

FAO Peter. - Decision as requested.

1. For the reasons given below this appeal by the claimant succeeds. In accordance with the provisions of section 23(7)(b) of the Social Security Administration Act 1992 I set aside the decision of the social security appeal tribunal made on 2 July 1996. I refer the appeal to a totally differently constituted tribunal for a fresh hearing and decision in accordance with the directions given below.

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 regulation 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. As originally presented, the claimant's capacity for work depended on whether she had scored at least 15 points for physical descriptors on the test. During the proceedings before the Commissioner her representative suggested that mental health descriptors should be considered. The claimant will have a full opportunity to present any relevant evidence to the new tribunal. There appears to be no evidence that the claimant might be exempt from the test or come within one of the exceptions. Further details of the relevant law and the relationship between the All Work Test and entitlement to incapacity benefit have been set out in the adjudication officer's original submission to the tribunal, of which all parties have copies. I do not propose to repeat what has been said in that document except insofar as is necessary to explain my decision.

3. The new tribunal will consider the matter down to the date of its own hearing (CIB/14430/1996 and associated cases). I remind the tribunal that the regulations were amended with effect from 6 January 1997 by SI 3207 of 1996.

4. The claimant was born on 17 January 1954. For many years she has suffered from diabetes which for some time has been insulin dependent. She has also been diagnosed as suffering from carpal tunnel syndrome. This latter is a varying and treatable condition and (if appropriate) the tribunal should take care in eliciting evidence and making findings with respect to the effect of this syndrome. So far as concerns the present appeal the claimant was certified as incapable of work from and including 15 December 1980. On 29 December 1995 she returned to the Department of Social Security or Benefits Agency form IB50, an incapacity for work questionnaire. On this form she referred to difficulties when having a hypoglycaemic attack. Apart from this she stated that she could not pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand and could not use a pen or pencil because her hands shook so much. She also stated that she had a hypoglycaemic attack at least once a week and the previous two occasions had been on 21 and 23 December 1995. Her answers were such that, if taken at face value, she would

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AWT/PCA & Commissioner
 - 'similar' reasons = similar in
 cause or effect
 - can conclude hypoglycaemic
 episode.

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 - article

have exceeded the score of 15 points for physical descriptors. On 25 January 1996 the claimant was examined by Dr Gamage on behalf of the Benefits Agency Medical Service. Dr Gamage was of the opinion that the claimant had good grips and full finger and wrist movement. He recorded that the claimant had had an involuntary episode of lost or altered consciousness once in the previous 6 months but not more than once. I am bound to say that the basis on which he recorded this is unclear. However, on the basis of the report from Dr Gamage the adjudication officer decided that as from 19 March 1996 the claimant was no longer incapable of work and no longer entitled to receive incapacity benefit, having scored 8 points in respect of descriptor 14(e).

5. On 15 April 1996 the claimant appealed to the social security appeal tribunal against the decision of the adjudication officer. In her letter of appeal she stated that although she does not always black out she had had hypoglycaemic episodes more frequently than indicated by Dr Gamage and also that the questions of shortness of breath and hands shaking had not been taken into account. The tribunal met on 2 July 1996 to consider the matter. The claimant attended with her husband and with a friend to represent her. Oral evidence was given. I can see nothing in the chairman's record of proceedings dealing with evidence as to the nature of the hypoglycaemic episodes (their impact, duration and so on) nor their frequency, nor whether they are always of the same kind. There is no record of any evidence as to the effect of her hands shaking or shortness of breath. The tribunal confirmed the decision of the adjudication officer. It accepted that there was some evidence that the claimant suffered from carpal tunnel syndrome although not to a degree that attracted any points. The tribunal may be correct in this finding but it is not clear that it had elicited any evidence on which it could reasonably reach this conclusion. The tribunal's decision made no reference to shortness of breath. The findings of fact recorded the suggestion that there were problems with carrying and lifting but stated that there was no evidence to support this and no complaint had been made on form IB50. This is simply incorrect. There was a reference on that form. The tribunal might not have accepted the claimant's evidence but it is wrong to say that there was no evidence. The tribunal recorded that the claimant had told Dr Gamage that she had lost consciousness once in the previous 6 months. However, activity area 14 is not limited to episodes of lost consciousness. I would also add that the tribunal gave no consideration to what might be called the "sometimes" descriptors. Descriptor 6(c) applies if the person sometimes cannot bend or kneel in the circumstances described. Descriptor 5(c) applies where a person sometimes cannot rise from sitting to standing without holding on to something. If the claimant has difficulty with these activities during hypoglycaemic episodes, then the new

tribunal should consider this and might decide that one or both of these descriptors does apply.

6. For all of the above reasons the tribunal's decision was made in error of law. Its findings and reasons were inadequate and it failed to take account of relevant evidence. On 23 October 1996 the claimant applied for leave to appeal to the Social Security Commissioner against the decision of the tribunal. On 30 October 1996 the chairman of the tribunal refused leave to appeal. The claimant now appeals by leave of Mr Commissioner Henty granted on 10 January 1997. The adjudication officer now concerned with the matter opposes the appeal and supports the decision of the tribunal but I have indicated the reasons why I disagree with these submissions of the adjudication officer.

7. The new tribunal must consider all relevant descriptors unless it is satisfied that the claimant has reached 15 points without considering any particular descriptor. In relation to activity area 14, for the period prior to 6 January 1997 column 1 of the schedule to the 1995 regulations defined the activity area as "remaining conscious other than for normal periods of sleep" and each of the descriptors which carries points uses the phrase "an involuntary episode of lost or altered consciousness". In my opinion suffering from a hypoglycaemic episode is capable of amounting to "altered consciousness" even if there is no loss of consciousness. The new tribunal will have to take evidence of precisely what is experienced by the claimant and the frequency of such experiences, and decide whether the phrase "altered consciousness" applies. With effect from 6 January 1997 the schedule to the regulations was amended so that column 1 now reads "Remaining conscious without having epileptic or similar seizures during waking moments". Thus from 6 January 1997 the questions to be asked are whether the claimant had "epileptic or similar seizures" and, if so, whether there is lost or altered consciousness and, if so, the frequency of episodes of lost or altered consciousness. In my view, the notion of "similar seizures" includes both seizures which are caused by conditions similar to epilepsy and seizures which are similar in effect, whatever the cause. However, I would caution the new tribunal that even under the original wording suffering a hypoglycaemic episode might not necessarily amount to a state of altered consciousness. This depends on the precise circumstances.

8. For the above reasons this appeal by the claimant succeeds.

(Signed) H Levenson
Commissioner

(Date) 14 October 1998