

HL/RC/1

- Mental health.. Tribunal
must make its own findings, not
simply accept findings of DSS doctor.

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CIB/1679/1998

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER H LEVENSON

Claimant :
Tribunal : Telford
Tribunal Case No :

1. For the reasons given below this appeal by the claimant succeeds. In accordance with the provisions of section 23(7)(a) of the Social Security Administration Act 1992 I set aside the decision made by the social security appeal tribunal on 5 January 1998. I make further findings of fact and substitute my own decision. This is to the effect that the claimant continues to be incapable of work and, accordingly continues to be entitled to incapacity benefit, from and including 16 October 1997.

2. This case concerns the claimant's capacity to work, which depends on the application of the All Work Test. The test is defined in regulations 24 of the Social Security (Incapacity for Work) (General) Regulations 1995. The rules for satisfying the test are set out in regulations 25 and 26. The test itself is set out in the schedule to those regulations. In the present case, the claimant's capacity for work depends on whether she has scored at least 10 points for mental health descriptors on the test. It is not suggested that the claimant comes within one of the exceptions from the test or might be exempt from the test, and there would be no evidence to support such suggestions. It has not been suggested that any of the physical descriptors applies, and I need make no further comment on that aspect.

3. The claimant was born on 15 March 1991. So far as concerns the present appeal she was certified as incapable of work with effect from 13 May 1995 because of anxiety, depression and stress. Her son is deaf and has had serious behavioural problems, culminating in an appearance in the Crown Court on matters connected with child abuse. On 26 June 1997 the claimant returned to the Department of Social Security ~~of~~ the Benefits Agency form IB50, an incapacity for work questionnaire. On 2 September 1997 the claimant was examined by Dr Scotten on behalf of the Benefits Agency Medical Service. Dr Scotten was of the opinion that certain mental health descriptors applied which would in fact carry 8 points. Descriptor 17(b) carries 2 points and applies when a claimant "frequently feels scared or panicky for no obvious reason". Dr Scotten indicated that this was not the case and the reason for his answer was "only if out alone with strangers". On the face of it that seems to me to be an inconsistent answer. The adjudication officer considered the matter, allocated 8 points in accordance with the report from Dr Scotten, and decided that as from 16 October 1997 the claimant was no longer incapable of work and no longer entitled to incapacity benefit. On 4 November 1997 the claimant appealed to the social security appeal tribunal against the decision of the adjudication officer.

4. On 18 November 1997 the claimant's GP reported with his opinion of which mental health descriptors applied. There has been much subsequent confusion in the submissions from both parties. However, the fact is that although there were

descriptors which were included in the assessment of Dr Scotten and were not included in the assessment of the GP, there was only 1 descriptor which was included in the assessment made by the GP which was not included in the assessment made by Dr Scotten. This was descriptor 17(b), to which I have referred above. I suspect that part of the confusion has been caused by the use of different abbreviations to refer to the descriptors from those used in the schedules to the regulations. I know that this is widespread and almost universal amongst Benefits Agency staff. I deprecate this practice. The schedule has provided very clear reference numbers and letters for each descriptor and much confusion would be avoided if these were used by all concerned.

5. The tribunal met to consider the matter on 4 December 1997 but adjourned so that the claimant could attend. A differently constituted tribunal met to consider the matter on 5 January 1998. The claimant attended the hearing and her evidence including the following:

"I get panic attacks. If in town, when I see certain people, I have to get away - I get hot and I perspire. I get a dry mouth and breathing problems, and stabbing sensation at back of neck. It only happens if I see someone who is deaf, because my son is deaf. I get something similar at home e.g. when there is a reference to child abuse on TV or on radio. It only happens in certain situations. I am better when staying with daughter [who lives in a different part of the country]. ...I go out occasionally with a friend to market. We try to help each other.... Situation has improved because son has improved, but I still get panic attacks....".

6. The tribunal confirmed the decision of the adjudication officer on the basis that it "accepted the evidence of the examining medical practitioner which amounted to an objective assessment of the appellants circumstances following examination. There was no medical evidence to the contrary".

7. The tribunal's reasoning is flawed to the extent that it renders its decision erroneous in law. The assessment of the application of mental health descriptors is not capable of being "objective" in the same sense as the results of a physical examination. Certainly the tribunal must take account of any evidence from a doctor making an assessment on behalf of the Benefit Agency Medical Service, but when it comes to it the tribunal must make its own decision on each relevant descriptor. In this case the tribunal has not done that. Further, it is wrong to say that there was no medical evidence to the contrary, because the GP had given his opinion that descriptor 17(b) did apply. Finally, the claimant gave the evidence which I have quoted above and to which the tribunal paid no regard.

8. The claimant applied for leave to appeal to the Social Security Commissioner against the decision of the tribunal. Leave was granted by the chairman of the tribunal on 26 April 1998. The adjudication officer now concerned with the matter supports the appeal but has suggested that I refer the matter to a new tribunal for a fresh hearing and decision. However, it is now over a year since the effective date of the adjudication officer's decision, it is obviously distressing for the claimant to have to keep explaining the history and her difficulties, and there is adequate evidence on the file for me to substitute my own decision, which I deem it expedient so to do. In light of all the other evidence and circumstances it is overwhelmingly likely that the claimant's evidence to the tribunal, which I have quoted above is accurate and I so find. Although it might be argued that the claimant feels scared or panicky for obvious reasons, because it happens when she is exposed to deaf people or to discussions of child abuse, in my view for a reason to be obvious within the meaning of descriptor 17(b) it must be a reason that a reasonable person would expect to find frightening or panicking (such as a reasonably based fear of physical attack). The descriptor can only apply when the feelings occur "quite frequently". However, this is a question of fact and on the basis of the evidence from the claimant and the GP I find that such attacks are frequent. In other respects I adopt the findings of the tribunal as my own insofar as they identify descriptors which carry 8 points. Adding 2 points in respect of descriptor 17(b) brings the total to 10 points which is the threshold for mental descriptors on the All Work Test.

9. For the above reasons, this appeal by the claimant succeeds.

(Signed) H Levenson
Commissioner

(Date) 5 November 1998