

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal. I set aside the decision of the Manchester appeal tribunal dated 20 November 2000 and I refer the case to a differently constituted tribunal for determination.

REASONS

2. The decision notice issued by the tribunal indicated that the decision was not unanimous but was reached by a majority. That that is in fact the case is confirmed by an annotation at the end of the record of proceedings. Where a decision is reached by a majority, regulation 53(5) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 requires that any statement of reasons issued under regulation 53(4) "shall include the reasons given by the dissenting member for dissenting". In this case, a statement of reasons was issued that did not include any reasons for the dissent and, indeed, made no reference to the fact that the decision had been reached only by a majority. The Secretary of State concedes that the tribunal's decision is therefore erroneous in point of law.
3. I agree. Regulation 53(5) is in mandatory terms and a statement of reasons must be regarded as incomplete when lacking reasons for dissent. The requirement for reasons for dissent has practical value. It enables the parties fully to understand the decision and implicitly requires the reasons of the majority to deal with any points raised by the dissenting member that are not otherwise addressed. Most importantly, the reasons of a dissenting member of a tribunal may draw the unsuccessful party's attention to a flaw in the reasoning of the majority that might be grounds for an appeal. For those reasons, I presume that it was intended that a party should have a remedy when there is a failure to comply with the requirement to record reasons for dissent. No doubt, if a chairman is faced with an application for leave to appeal based on the lack of a record of reasons for dissent, that chairman can consider correcting the statement of reasons to include that record. However, I suspect that in most instances the chairman will be unable to make such a correction because the reason that the statement did not include the record of reasons for dissent in the first place will be that the chairman was not the dissenting member of the tribunal and had forgotten to make a note of the dissenting member's reasons. The lapse of time will often make it inappropriate to try and obtain, at that stage, a statement of reasons from the dissenting member. In those circumstances, the failure to include in a statement of reasons the reasons for dissent will render the decision erroneous in point of law and liable to be set aside, either by the chairman under section 13(2) of the Social Security Act 1998 or, on appeal, by a Commissioner. In the present case, the lack of reasons for dissent was first raised as an issue by the Commissioner granting leave to appeal. It is now far too late to have the

statement of reasons supplemented. I must allow the appeal and set aside the tribunal's decision.

4. Both parties submit that the decision is also erroneous in point of law because the tribunal did not give an adequate reason for adopting the examining medical practitioner's findings as to the extent of his walking ability, when the claimant had given contrary evidence supported by his general practitioner. It would doubtless have been better if the tribunal had made express reference to the relevant parts of the claimant's evidence and that of his general practitioner. However, it is to be noted that the general practitioner's evidence of 7 November 2000 was given as a series of indications of approval of statements drawn up by the claimant's representative and the tribunal said that they preferred the evidence of the examining medical practitioner because the evidence of the claimant's general practitioner was contradicted in many respects by the claimant's own oral evidence. Whether the claimant's own evidence was actually inconsistent with the tribunal's finding and, if so, whether the tribunal ought to have made a specific comment on the point are questions upon which I prefer not to express a view. It is unnecessary for me to do so because I must in any event refer this case to another tribunal who will have to form their own judgment on the evidence before them.

(signed)

M. ROWLAND
Commissioner
22 August 2001