

CDLA/1457/98 (CDLA/1684/98 attached)  
Deaf - CC + MC

RAS/CW/5

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/1457/1998

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

MR COMMISSIONER R A SANDERS

Claimant : Caldric Daniel  
Tribunal : Oxford  
Tribunal Case No : D/42/048/97/00033

1. This is an appeal by the claimant against the decision of the Oxford disability appeal tribunal given on 14 January 1998. The tribunal decided that the claimant was entitled to lower rate mobility component and lowest rate care component of disability living allowance from 21 October 1996 for life. The contention by the claimant is that middle rate care component should have been awarded. The adjudication officer questions the award of the mobility component.

2. At the oral hearing of this appeal the claimant was represented by Ms Brough and the adjudication officer by Mr Heath. The hearing followed immediately after that of the Freeman case (see CDLA/1684/98). The two cases concerned more or less the same issues.

3. The tribunal's Statement of Material Facts and Reasons is recorded as follows -

"In this appeal the tribunal awarded lower rate mobility from 21 October 1996 for life because Mr Daniel needs guidance or supervision most of the time when using unfamiliar routes.

In reaching this decision the tribunal found that Mr Daniel is profoundly deaf he also suffers from a rolling gait and has risk of knocking himself and falling. He has impaired vision, difficulty in lip reading and reading and understanding some written directions. In finding these facts on which the decision is based the tribunal took note of evidence given at tribunal.

The tribunal supported the adjudication officer's decision that the lowest rate care component was appropriate from 21 October 1996 for life.

The tribunal were asked to consider the middle rate on the grounds that care required was frequent enough to qualify. The evidence showed that Mr Daniel has an established family routine reads newspapers although many words skipped manages to get out to the Deaf Centre in Oxford and local pubs.

Clearly he requires help but the tribunal find that the help is at a significant level and not frequent."

Those findings and reasons are plainly insufficient, as Miss Brough and Mr Heath agreed, with regard to both the mobility component and the care component. I accordingly allow this appeal, set aside the tribunal's decision and remit the case for rehearing by a differently constituted tribunal.

4. Everything I said with regard to the mobility component in the Freeman case is relevant to this case and I hope Mr Daniel and Ms Brough will not take it amiss if, instead of

repeating all of that here, I simply refer them to my decision in that case, a copy of which is attached. There are however two additional factors in this case.

5. First is the evidence of the claimant's propensity to fall. I agree with Miss Brough, as did Mr Heath, that that may be taken into account in relation to the need for supervision or guidance for the purposes of the mobility component (and also of course in relation to the care component). Second, I think there is evidence in this case that the claimant can become fearful or panicky in unfamiliar situations. As to that, Ms Brough referred to CDLA/14307/96 in which the Commissioner said (paragraph 17) -

"Section 73(1)(d) of the 1992 Act refers not only to severe physical disablement but to severe mental disablement. If a fear of being attacked, or attacks of panic on getting lost, are a consequence which a person of reasonable firmness would suffer from profound deafness (and I can well imagine this to be so), then the fear and panic are legitimately to be taken into account in deciding whether or not a person needs guidance or supervision in order to take advantage of the faculty of walking."

It is enough for me to say, in regard to this matter, that I agree with that statement.

6. With regard to the care component, Mr Heath made the point that the tribunal may not have taken into account the by now well known principles established by the House of Lords in the Fairey case. The new tribunal will not want to make the same mistake.

7. This claimant is profoundly deaf, has problems with walking and has impaired vision. I would be surprised if, when all of his needs are established, he is found not to be entitled to the middle rate of the care component and the lower rate of the mobility component. That however is for the new tribunal and not for me to determine.

(Signed) R A Sanders  
Commissioner

(Date) 17 May 1999