Social Security Medical Appeal Tribunal

Case number: 2017TRS009

Date: 11 May 2017
Held at: The Jersey Tribunal Offices, Bath Street, St Helier
Before: Chairman B.I. Le Marquand, Doctor B. Kellett and Dr N. Charles
Nature of Claim: Long Term Incapacity Allowance (LTIA)
Hearing Type: Social Security Medical Appeal

Appellant: “I”
Respondent: The Minister for Social Security

Background

1. The Appellant has for a number of years suffered from depression/anxiety/stress. The details and causes of this are set out in the various letters and documents relating to this appeal but are of a sensitive and confidential nature and so will not be detailed in this written decision because of this decision's public nature.

2. On 17th June 2015 the Appellant was assessed for Long Term Incapacity Allowance (LTIA) by a Medical Board consisting of one doctor at 70% with the next date for assessment being set as 17th June 2017. The assessment for 70% was based upon the Appellant's mental faculties being assessed as being severely impaired due to mental impairment due to depression/stress/anxiety.

3. On 1st June 2016 a further assessment for LTIA was conducted by a Medical Board consisting of a second doctor and the outcome of that assessment was an assessment for only 5% due to impairment of cognitive function due to depression/stress/anxiety with a date for further assessment of 1st June 2018.

4. The Appellant was dissatisfied with the assessment of 5% and so the case was referred to a second Medical Board consisting of a third doctor (“the Third Doctor”) who on 15th July 2016 made a revised assessment in respect of loss of faculty due to cerebral impairment in respect of
depression/anxiety/stress of 10%. This assessment was based upon the Appellant being assessed as being at the top of the Very Mild range for depression which is set out in the guidance document entitled “Guide to depression assessments”, that is the top of the range from 5% to 10%.

5. On 8th August 2016 the Third Doctor received from the Social Security Department (“the Department”) a Memorandum dated 8th August 2016 to which was attached a letter from a consultant psychiatrist dated 29th July 2016, together with an inquiry from the Department as to whether the contents of the letter from the Consultant Psychiatrist altered the Third Doctor’s previous determination of 10%.

6. The Third Doctor immediately responded to the Department that in the light of this further information the assessment was changed to 20% LTIA upon the basis that the assessment was now at the top of the Mild range for Depression, that is the top of the range from 11% to 20%.

7. On 24th August 2016 the Appellant lodged an appeal to this Tribunal dated 24th August 2016 from the reassessment of 8th August 2016 in respect of 20% LTIA. This appeal was referred to the Third Doctor who by a Memorandum dated 30th August 2016 maintained the previous decision of 20% LTIA.

8. There has been a considerable delay between the date of the Appellant’s appeal and the date of this hearing which has been due to the fact that on a number of occasions the Appellant has requested a delay in the hearing date.

The Law

9. The appeal was brought under Article 34B of the Social Security (Jersey) Law 1974, as amended, ("the Law") the Tribunal having the power to confirm, reverse or vary the decision of the medical board (Article 34B (4)).

10. It was noted that, whilst Article 34B (3) (a) prevented an appeal within 2 years of a provisional assessment, this provision has ceased to apply to appeals. Such appeals proceed by virtue of the powers given to the Minister under Article 34C of the Law by way of reference to the Tribunal.

11. The relevant provisions of the Social Security (Assessment of Long Term Incapacity) (Jersey)(Order) 2004 (“the Order”) are as follows: Article 3 (1) (a) states that “the incapacitation to be taken into account shall be the whole of the loss of faculty to which ….. the claimant may be
expected to be subject … as compared with a person of the same age and sex whose physical and mental condition is normal” and Article 3 (1) (b) states that “the question whether or not any incapacitation involves loss of earning power or additional expense shall be immaterial.”

Evidence
For the Minister

12. The Third Doctor who had constituted the Medical Board against whose decision of 20% LTIA this appeal has been made, gave sworn evidence in relation to the assessment of 15th July 2016 and in relation to the Memoranda dated 8th August 2016 and 30th August 2016. The Third Doctor referred to the written assessment form dated 15th July 2016 and to the Depression Assessment Report also dated 15th July 2016 which was attached thereto. The Third Doctor had seen the Appellant on that date but had not seen any Jersey General Hospital notes. These documents contain information of a sensitive and confidential nature and so will not be detailed in this written decision because of its public nature.

13. The Third Doctor also referred the Tribunal to the written assessment form dated 1st June 2016 which had been completed by the second doctor who had made an assessment of 5% LTIA and to the Depression Assessment Form also dated 1st June 2016 which had been attached thereto and to the letter from the Consultant Psychiatrist dated 29th July 2016 which had caused the Third Doctor to change the assessment of LTIA from 10% to 20%. These documents also contain information of a sensitive and confidential nature and so will not be detailed in this written decision because of this decision’s public nature. The Third Doctor was of the opinion that the condition of the Appellant had worsened a little since the assessment of the second doctor.

