

Casebase Number: CASE 3

Title of Payment: Disablement Benefit



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

Date of Final Decision: 15/12/2003

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Date of Final Decision: 15th December, 2003

Keywords: Entitlement revocation—whether Appellant fully incapacitated for work—medical—appeal allowed

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

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Case Summary:

The Appellant appealed the decision to cut off his disability benefit. The appeal was allowed.

Summary of Benefit(s) Received:

Appellant was receiving disability benefit from December 2001/January 2002. Her benefit was revoked, effective 28 March 2003, after a medical assessment by Social Welfare Services.

Background:

Appellant worked for a company for 29 years as an over-looker, overlooking a conveyor belt. This job entailed a lot of lifting and pulling. Appellant has a bad back due to an injury at work, which she and company settled. She was out of work for a year and a half and as the company did not pay sick leave Appellant was receiving disability benefit from January 2002. In spring 2003, the company was still holding her job open, but Appellant had a doctor's certificate stating that she could not do any heavy-duty work, which would include the work she did in her former position as over-looker. The company stated there was no light-duty work for the Appellant to do. On 20 March 2003, Appellant went for a medical examination by Social Welfare Services and the examination deemed her fit to perform other categories of work that are light or moderate. Because of that, Appellant's disability benefit was cut off. Appellant appealed this decision. Appellant went for a second medical examination on 21 May 2003 and the results again showed she was capable of work. Appellant appealed this decision also.

Relevant Evidence put forth by Appellant:

- Appellant submitted two medical reports from her doctor.
- Report dated 31/03/2003: Appellant has chronic lower back pain and can work doing only light duties and no heavy lifting.
- Report dated 16/05/2003: Appellant has chronic lower back pain and paravertebral muscle spasm and therefore is unable to lift heavy objects at work. Appellant is unfit for work at present.
- Appellant also submitted a letter from the company of 7 April 2003 stating that
- Appellant was fit to do only light duties but that the company did not have any such positions available.

Date Appeal Taken:

May/ July 2003

Date Appeal Heard:

23 September 2003

At Hearing:

Appeals Officer remarked that the evidence showed that Appellant was fit for light duty work, while the legislation requires that a person be "totally incapable." Appellant put forth that age, education and training should also be taken into account, and Appellant has no training education or experience in any other area. Appeals Officer remarked that those areas are instructions only and it is the legislation that controls.

Decision:

Appeal ALLOWED.

Appeals Officer's Reasoning:

Appellant is a genuine person. It was apparent she was in some discomfort at the hearing due to her back pain. I note Appellant is presently taking medication for her pain, as well as anti-inflammatories, and also she has had pain relieving injections as recently as last week. I am satisfied there is no way she is fit to return to her old job at this time, and I am satisfied at her GP's letter stating she is not for work at present. Because of her excellent record of employment with one employer for 29 years and her current medical treatment, I am satisfied Appellant deserves her disability benefit.

Appeals Officer's Conclusion:

Appellant is entitled to her disability benefit. The case will be reviewed in early 2004.

Observations:

The contested issue in this case is whether the Appellant meets the Disability Benefit requirement of being completely incapable of work. Despite the Department's Medical Officer's opinion that she was capable of some types of work, Appellant felt her age and training rendered the types of work which remained inappropriate. While the Appeals Officer disagreed with Appellant's assertion that her age and training should be taken into account, he came to the same conclusion applying the legislative test that she be completely incapable of work, indicating these factors were, in reality, absorbed into his rationale. This case is notable as while many similar cases concerning the degree of injury come down to a battle of medical experts, this Appeals Officer was particularly influenced by his impression of the sincerity of the Appellant. The Appeals Officer's rationale for allowing the appeal indicates a sympathetic Appellant may be the deciding factor when Appellant's own doctor reports contradict that of the Department's Medical Advisors.

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