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SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File No.: CIB/4828/99

Starred Decision No: 63/01

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

*Mr Damien Abbott,
Office of the Social Security and Child Support Commissioners,
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.*

so as to arrive by 10th August 2001

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

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 Doncaster social security appeal tribunal, held on 24th February 1999, is erroneous in point of law.
 - 1.2. I set it aside and give the decision that the appeal tribunal should have given without making fresh or further findings of fact.
 - 1.3. My decision is that there were no grounds on which to review the last operative decision awarding incapacity benefit to the claimant. There were no grounds to terminate his award of that benefit. From and including 18th June 1998, the claimant remained entitled to incapacity benefit.

The appeal to the Commissioner

2. This is an appeal to a Commissioner against the decision of the social security appeal tribunal brought by the claimant with the leave of the tribunal's chairman. The Secretary of State does not support the appeal.

The history of the case

3. The claimant became incapable of work in 1992 and entitled to incapacity benefit from the inception of that benefit.
4. His capacity for work was assessed in 1997 and 1998 by self-assessment questionnaire and medical examination.
5. In his self-assessment questionnaire, the claimant reported a number of difficulties:
 - 5.1. Dizziness on rising from sitting or from bending and kneeling and on climbing stairs.
 - 5.2. Tiredness if he stood for too long or walked too far.
 - 5.3. Difficulties with reaching and lifting and carrying because of an operation for an abscess on his left arm.
 - 5.4. Poor hearing in busy places.
 - 5.5. He also referred to bad headaches, water retention and frequency of urination after taking his medication.
6. The examining doctor conducted an examination under the physical disabilities section of the all work test, but found no relevant level of disability.
7. The adjudication officer accepted the examining doctor's evidence. On the basis of that evidence, the adjudication officer decided that the claimant was no longer incapable of work.

The decision awarding incapacity benefit was reviewed and the award terminated from and including 18th June 1998.

8. The claimant appealed against that decision to a social security appeal tribunal. He produced three pieces of medical evidence in support of his appeal:

8.1. A letter from his GP stated that the claimant's blood pressure was not well controlled, that he experienced dizziness, that he felt generally unwell most of the time and that he suffered from a degree of anxiety and depression.

8.2. A letter from a Consultant Physician also referred to dizziness, raised blood pressure and symptoms of anxiety.

8.3. A short letter from a Counsellor stated that the claimant was stressed and depressed and mentioned specifically lack of concentration and ability to settle to do anything.

9. The tribunal confirmed the adjudication officer's decision terminating the award. However, the tribunal investigated the mental disabilities section of the all work test and awarded 6 points. They were, of course, insufficient for the claimant to satisfy the test.

10. The tribunal accepted that the claimant experienced dizziness. However, it attributed this to his anxiety and depression which it in turn related to his hypertension. This conclusion seems to be based on the advice of the tribunal's medical assessor, who told the tribunal that depression could be secondary to hypertension.

11. The tribunal found that the claimant's difficulties resulting from dizziness were 'not a manifestation of a specific bodily disease or disablement'.

The law

12. This case raises the issue of the interpretation and application of regulation 25(3) of the Social Security (Incapacity for Work) (General) Regulations 1995:

'In determining the extent of a person's incapacity to perform any activity listed in Part I or Part II, it shall be a condition that the person's incapacity arises-

- (a) in respect of a disability listed in Part I, from a specific bodily disease or disablement; or
- (b) in respect of a disability listed in Part II, from some specific mental illness of disablement.'

13. Parts I and II refer to the Schedule to the Regulations. Part I contains the physical disabilities section of the all work test; Part II contains the mental disabilities section of that test.

14. The wording of the full statement of the tribunal's decision suggests that the tribunal applied the wrong legal test. It repeatedly states that the claimant's hypertension did not give rise to 'any physical manifestations' or that the dizziness was 'not a manifestation of a specific bodily disease or disablement'. That is not the legal test for the physical disabilities

section. The legal test is whether the claimant's 'incapacity arises in respect of' one of the descriptors 'from a specific bodily disease or disablement'. That is slightly different from the terms used in the chairman's statement of tribunal's reasons. However, I do not take that difference in expression as showing that the tribunal did not have regard to the correct wording. The statement bespeaks the chairman's care and attention to detail. I treat the differences in language as merely differences of expression rather than substance.

15. However, the tribunal did misinterpret regulation 25(3).

16. I begin by accepting the tribunal's analysis of the chain of causation. Hypertension is a specific bodily disease. If that disease gave rise directly to dizziness, the resulting incapacities would arise from it. I see no reason why the incapacity has to arise directly. The Secretary of State argues otherwise; I disagree. If there was a causal link in which the hypertension caused anxiety and depression which in turn caused the dizziness, a tribunal might be entitled to find that the incapacities resulting from the dizziness arose from the hypertension.

17. Next, I assume that the tribunal's analysis was wrong and the hypertension was neither by cause nor contribution related to the hypertension. On this assumption, the dizziness arose from, and only from, the anxiety and depression. The dizziness would not of itself be a specific bodily disease, but it might be a bodily disablement. If it was a bodily disablement, any incapacity that arose from it would fall within the physical disabilities section of the all work test.

18. I have worded paragraphs 16 and 17 in terms of possibilities. I am not saying that any link, however tenuous, is sufficient to allow or require a tribunal to find that an incapacity arises from a bodily disease somewhere earlier in the chain of causation. Nor am I saying that any physical symptom of a mental illness or disablement will constitute a bodily disablement. All I am saying is that, depending on the circumstances, either of these is possible.

19. So, regulation 25(3)(a) and (b) do not create rigid categories. A physical symptom that arise from a mental illness or disablement may be a bodily disablement. Or it may arise from a bodily disease that itself gave rise to the mental illness or disablement. In either case, the symptom may give rise to incapacity in respect of a disability under the physical disabilities section of the all work test. It would be surprising if it were otherwise, as a person's condition is often the result of the complex interaction of physical and mental factors.

What decision should I give?

20. The tribunal's decision was wrong in law. So, it must be set aside. A rehearing is not necessary. I can give the decision that the tribunal should have given on its own findings of fact. On the careful and detailed findings of the tribunal in this case, it is clear that, if the tribunal had correctly interpreted regulation 25(3), the claimant would have scored 3 points each for the 'sometimes' descriptors under the activities of rising from sitting and bending and kneeling. Taken together with the 6 points awarded by the tribunal under the mental disabilities section of the all work test, the claimant's score was sufficient to satisfy that test. So, there were no grounds to terminate the claimant's award of incapacity benefit.

Signed on original

Edward Jacobs
Commissioner
27th April 2001