

Claimant entitled to higher rate
mobility where rental as assessment
led to payment problems



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CDLA/4125/2000

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER JACOBS

Claimant:
Tribunal:
Tribunal's Case No:

Sylvia Lovelock
Sutton
D/45/176/1999/03479

Decision:

1. My decision is as follows. It is given under section 14(8)(a)(i) of the Social Security Act 1998.

1.1 The decision of the Sutton appeal tribunal held on 7th January 2000 is erroneous in point of law.

1.2 Accordingly, I set it aside and, as I can do so without making fresh or further findings of fact, I give the decision that the tribunal should have given.

1.3 My decision is:

The claimant is entitled to an award of mobility component at the higher rate for the inclusive period from 2nd October 1998 to 1st October 2003. She is not entitled to an award of any rate of the care component.

The appeal to the Commissioner

2. This is an appeal to a Commissioner against the decision of the appeal tribunal brought by the claimant with the leave of the tribunal's chairman. The Secretary of State supported the appeal. The case was then referred to me. Having read the papers, I considered that the claimant was entitled to an award of a disability living allowance containing the mobility component at the higher rate, but not the care component. I offered her the choice of an award of the mobility component or a rehearing before a tribunal. Her representative has replied that the claimant will accept the award I suggested.

The history of the case

3. The claimant's claim for a disability living allowance was treated as made on 2nd October 1998. She wrote that she had had depression and difficulties with walking. Her GP wrote that she had difficulty with walking for 4 months in that her legs felt weak and gave way, restricting her walking to a maximum of 50 metres. A report was obtained from an examining medical practitioner. The doctor identified no care needs. On mobility, the doctor reported that the claimant's left leg was weak, that her progress on foot was very slow and 'distinctly uncomfortable', that she had a shuffling gait and that her balance was poor.

4. The adjudication officer refused the claim. The claimant applied for a review of that decision. A report was provided by a Consultant Clinical Psychologist. It included details of an examination by a Consultant Neurologist, who found that the claimant had general muscular weakness and an abnormal gait. The diagnosis was a form of somatisation disorder, in which mental and emotional symptoms manifest themselves as physical problems. The recommended treatment was physiotherapy, but this was not a cure and was not yet producing visible results. A different adjudication officer conducted a review under section 30(1) of the Social Security Administration Act 1992, but confirmed the refusal of the claim.

5. The claimant appealed against that decision, arguing that she was entitled to the mobility component at the lower rate. The report of the Consultant Neurologist was produced for the hearing.

6. The tribunal confirmed the refusal of the claim. It found that the claimant's disabilities were not physical.

The error of law

7. The tribunal's decision is erroneous in law for taking the wrong approach to the nature of the claimant's disablement.

8. Section 73(1)(a) of the Social Security Contributions and Benefits Act 1992 provides that an award may only be made if the claimant "is suffering from physical disablement" and regulation 12(1)(a) of the Social Security (Disability Living Allowance) Regulations 1991 provides that the claimant's limited mobility must be a result of "his physical condition as a whole".

9. The legislation assumes a three link chain of causation. The chain begins with an injury, disorder or disease. This produces disablement. That disablement leads to limitations to a person's mobility. The second and third links cannot be merged by arguing that the limitation on mobility is itself a physical disablement. The person must have a physical disablement or condition which is separate from and gives rise to those limitations: see Lord Justice O'Connor in the Court of Appeal decision in Harrison v. Secretary of State for Social Services (reported as an Appendix to the decision of the Commissioner in R(M) 1/88). This follows from the words "physical disablement such that ... he is virtually unable to walk".

10. It is the second link in the chain which must involve a physical disablement and requires the tribunal to decide whether the claimant's "physical condition as a whole is such that ... he is virtually unable to walk", not the first: see the decision of the Commissioner in CSDLA/265/1997, paragraphs 12 and 16.

11. Put in terms of the evidence in this case, the ultimate origin of the claimant's difficulties lay in her mental and emotional state, but that had produced muscle weakness. That was a physical disablement that produced the problems in walking described by the examining medical practitioner.

My award

12. The evidence does not support an award of the care component and the claimant does not want to pursue that component. So, I need say no more about it.

13. I have explained why the claimant's mobility is restricted by a physical disablement. On the basis of the evidence of the examining medical practitioner, she is virtually unable to walk because of her speed of progress, her manner of walking and her lack of balance.

14. On the evidence of her GP, she had experienced her difficulties for at least three months before the date of claim. so, the initial qualifying period is satisfied. My award begins on the date of claim.

15. As to duration, I must confine my consideration to the circumstances obtaining at the date of the decision under section 30(1) of the Social Security Administration Act 1992. At that date, the Consultant Psychologist's report showed that physiotherapy was having little effect. I have considered the diagnosis, the form and likely success of treatment, and the

claimant's age. It looks as if the claimant's mobility will be affected for some time. An award for a number of years is appropriate. An award for 5 years is appropriate.

Summary

16. As I have decided that the tribunal's decision is erroneous in law, I must set it aside. I, therefore, have power either to refer the case to an appeal tribunal for determination or to give a decision myself, with or without further findings of fact. It is not necessary for me to make further findings of fact. The tribunal found the facts correctly; it merely applied the law wrongly to them. So, I can give the decision which the tribunal should have given on its findings of fact. That decision is set out in paragraph 1.3.

Signed on original

**Edward Jacobs
Commissioner
21st February 2001**