimant's present appeal is confined to the mobility component. There is no "cross appeal" in respect of the care component, the adjudication officer accepting the tribunal's decision in respect of that component.

2. The adjudication officer also agrees that the tribunal's decision is erroneous in law in relation to the mobility component in that the findings of fact made and the reasons given by the tribunal are insufficient. What arose at the oral hearing was whether I might set aside the tribunal's decision only in respect of the mobility component thus leaving the award to stand in respect of the care component. Both Mr Seddon of the Free Representation Unit who represented the claimant and Mr Hewett of Counsel who represented the adjudication officer supported that course.

3. The care component is of course largely the old attendance allowance and mobility component is largely the old mobility allowance. Attendance allowance and mobility allowance were separate benefits claimed independently of each other and subject to separate adjudications. The two components are now part of the one benefit, disability living allowance. Even so they can be separated, for example where either sub-section (4) or (5) of section 33 of the Social Security Administration Act 1992 applies. Furthermore, the practice of remitting to a new tribunal only one aspect of benefit entitlement is by no means unprecedented and, for example, in the recent case of Secretary of State v Fairey (15 June 1995) the Court of Appeal implicitly accepted that the Commissioner was right to have decided the care

component in favour of the claimant until she was 16 years old and then to have remitted to a new tribunal the question of entitlement after that age in accordance with directions. As both Mr Seddon and Mr Hewett agreed, it would be lacking in common sense to require a new tribunal to determine again something that was not in dispute and I do not favour that course. Nor did the Commissioner who decided CSDLA/169/94 where the point is briefly referred to at paragraph 17.

4. Accordingly I set aside the tribunal's decision so far as it concerns the mobility component. The tribunal's award of the middle rate care component stands and benefit should be paid. I remit for rehearing by a new tribunal the question of entitlement to the mobility component. The new tribunal must make findings in relation to all of the matters made relevant to virtual inability to walk by regulation 12(1)(a)(ii) of the Social Security (Disability Living Allowance) Regulations 1991 as explained by the Court of Appeal in the recent case of Cassinelli and in R(M) 1/81, both dealt with the current adjudication officer's submissions.

(Signed) R A Sanders
Commissioner

Date: **27 JUL 1995**