

Casebase Number:

Title of Payment: Invalidity Pension



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

Date of Final Decision: 27/04/2005

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Date of Final Decision: 27th April, 2005

Keywords: Medical - CE scheme - therapeutic work - exemption - full and part time work - oral hearing - incapable of work

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

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Case Summary:

Appellant suffered a subarachnoid haemorrhage in 1998. Postoperatively he developed a haemorrhagic infarct which manifested as left hemi paresis. He also developed epilepsy, which is exacerbated by fatigue and lack of sleep. As of June 2004, he required extra sleep in the afternoons due to side-effects of medication and brain surgery. Appellant's official certified incapacity is C.V.A./Brain haemorrhage. Following his injury, Appellant was first allowed Disability Benefit and then switched to Invalidity Pension 15 months later. Beneficiaries of Invalidity Pension are allowed to participate in work like activities, such as the FAS Community Employment Scheme (CE), if the purpose of the work is therapeutic/rehabilitative (i.e. to counteract depression, etc).

Appellant was granted an exemption to participate in a CE scheme in 2001. He remained on Invalidity Pension until August of 2004, when he reapplied for an exemption to Rule 4 of the Rules of Behaviour for Invalidity Pensioners. He wished to continue to work part time in a FAS Community Employment Scheme. This application required a medical examination which found Appellant to be capable for work. Based on this examination, a Deciding Officer found Appellant not entitled to Invalidity Pension from September of 2004. To qualify, Appellant needed to be found incapable of **any** work. The September decision was appealed on the grounds that the side effects of Appellant's medications included fatigue and irritability, rendering Appellant completely incapable of work in a normal setting. As evidence, Appellant listed his medications and their respective dosages and the symptoms of his condition (loss of hearing, trouble with concentration, short term memory loss, insensitivity, depression, and a weak left side). However, a second Deciding Officer upheld the decision denying the claim. He stated the Appellant provided no new medical evidence. Appellant appealed this decision to the Social Welfare Appeals Office. Appellant provided evidence from Appellant's GP and a Consultant Neurologist outlining Appellant's condition and difficulty with fulltime work due to seizures and rest. Both recommended him for Invalidity Pension. He provided a follow-up letter from the Consultant Neurologist stating he suffered from on going partial seizures involving his left upper limb requiring changes in medication and regular visits in outpatient care, and confirming his condition rendered him incapable of any work. Also provided was a letter confirming Appellant's participation in counselling at a Counselling Service.

Summary of Benefit(s) Received:

Appellant received Disability Benefit from May 4, 1998. He was transferred to Invalidity Pension on August 12, 1999. Appellant was taken off Invalidity Pension on August 31, 2004 after receiving a 'capable' assessment following an examination. To qualify for Invalidity

Pension you must either be permanently incapable of any work, or have been incapable of work for 12 months and likely to continue to be incapable of any work for at least another 12 months. Appellant appealed this decision in October of 2004. His appeal was allowed and he was thus awarded Invalidity Pension pursuant to a decision dated April 27, 2005 relating to an oral hearing held March 30, 2005.

Relevant Evidence put Forth by Social Welfare Services:

- Medical Review finding Appellant capable for work
- Decision of Deciding Officer

Relevant Evidence put Forth by Appellant:

- Medical Report from GP 6/10/04
- Medical Report from Consultant Neurologist at Neurology Clinic 30/9/04
- Letter of Attendance from Counselling Service 9/9/04
- Follow up Medical Report from Consultant Neurologist 17/1/05 confirming Appellant is not capable of any work

Date Appeal Taken:

6 October 2004

Date Appeal Heard:

30 March 2005

At Hearing:

Decision:

Appeal ALLOWED

Appeal Officer's Reasoning:

The evidence provided at the appeal hearing indicated that his medical condition had deteriorated in that his epilepsy had got worse and that he also suffered from depression. Specifically, the Appeals Officer was swayed by the medical reports from Appellant's GP and Consultant Neurologist which declared Appellant incapable of any work as required by the Invalidity Pension scheme.

Appeal Officer's Conclusion:

Because Appellant's condition has deteriorated significantly, and medical reports confirm he is incapable of any work, he is now entitled to Invalidity Pension and his appeal is therefore allowed.

Observations:

Contested Issue: The contested issue in this appeal was whether Appellant was capable of **fulltime work**. Appellant himself admitted to being capable of (and wished to) work part time. Indeed, it was his application to work in a FAS CE scheme which provided the catalyst to the reassessment leading to the refusal of his Invalidity Pension claim.

Relevant Evidence: The most compelling evidence put forth by the Social Welfare Department, and depended on by the Deciding Officers, was the medical report prepared by the Department's medical advisors declaring Appellant capable. However, it was the

conflicting reports of Appellant's GP and Consultant Neurologist that convinced the Appeals Officer to allow the claim.

Other: In these types of appeals, where the severity, cause, or diagnosis of a medical condition/injury is at issue, medical reports in form of doctor and specialist opinions appear to carry the most influence with Appeals Officers. Deciding Officers seem most influenced by the opinion of their own medical advisors. Notably in this case the second Deciding Officer did not consider Appellant's own account of his symptoms and medications as 'new medical evidence'. This case highlights the importance of providing evidence in the form of doctor/specialist reports as compared to merely Appellant's own account of the disorder/injury. This will be particularly important if the Appeal involves overcoming the opinion of medical staff/advisors employed by the Social Welfare Department. Specialists have particular weight with the Appeals Officers.

This case is also important as it underscores how, although permissible under the legislation, receiving an exemption to participate in therapeutic work can complicate an applicant's ability to prove the incapacity for work required by the scheme. Appellant's participation in part time, flexible CE work for therapeutic reasons must be distinguished from an actual ability to participate in the work force. Evidence of Appellant's Depression, and the benefit of having an occasional activity, such as participation in the CE scheme, helped elucidate the distinction between this activity and his actual capacity for employment.

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