

DETERMINING DISABILITY FOR THE PURPOSE OF DLA AND AA

Contents	Paragraphs
Introduction	1
Background	2 - 3
The Tribunal of Commissioners' decision	4 - 7
Action	8 - 10
Annotations	
Contacts	

INTRODUCTION

- 1 A recent Tribunal of Commissioners (TOC) decision¹ has determined that when assessing whether a claimant is virtually unable walk for the purposes of the higher rate mobility component, the inability must be caused by or at least derive from some physical condition. This memo is to bring this to your attention and advises how such cases should be treated.

1. CDLA /2879/2004 & CDLA 2899/2004 (25 November 2005)

BACKGROUND

- 2 The higher rate of the mobility component is paid when the claimant has a physical disablement such that he is unable or virtually unable to walk¹.

1 SS CB Act 92, s 73(1)(a); SS (DLA) Regs, reg 12

- 3 Previously when considering whether a claimant fulfilled the condition of virtually unable to walk, a person's disability had to be physical. Any limitation in a person's ability to walk must be because of a physical disablement not a physical manifestation of the person's mental condition.

THE TRIBUNAL OF COMMISSIONERS' DECISION

- 4 The disabilities of the two claimants involved in these decisions were such that both claimed to be virtually unable to walk. However neither of the two claimants despite extensive tests had been diagnosed with a particular medical problem. In one case the claimant had vertigo and in the other the claimant had lower back pain. In neither case had the tribunal been able to make an award of the higher rate of the mobility component since though for slightly different reasons, neither claimant had been found to have an identifiable physical disability.
- 5 The TOC summarised their findings by saying that the effect of a previous Court of Appeal decision¹ (which they considered binding on them) is that pain, dizziness or other symptoms are not a feature of the claimant's "physical condition as a whole" within the meaning of the regulations² unless they have a physical cause. Difficulty in walking which results from pain, dizziness or other symptoms affecting physical functions which are found to have an entirely mental or psychological cause cannot therefore qualify a claimant for the higher rate of the mobility component of DLA.

1 R(M) 1/88 (Appendix); 2 SS (DLA) Regs, reg 12(1)(a)

- 6 The TOC also thought that tribunals have in the past been too ready to conclude that, the fact that no specific identifiable cause for lower back pain and dizziness has been found, despite extensive investigation, means that there is no physical cause. DMs however must be satisfied that the symptoms complained of, stem from a physical disability as opposed to a purely mental disability.
- 7 In cases where a claimant's inability or virtual inability to walk is caused by both physical and mental factors, the claimant is entitled to the higher rate of the mobility component if the physical disability is a material cause - i.e. if its contribution to the inability or virtual inability to walk is more than *de minimis*. The physical cause must be one which is likely to be still current from the award and throughout the period of the award, but it does not matter at what point in the chain of causation it comes, eg the physical cause may be subsequent to a mental disability.

ACTION

- 8 The TOC have confirmed that consideration should be given to the following
1. there must be a physical cause for the claimant's disability and consequent inability to walk
 2. the Court of Appeal case¹ must be followed

3. the physical cause does not have to be diagnosed medically
4. the physical disability must contribute to the claimant's inability to walk and must still be present at the time the decision to award the higher rate of the mobility component is made.

1 R(M) 1/88 (Appendix)

Note: The degree to which the physical disability contributes to the claimant's inability to walk is left unspecified but by stating that unless it comes within the definition of *de minimis*, the TOC have signalled that the physical disability could be only a small contribution to the claimant's inability to walk.

- 9 The effect that the TOC decision will have, is that provided the evidence of the claimant is credible and is supported by medical evidence, then a medical diagnosis of a particular physical disability will not be essential.
- 10 Where other cases are re-examined following the TOC decision, the DM should supersede the original decision on the grounds of ignorance of or a mistake as to fact in the normal way (See DMG Chapter 04).

Example 1

John has the symptoms of agoraphobia. Consequently his difficulties with walking outside are based on a mental illness not a physical one and he would not therefore satisfy the conditions for being virtually unable to walk because there is no material physical cause.

Example 2

Yasmin has arthritis which is the material cause of her walking disability and is able to walk 100 metres at a slow speed. However she also suffers from depression as a result which exacerbates her difficulties with walking. She can only walk 50 metres at a very slow speed. She would satisfy the conditions for being virtually unable to walk as her arthritis is a material physical cause.

Example 3

Basil has a verucca. He has difficulty walking however the effect is minimal and he would not satisfy the conditions for being virtually unable to walk.

ANNOTATIONS

Please note the number of this memo (DMG memo Vol 10 02/06) against the following DMG paragraphs 61280 et seq.

CONTACTS

If you have any queries about this memo, please write to ACI Division, Room GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in DMG Letter 05/04.

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