

Casebase Number: Case 1

Title of Payment: Disablement Benefit



Northside Community Law and Mediation Centre

Northside Civic Centre

Bunratty Road

Coolock

Dublin 17

Date of Final Decision: 20/09/2004

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Date of Final Decision: 20th September 2004

Keywords: Awarded Disablement Benefit-reduced rate- medical-appeal- disallowed

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

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Case Summary:

The Appellant's rate of disablement benefit was reduced. He Appealed this decision, and his Appeal was disallowed.

Summary of Benefit(s) Received: Appellant was awarded disablement benefit based on 100% disablement from 27 September 2002 – 12 February 2004. From 13 February 2004, the disablement benefit was reduced based on a medical assessment that put Appellant at 50% disablement. Appellant appealed this reduction on 20 February 2004. Appeal was heard 28 July 2004.

Background: Appellant nearly lost his leg after an accident at work in which he fell off of a roof he was working on as a builder/labourer on 25 March 2002. He severely broke his right leg and was in the hospital for 18 days. He had two operations and a skin graft and he was in a wheelchair. Appellant applied for an injury benefit on 19 April 2002 (€127.20). On 03 July 2002, he applied for an unemployability supplement to be added to his graduated disablement benefit. On 1 August 2002, Appellant underwent a medical assessment by Social Welfare Services and was found to have 100% disablement, with severe disablement in the categories of lifting/ carrying, bending/kneeling/squatting, climbing stairs and walking. From 27 September 2002 he was awarded the unemployability supplement in addition to his disablement benefit and child dependant allowance, which meant he was getting €276.10 per week in total. Again on 16 April 2003, Appellant underwent a medical assessment by Social Welfare Services. This examination also assessed Appellant as suffering from 100% disablement, with severe disablement in the categories of lifting/carrying, bending/kneeling/squatting, climbing stairs and walking. The rates for his disablement benefit and the unemployability supplement went up each year. At the start of 2004, Appellant was receiving €309.10 in total each week.

However, on 29 January 2004 Social Welfare Services medically assessed him at only 50% disablement for the first time. Because of that, his disablement benefit was reduced to €83.00 from 13 Feb 2004 until 29 July 2004. This means the total Appellant was receiving was reduced by €82.90, bringing the total to €226.20 per week.

Relevant Evidence put forth by Social Welfare Services:

- **Medical assessment by Department's doctor on 29 Jan 2004:**
 - 45% disablement
 - Description of effects of claimant's illness:

- Moderate: bending, kneeling, squatting/standing/climbing stairs/walking
- Mild: lifting, carrying
- Normal: everything else

Relevant Evidence put forth by Appellant:

- **Medical Report of Examination by Appellant's doctor on 18 December 2003**
 - Opinion: Appellant's injury is improving, but slowly. He still walks with a discernible limp due to the fact that he is unable to fully and easily move the right ankle joint.
 - Prognosis: Appellant will have permanent restriction in the range of movement of the right ankle joint and there will not be significant improvement in relation to the range of movement in the future, which will impair his locomotion. He will have significant difficulty returning to his former employment. In the future he will have an increased risk of degenerative osteoarthritis of the ankle joint.
- **Occupational Therapist's opinion is that it is doubtful Appellant will return to work**
 - In his form capacity and his future prognosis is guarded.

Date Appeal Taken:

20 February 2004

Date Appeal Heard:

29 July 2004

At Hearing:

Heavy questioning by Appeals Officer, who stated that Appellant's award was too high at the start – 100% disablement is usually given only to those in a head-on collision or amputees. Appellant stressed his poor quality of life and the fact that he remains essentially housebound.

Decision:

Appeal DISALLOWED.

Appeals Officer's reasoning:

The amputation of a leg at the hip is regarded as 80% disablement and amputation below the knee is considered 60% disablement. Because the Appellant's injuries are below the knee on his right leg, it would seem that his injuries and loss of mobility were treated initially by the Department of Social Welfare's examining doctor as equivalent to amputation, and the associated pain and suffering brought the Appellant's award up to 100% disablement. Active medical treatment of the Appellant currently has ended although he is reviewed from time to time. A decision has been taken to leave the pins in his leg for the moment and he continues to have swelling and pain in his right leg and ankle but does not take any medication. Appellant only rarely has a slight limp but he can walk unaided for short distances, can drive a car locally and go out socially.

Appeals Officer's Conclusion:

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In these circumstances which point to a considerable recovery by the Appellant, the existing assessment of 50% (of 29 January 2004) represents a reasonable assessment of the loss of faculty, reduction in use and associated pain and discomfort in Appellant's right leg.

Appeal DISALLOWED.

Observations: The contested issue of the degree of disablement suffered by the Appellant. As such, medical reports furnished by both the Social Welfare Department and Appellant appear to carry the most magnitude with the Appeals Officer.

Notably in this case, the Appeals Officer utilizes a test for determining disablement which simply correlates the injured body part with a percentage of disablement. This diverges from the test used in other instances where the Appeals Officer has considered Appellant's lifestyle before and after the injury or what a person of similar age and sex should be capable of. The focus of these other tests is on the incapacity suffered by the appellant as a result of the injury, as opposed to the physical nature of the injury itself. As a bright line rule, the test used in this appeal may be more manageable than one that considers the specific effects of injury, but it is also less flexible. Such a rigid test may sacrifice fairness without the expected gain in efficiency, particularly because the guidelines referenced by the Appeals Officer do not seem to be published or universally used by all Appeals/Deciding Officers. This means the test used in this appeal is not associated with the usual benefit to a bright-line rule—that of predictability.

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