Bulletin 193
Item 3

CDLA/2142/2005

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Claimant, brought with my permission, against a decision of the Fox Court Appeal Tribunal made on 29 March 2005. For the reasons set out below that decision was in my judgment erroneous in law. I allow the appeal, set aside the Tribunal's decision and remit the matter for redetermination by an entirely differently constituted appeal tribunal.

2. The Claimant is a woman now aged 30 who suffers from severe agoraphobia and dysmorphobia. She is unable, even when accompanied by a member of her family, to leave the confines of her house and garden.

3. The Tribunal's decision was to allow the Claimant's appeal against a decision, made on 18 June 2004, refusing the Claimant's claim for disability living allowance. The Tribunal awarded the middle rate of the care component from 6 April 2004 (the date of claim) to 5 April 2007.

4. However, the Tribunal did not award the lower rate of the mobility component, its reasons being as follows:

> "With regard to the mobility component, the Tribunal finds that [the Claimant] cannot be persuaded to go further than the gate of the shared garden and has not been away from the house for at least 6 years. Her representative .....very properly drew our attention to Commissioners' decisions CDLA/2364/1995, CDLA/042/94 and CSDLA/12/03 regarding the application of Social Security Contributions and Benefits Act 1992, section 73(8). The Tribunal considers that it is bound to apply the law as stated most recently in CSDLA/12/03: Because [the Claimant] cannot be persuaded to go out even with supervision or guidance, her condition does not permit her to benefit from enhanced facilities for locomotion and she is therefore not entitled to an award of the mobility component."

5. S.73(1)(d) of the 1992 Act applies where the Claimant "..... cannot take advantage of the faculty [of walking] out of doors without guidance or supervision from another person most of the time."

6. By s.73(8):

> "A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion."

7. In my judgment, as the Secretary of State's submission in support of this appeal in effect accepts, the Tribunal's decision was erroneous in law in that the reasoning set out in paragraph 4 above appears to assume that the walking to the gate of the shared garden cannot constitute benefiting from enhanced facilities for locomotion within the meaning of s.73(8).

8. In my view the Tribunal was right to regard the law as having been correctly set out in CSDLA/12/03, and in particular in para. 31 of that decision: "the statutory wording does not encompass the relatively rare claimant who, while he or she could benefit from other forms of transport, through disablement will not walk out of doors even with guidance or supervision."

9. Pursuant to my direction in this appeal the Claimant's representative has given further details as to what walking the Claimant could be persuaded to do at the date of the Secretary of State's decision, and as to the distances and time involved. According to those details (pages 131 to 133), it was limited to going to the front garden gate (a distance of 12-15 feet) with refuse twice a week and into the rear garden (approximately 50 feet long) two or three times a week "for a longer period – the claimant would be encouraged to stay out for as long as possible". The Claimant would venture out only if she was accompanied by a family member and if no-one else was in the vicinity.

10. Section 73(8) requires that a claimant's condition be such as permits him to "benefit from" enhanced facilities for locomotion. The words "benefit from" are in my judgment important in this context. It seems to me that s.73(1)(d) and s.73(8) should be construed against the background that someone such as the Claimant is likely to derive benefit, both mentally and physically, from walking outside to any extent. If guidance or supervision enables an agoraphobic claimant to do any walking out of doors which she would not otherwise be able to do, that should in my judgment be held to satisfy s.73(8), unless the amount of walking is so minimal, either in distance, time or frequency, that it should be disregarded because it cannot realistically be of any appreciable benefit to the claimant.

11. In my judgment it cannot be said, in the context of s.73(1)(d), that the activities described in para. 9 above necessarily involved insufficient walking, or were of insufficient benefit to the Claimant, to constitute benefiting from enhanced facilities for locomotion within the meaning of s.73(8). I would say the same even if the only walking had been (as the Tribunal found) to the front garden gate.

12. The new tribunal will therefore need to make findings as to the amount of walking out of doors which the Claimant was able to do at the date of the decision under appeal, and as to whether the Claimant reasonably required guidance or supervision in order to achieve that. If it concludes that guidance or supervision enabled the Claimant to do some walking out of doors which she would otherwise have been unable to do, it should award the lower rate of the mobility component unless it considers that that walking was so minimal that it could not be of any real benefit to the Claimant.

13. The Claimant's representative has asked me to substitute my own decision in the Claimant's favour on the evidence now available. However, some of the evidence before the Tribunal (and in particular para. 8 of the report of Dr. Macgregor at p.69) suggests that the Claimant never goes outside at all. As I have said, the new tribunal will need to make findings in this respect. It will also need to reconsider entitlement to the care component.

(signed on the original) **Charles Turnbull**
Commissioner
22 March 2006