

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal. I set aside the decision of the Newcastle-upon-Tyne appeal tribunal dated 4 August 2003 and I substitute a decision that the claimant is entitled to the lower rate of the mobility component of disability living allowance from 10 March 2003 to 9 March 2005.

REASONS

2. I held an oral hearing of the claimant's application for leave to appeal. The claimant neither attended nor was represented. The Secretary of State was represented by Ms Deborah Haywood of the Office of the Solicitor to the Department of Health and the Department for Work and Pensions. I am very grateful to her for her helpful submissions in support of the claimant's application. After the hearing, I issued a direction stating, with reasons, that I proposed to award the lower rate of the mobility component for two years and inviting the parties to indicate whether they had any objection. Both parties have indicated that they have no objection to the decision. I now repeat the reasons.

3. The claimant claimed disability living allowance on 10 March 2003. Her claim was disallowed on 28 April 2003. She appealed, seeking the middle rate of the care component and the lower rate of the mobility component. She made a detailed statement in writing, saying that she would find attending the tribunal too stressful. She said that she had had a "near breakdown" and now only went out with her son or daughter. In particular, she said –

“6. The last time I tried to go out alone was to attend a doctor's appointment about 18 months ago. I started to walk there but got to the corner of the street and had a panic attack and had to come back home. I had to phone my daughter and she came for me and took me in the car.

7. If I am walking outdoors then my daughter or her husband will talk to me all the time and encourage and reassure me. This seems to make the journey go quicker and takes my mind off my panic. I find that my husband calms me down more than my daughter because he is more assertive.”

4. On 4 August 2003, the tribunal dismissed her appeal, saying in respect of the mobility component –

“Although the Appellant suffers from anxiety and depression, she can walk outside without needing the guidance or supervision of another person. She has a preference to be accompanied so that she can be reassured, but having someone with one for the purposes of reassurance does not amount to needing someone for guidance or supervision.”

The claimant applied to the chairman for leave to appeal on the ground that the tribunal's decision in respect of the lower rate of the mobility component is erroneous in point of law. A different chairman refused leave, stating that “Reg 12(7) applies”. Presumably, that was a reference to regulation 12(7) of the Social Security (Disability Living Allowance) Regulations

1991. She now renews her application. Mr Commissioner Jacobs directed that there be an oral hearing for argument as to the application of regulation 12(7).

5. The lower rate of the mobility component is payable by virtue of section 73(11)(b) of the Social Security Contributions and Benefits Act 1992 in a case falling within section 73(1)(d), which provides that a person shall be entitled to the mobility component for a period throughout which-

“he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.”

6. The claimant and Ms Haywood both submit that the tribunal erred in their approach to the word “guidance”. I agree. It is true that the mere fact that a claimant derives reassurance from another person does not mean that that person is providing guidance or supervision but the point was made in CDLA/42/94, at paragraph 22(1), that it is equally true that the fact that a claimant derives reassurance from another person does not mean that that other person is *not* providing guidance or supervision. See, also, R(DLA) 4/01, at paragraph 18, where a Tribunal of Commissioners followed CDLA/42/94 in holding that supervision requires an element of monitoring or readiness to intervene so as to prevent the claimant’s ability to take advantage of the faculty of walking from being compromised.

7. The claimant and Ms Haywood both also submit that the action of talking to a claimant to take her mind off her fears is likely to involve supervision. The talking itself may be “attention” rather than “supervision” but it plainly requires an element of monitoring of the claimant to see how she is reacting and it seems to me plain that if the claimant needs that assistance from another person in order to make use of the faculty of walking, she *prima facie* falls within the scope of section 73(1)(d).

8. As to regulation 12(7), Ms Haywood accepted that it really had no application in this case due to the effect of regulation 12(8). Those paragraphs provide –

“(7) For the purposes of section 73(1)(d) of the Act, a person who is able to walk is to be taken not to satisfy the condition of being so severely disabled physically or mentally that he cannot take advantage of the faculty out of doors without guidance from another person most of the time if he does not take advantage of the faculty in such circumstances because of fear or anxiety.

(8) Paragraph (7) shall not apply where the fear or anxiety is:
(a) a symptom of mental disablement;
(b) so severe as to prevent the person from taking advantage of the faculty in such circumstances”

As Mr Commissioner Jacobs observed, mental disorders are often defined by symptoms and in the present case “anxiety” is one of the diagnoses of the claimant’s conditions. In those circumstances, regulation 12(8)(a) cannot be regarded as requiring that anxiety be a symptom of some other mental disorder. What it requires is that the anxiety be recognised as a mental disorder and that the word “anxiety” is not being used in its more colloquial sense. Ms

Haywood confirmed my understanding that regulation 12(7) and (8) was introduced to reverse R(DLA) 4/01 to the extent that the Tribunal of Commissioners held that fear and anxiety not amounting to mental disability could have the effect that a person could not take advantage of the faculty of walking out of doors. In at least some of the cases considered by the Tribunal of Commissioners, there was no evidence of any mental disablement. By contrast, in CDLA/2409/03, to which Ms Haywood referred me, a claimant suffering from incontinence had also been diagnosed as suffering depression and an anxiety state and Mr Deputy Commissioner Paines QC held that the fact that a fear or anxiety might be related to incontinence did not preclude it from being a symptom of her mental disability. The present case is rather simpler because there is no suggestion that the claimant's fear and anxiety is due to anything other than the depression and anxiety that her doctor has diagnosed. If it is so severe that it prevents her from going out, both conditions of regulation 12(8) are met and regulation 12(7) does not apply.

9. I see no reason not to accept the claimant's written evidence. She mentions that her condition was so bad at one stage that hospitalisation was considered and, although she accepts her doctor's opinion that her condition is variable and depends to some extent on her domestic circumstances, she makes the point that for well over a year before the date of claim, it was not such that she felt able to go outdoors without supervision.

10. In those circumstances, I take the view that the claimant is entitled to the lower rate of the mobility component of disability living allowance. It is to be hoped that her condition will improve and so I limit the period of the award to two years.

(Signed) **MARK ROWLAND**
Commissioner
30 January 2004