Mobility
- whether Chronic Fatigue Syndrome is physical disablement (LRB 151)

(7)

THE SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Starred Decision No: *22/99

(Commissioner's File No.: CDLA/5183/97)

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Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

Miss J Bravo
Office of the Social Security and Child Support Commissioners
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3 BN.

so as to arrive by 8TH JULY **1999**

1. My decision is that the decision of the Norwich DAT dated 3 June 1997 is not erroneous in law.

2. The appellant who is now 23 years old suffers from a chronic fatigue syndrome, mild asthma, raynaud's disease and back pain. She was awarded DLA higher rate mobility component and lowest rate care component from 19 October 1994 to 18 October 1996. On her repeat claim, the adjudication officer (AO) awarded only the lowest rate care component. She therefore took her case to the disability appeal tribunal but was unsuccessful. She now appeals to the Commissioner on a point of law.

3. I can allow the appeal only if I am satisfied that the tribunal decision is erroneous in law. It is not for me to evaluate the evidence afresh.

4. It is argued on behalf of the appellant that the tribunal decision is erroneous in law on two grounds. First, they failed to deal adequately with the question of whether the appellant's walking difficulties arose from physical disablement. Second, it is argued that the tribunal's findings and reasons are inadequate.

5. For the purposes of a DLA claim, it does not usually matter whether a person's disability is mental, physical or a combination of the two. But higher rate mobility component is different. This is because section 73(1)(a) Social Security Contributions & Benefits Act 1992 entitles a person to that rate of the component if "he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so". And regulation 12(1)(a)(ii) Social Security (DLA) Regulations 1991, under which the majority of awards are made, refers to the need for the claimant's "physical condition as a whole" to be such that (s)he is virtually unable to walk.

6. In this case, the DAT had expert medical evidence concerning the appellant's condition. This included a report from a consultant haematologist and a report from a consultant orthopaedic surgeon. The latter report, which was important to the tribunal's deliberations, I should quote in full:-

> "This is your patient who we discussed with low back pain in addition to her various medical problems.
>
> I had an MRI scan done following (the consultant haematologist's) comment that it is very important to rule out physical causes for her pains and I am pleased to say that this scan is entirely normal.
>
> Her backache must therefore be regarded as a mechanical problem and I think should be treated on its own merits

with as vigorous a programme of rehabilitation and weight loss as she is capable of."

Other relevant information before the tribunal was the advice of the DLA Advisory Board and an assertion by the appellant's representative that a report for the World Health Organisation existed indicating that chronic fatigue syndrome was a physical disability.

7. This is a controversial and sensitive issue. Accordingly, it is important to be clear about how the Commissioner and tribunals approach this question when it arises. It is not for the Commissioner to rule on whether or not chronic fatigue syndrome has a physical cause. It is not a question of law. Nor is it for the DAT to have some kind of general rule or policy on this matter. What the DAT must do in each individual case, is to examine the evidence before it and reach a conclusion on whether the walking difficulties which an individual appellant experiences arise from "physical disablement", in order to satisfy the statute; and the individual appellant's "physical condition as a whole" in order to satisfy the regulation. This evaluation of the evidence is a question of fact for the DAT. See R(M)2/78.

8. In this case I have carefully considered the evidence and the DAT's statement of material facts and reasons for its decision. In my judgment, they have lawfully performed their task as a tribunal of fact. In particular, they have regarded the advice of the DLAAB not as binding on them in any way but simply as a factor to be taken into account. The appellant's representative argues that the consultant haematologist's report includes amongst the diagnoses "back pain - mechanical cause". However, in the light of the orthopaedic consultant's report to which I have referred, the DAT were entitled to conclude that the appellant's back pain did not arise from physical disablement.

9. I am equally satisfied, after reviewing the papers, that the DAT's findings of fact and reasons have been recorded to the standard required by law.

10. I therefore conclude that the decision of the Norwich DAT dated 3 June 1997 is not erroneous in law.

Nicholas Warren

(Signed) Nicholas J Warren
Deputy Commissioner

(Date) 5.3.99