

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: 26/07/2005

Title of Payment: Disablement Benefit

Date of Final Decision: 26th July 2005

Keywords: Disablement Benefit payment review - degree of disability – medical - capable of work - appeal allowed

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

Case Summary:

Appellant received Disability Benefit beginning in 2002. These payments stopped January 5, 2005, after a medical assessment declared her capable of work in December of 2004.

Background

Appellant has a lengthy medical history including chief complaints of Fibromyalgia and severe Temporomandibular Joint Dysfunction (TMJ). She suffers chronic pain in many places of her body. Her pain began in 1996 following a tooth extraction. She continued to work fulltime as a secretary, as she had since age 18, until 2000 when she switched to job-sharing. In 2002, the pain progressed and she felt compelled to resign. She attempted part time employment but was forced to give this up eventually as well. A Medical Examiner for the Social Welfare Department certified Appellant unfit for work due to neck/back/rib injury on March 8, 2002. She was awarded Disability Benefit accordingly. An examination on October 11, 2003 confirmed this assessment. However, an examination on December 13, 2004 found her fit for work and her Disability Benefit was denied from the 5th of January 2005 forward. Appellant appealed the January 2005 decision on the grounds the December assessment did not take her lengthy history and doctor reports into account.

She claimed difficulty verbalizing her symptoms and that she normally relied on her husband to help her communicate during appointments. She stated she had assumed the Medical Examiner would have reviewed her file before examining her, which, combined with her general difficulties with personal communication, left her unprepared to successfully articulate her condition to the Medical Examiner. In her letter of appeal, she stressed the constant nature of pain, its likelihood to flare up at any time, and the effects work had on worsening her condition. She claimed to enjoy and miss work and hoped to return to employment following successful treatment. She included supporting letters from her G.P. as well as specialists from the past and present outlining her condition and indicating the opinion Appellant was, at present, incapable of work. Appellant was successful in her appeal and granted Disability Benefit.

Relevant Evidence put forth by Social Welfare Services

- Medical Report 13122004, found there to be no evidence the appellant was incapacitated
- Medical Report 07022005, found that besides bending and lifting, appellant was fit for light work

Relevant Evidence put forth by Appellant

- Letter(s) from Appellant's Specialist in Integrative Medical Therapeutics stating her to be a patient, the severity of her disorder, and the necessity of her treatment.
- Letter from Appellant's G.P. outlining her diagnoses and severity of pain.
- List and description of Appellant's lengthy medical/dental history along with letters from those that provided treatment in the past.
- Articles from health journals outlining the nature and severity of her disorders.

Date Appeal Taken:

March 6, 2005.

Date of Decision:

July 26, 2005

At Hearing:

Decision: Appeal ALLOWED

Appeal Officer's Reasoning:

Appeal Officer's Conclusion:

Appellant is entitled to Disability Benefit from July 26, 2005.

Observations:

The contested issue in this appeal was whether Appellant was incapacitated and therefore unfit for work, entitling her to Disability Benefit. As such, the case came down to a battle of medical experts. Although the Appellant provided a full medical history to the Medical Examiner, she was under the impression at her examination that he did not take it under heavy consideration. The Deciding Officer appeared to place heavy weight on the opinion of the Department's own Medical Examiner at the expense of Appellant's own medical evidence. Of key importance in overcoming the heavy reliance of the Department on the opinion of its own Examiner at the Appeals stage were the medical reports from Appellant's own G.P. and Specialist contradicting the views held by the Department's Examiner. Appellant's own account of her medical history, while supplementary, did not prove as influential as hearing the same evidence professed by the medical professionals themselves.

For ***more information***, contact us at:

Northside Community Law and Mediation Centre,
Northside Civic Centre, Bunratty Road, Coolock, Dublin 17
T: 01 847 7804 | E: info@nclc.ie | W: www.nclc.ie