

Casebase Number:

Title of Payment: Disablement Benefit



Northside Community Law and Mediation Centre
Northside Civic Centre
Bunratty Road
Coolock
Dublin 17

Date of Final Decision: 10/04/2003

Title of Payment: Disablement Benefit

Date of Final Decision: 10th April, 2003

Keywords: Disablement Benefit payment review— degree of disability—Disablement Benefit adjustment—medical

Organisation who assisted claimant: Northside Community Law and Mediation Centre (NCL&MC)

Case Summary:

The case concerns an Appeal taken following refusal of disablement benefit. The Appeal was partially allowed.

Summary of Benefit(s) Received:

Appellant was first awarded Disablement Benefit in 1989 where his disablement was assessed at 30%. He appealed this assessment and was awarded Disablement Benefit at a rate of 50% from July 21, 1999. In February 2002, this decision was backdated to March 25, 1998. Later in 2002 Appellant sought to have his degree of disablement adjusted to 80%. After an original rejection, the Appeals Officer adjusted Appellant's disablement to 60% from March 17, 2002 for life. In August of 2004 Appellant again sought to have his degree of disablement reassessed. This request was denied by the Chief Medical Advisor. Appeal was taken. At oral hearing, the Appeals Officer decided further documents were required. This appeal is on-going.

Background:

Appellant suffered loss of faculty as a result of two occupational injuries to his back in 1976 and 1981. He was first assessed by a medical advisor in 1989 and assessed at 30% disablement. In July of 1999, Appellant sought to have this amount reviewed. He was refused and appeal was taken. Following the Oral Hearing, the Appeals Officer consulted with the Chief Medical Officer, and Appellant was eventually examined by an independent specialist. Appellant's solicitor objected to this procedure. The Appeal resulted in increasing Appellant's Disablement Benefit to 50%, first from July 21, 1999 and, after successful appeal, from March 25, 1998 for life. In 2002, Appellant asked his degree of disablement be revised due to further degeneration. This request was denied in July 2002. The Chief Medical Advisor found, 'the medical report substituted does not indicate any particular degeneration of the occupational injury'.

Appeal was taken in October of 2002. An Oral Hearing took place on April 10th, 2003. Additional medical reports were furnished from Appellant's GP stating the degree of disablement to be 80%. The Appeals Officer increased Appellant's Disablement Benefit to 60% disablement from April 17, 2002. Appellant again asked the Chief Medical Advisor to review his degree of disablement in 2004. In August 2004, the Chief Medical Officer refused stating a review was not warranted. An Oral Hearing for the appeal to this decision was held February 16, 2005.

Although this hearing included medical reports from Appellant's GP and a Consultant Pain Anaesthetist, the Appeals Officer held that further medical reports were required. Appellant furnished such further reports in March of 2005. In June of 2005 Appellant requested to be informed of the status of his case, claiming undue hardship by the long

delay in reply. Appellant was then asked to attend an assessment with the Chief Medical Advisor on July 22, 2005. Appellant refused the assessment, citing improper procedure. Appellant claimed the assessment should have taken place prior to the oral hearing in February.

Relevant Evidence Put Forth by Social Welfare Services

- 10/4/2003: Decision of Deciding Officer 26/7/2002 stating no particular degeneration in occupational injury indicated in medical reports

Relevant Evidence put Forth by Appellant

- 10/4/2003: Medical Report from Appellant's GP 17/4/2002 stating further degeneration
- Medical Report from Appellant's Chiropractor 4/3/2002 affirming that it is the occupational injuries that are causing Appellant's disablement and assessing disablement at 100%.
- Letter from Appellant's Solicitor dated October 23, 2002 laying out reasons for appeal
- Medical Report from Appellant's GP 12/8/2003 stating 80% disablement
- Medical Report from Appellant's GP 13/10/04
- Medical Report from Consultant Pain Anaesthetist 27/9/2004 stating degenerative changes
- Medical Report 30/7/04 Listing Medications
- Further Evidence Submitted 9/3/05:
- Medical Report from GP 22/2/05
- Medical Report from Registrar in Rheumatology 28/1/05 outlining condition and medications
- Report from registrar 18/02/05 confirming Appellant as patient of hospital and outlining surgeries
- Letter from hospital 18/02/05 confirming Appellant as a patient
- Letter from Consultant Orthopaedic Surgeon 02/2/05 confirming his condition and need for surgery and including list of medications

Date Appeal Taken

1. 23 October 2002
2. 6 September 2004

Date Appeal Heard

1. 10 April 2003
2. 16 February 2005

At Hearing:

10/4/2003: The Appeals Officer reviewed the decision of the Deciding Officer and the evidence given by the Appellant. He then stated that the medical evidence was submitted to the Chief Medical Officer who stated it did not warrant a review of the Deciding Officer. The Appeals Officer stated that the Chief Medical Officer was performing only an advisory role, and not making the decision as is a responsibility charged by the legislation to a Deciding/Appeals Officer. The Appeals Officer stated that the basis of a disablement benefit

was the inability to enjoy a normal lifestyle due to loss of faculties. The proper comparison was between pre and post accident lifestyle, along with a comparison to persons of a similar age and sex. Next the Appeals Officer questioned the Appellant as to his age, family situation, hobbies, lifestyle, and history and symptoms of his injury. A BL also made a statement on Appellant's behalf, summarizing his history, injury, and the evidence in his favour. 16/2/2005: Appeals Officer stated that more medical documentation was required.

Decision:

10/4/2003: Appeal partially allowed. Benefit increased to 60%

Observations:

The contested issue of this case is not whether the Appellant is entitled to Disability Benefit, but a question of how much Benefit he is entitled to. This case is particularly relevant to the problem faced by Appellants in receiving the appropriate amount of payment when they have disablements which continue to degenerate over time. The rule articulated by the Appeals Officer for determining the degree of disablement is somewhat complex as it has both a subjective and objective component. He stated the test to be an analysis of the loss of capacity to enjoy a normal lifestyle, measured first by a comparison of the particular abilities of the Appellant previous to and following the accident, and second by a general comparison of abilities with a person of similar age and sex. Unfortunately, no further instruction was given as to which component of the analysis, the subjective or objective, is to carry more weight in the situation the two standards would render divergent results.

The evidence most important to Appellant's successful Appeal in increasing his disablement in 2003 was the specific medical reports stating his condition to have degenerated. Such medical reports are crucial in overcoming a decision based on a Medical Advisor opinion that no degeneration has occurred. Procedurally, this case is noteworthy as the Appeals Officer ignored the regular rule that his decision must be based on evidence procured prior to and during the Oral Hearing. At the hearing, the parties agreed to provide more documentation regarding their claims. However, following the production of this documentation from Appellant, the Chief Medical Officer requested a further examination. Although Appellant refused and the appeal is still pending, allowing orders for examination following Oral Hearing flies in the face of a rule of procedural fairness which requires the parties to gather and present their evidence at the appeal, and a decision to be reached based on this evidence. Sanctioning post appeal gathering of evidence allows the Department to unjustly deny claims without proper investigation.

Many eligible Applicants may not appeal and the matter will be closed. For those that do appeal, such a procedure allows the Department to correct mistakes without consequence. Following the precedent of this case of could allow the appeals process to continue into perpetuity at great inconvenience to Appellants awaiting final decision. Indeed, in this particular case, although the Oral Hearing occurred in February of 2005, decision was still pending seven months later.

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