

SOCIAL SECURITY ACTS 1975 TO 1990  
SOCIAL SECURITY ADMINISTRATION ACT 1992  
CLAIM FOR INVALIDITY BENEFIT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Darlington

Case No: [REDACTED]

1. My decision is that the decision of the SSAT was erroneous in point of law. I set it aside and remit the case for re-hearing in front of a differently constituted tribunal.

2. This is an appeal with the leave of the chairman from the decision dated 8.3.94 that the claimant was not entitled to invalidity benefit from and including 15.11.93 (the date of the decision of the A.O. on review) "because we are not satisfied that at that date she was not incapable of work by reason of some specific disease or bodily or mental disablement". That wording could be taken to imply that, although the AO in his submissions to the tribunal placed the onus of proof correctly, possibly the tribunal did not. The onus in this case is firmly on the AO to show that the claimant was no longer entitled to benefit.

3. The claimant suffers from cervical spondylosis and had an operation for a prolapsed disc in or about 1989. An award of benefit was made on 22.6.92. She attended an AMA on 6.10.93 and the EMO concluded that she was medically incapable of doing her old job but medically capable of suitable alternative work. He said,

"She could cope with light sedentary or semi-sedentary work."

The AO reviewed the original award, as I have said, correctly placing the onus of proof. On 13.11.93 he decided that as from that day the claimant was not incapable of work and accordingly was no longer entitled to benefit. The appeal tribunal upheld his decision.

4. There are really two points on the appeal:-

- (i) The tribunal failed to make any findings of fact as to the degree or frequency of the pain from which the claimant stated she suffered. In accordance with R1/62(SB), where the Commissioner held that functions that can only be performed with substantial pain should not be included in the estimate of a person's degree or capacity, by failing to make adequate findings of fact in that respect they erred in law. I accept that submission.
- (ii) The tribunal stated that that decision related to her condition as they believed it was at 15.1.93 i.e. when the AO reviewed the original award. That tribunal was 8.3.94 and it is accepted that between the date of her examination by the AMA on 6.10.93 at the date of the tribunal, her condition had deteriorated. This is an open-ended claim. In R(SB) 4/85 at para 13 the Commissioner said:-

"The claim was an open-ended claim for an allowance. In the national insurance field it has been held that a decision refusing benefit under an open-ended claim operates as a refusal of benefit down to the date of the decision unless otherwise stated ...; and that in particular a decision of a person or tribunal refusing benefit given on a particular day operates down to that day and if confirmed on appeal operates down to the date of the appeal decision."

Accordingly, in holding as they did by reference to the condition of the claimant as at 15.11.93 the tribunal erred in law and should have considered the position right down to the date of the tribunal. Similarly, the new tribunal will have to consider the claimant's condition right down to the date when they sit to hear the appeal.

5. My decision is therefore as set out in paragraph 1 above.

(Signed) J.M. Henty  
Commissioner  
(Date) 21 February 1995