14. The Third Doctor had made the assessment of 10% on 15th July 2016 upon the basis that the Appellant’s loss of faculty due to cerebral impairment in respect of depression/anxiety/stress was at the top end of the Very Mild range for depression which is set out in the guidance document entitled “Guide to depression assessments”, that is the top of the range from 5% to 10%.

15. When the Third Doctor had received the letter from the Consultant Psychiatrist dated 29th July 2016, the Third Doctor noted that the Appellant had been placed on medication and that there had been a recommendation for cognitive behavioural therapy. The Third Doctor particularly noted the findings of the Consultant Psychiatrist that the Appellant was with a reactive mood and had loss of interest in some leisure activities, loss of appetite and weight, particularly following the death of her cat and some anxiety/irritability. She was not then able to work due to her symptoms. The
information contained in the Consultant Psychiatrist's report had led the Third Doctor to increase the assessment of impairment from 10% to 20%.

16. Dr. Kellett asked the Third Doctor to explain the way in which an assessment was made where different levels of severity were found in relation to different Symptoms/Signs in the Depression Assessment Form the completion of which was part of the assessment process. The Third Doctor after some discussion with the Panel Members, indicated that the best explanation was that a best fit approach was made, that is to say with the category of assessment of severity which had the most items being followed, subject to the totality of the case being taken into account.

17. At the request of the Tribunal, the representative of the Department, gave the following sworn evidence:–

   a) That prior to 2014 the guidance given by the Department in relation to the cases which were not specifically covered under the Law and subsidiary legislation was only general in nature and summarised in the General Guide to Assessments document.

   b) That during 2014 more specific guidance had been issued in relation to a variety of conditions including depression as a result of advice received by the Department from a UK expert in this area and this had led to the issuing of the document entitled ‘Guide to depression assessments’ which was understood by the doctors on Medical Boards as being advisory.

   c) That the normal procedure of the Department when the first assessment of a doctor was challenged, as had happened in this case in relation to the assessment of the First Medical Board, was that a second assessment was made by another doctor, constituting the Second Medical Board. This did not correspond with the relevant articles of the Social Security (Jersey Law 1974 but was thought to be fair to the applicant.

   d) That the practice of the Department when receiving an appeal to the Tribunal was to refer the matter back to the doctor on the Medical Board. Sometimes the information which accompanied the notice of Appeal to the Tribunal contained additional medical information which led to the doctor on the Medical Board being able to increase their assessment and in such a case the Department would write to the Appellant in order to indicate this and in order to ask whether, in the light of this increased assessment, the person wished to proceed with their appeal to the Tribunal. This procedure also did not correspond with the relevant articles of the Social Security (Jersey Law 1974 but was thought to be fair to the applicant. However, in this case, the reference back to the Medical Board (the Third Doctor) had first occurred when the letter from the
Consultant Psychiatrist had been received as well as when the appeal had been lodged.

18. The Department had provided the Tribunal with a bundle of other relevant information.

For the Appellant

19. The Appellant included a brief written Statement in the notice of appeal to the Tribunal which was received on 24th August 2016 in which the Appellant referred to a recent conversation with the Appellant's GP who had advised that the Appellant was not then fit for work. The Appellant had previously on 15th June 2016 written to the Department with comments in relation to the circumstances of the case and the current situation.

20. At the hearing the Appellant explained to the Tribunal the current situation. The Appellant did not disagree with any part of the factual assessment of the Third Doctor but particularly relied upon the letter of the Consultant Psychiatrist.

Decision

21. The matter to be determined is the question as to the appropriate assessment of loss of faculty by reason of depression/anxiety/stress. The Third Doctor, against whose decision the appeal was being made, had relied heavily on the assessment of the Consultant Psychiatrist and had made the revised assessment of 20% based upon an assessment for depression at the upper end of the mild range (11% to 20%).

22. The Tribunal first considered what was the appropriate way of dealing with a Depression Assessment Report Form in which different items were assessed as having different levels of severity. In so doing, the Tribunal was of course aware that the Depression Assessment Report Form was only part of the assessment process. The view of the Tribunal is that where there are a number of Symptoms/Signs which have a degree of severity it would be better to apply an averaging process in relation to the various Symptoms/Signs rather than a best fit approach. The situation is of course complicated by the fact that the Depression Assessment Report Form only has the categories of Not Present, Mild, Moderate and Severe and does not have the intermediate Categories of Very Mild, Mild/Moderate and Moderate/Severe which appear in the Guide to depression assessments document.
23. The Tribunal noted that even on the assessment of the Third Doctor that there were Five Symptoms/Signs which were assessed as Moderate and three which were assessed as Mild to Moderate. Taking the assessments and evidence together the Tribunal's decision is that the appropriate assessment of the Appellant's condition as at 8th August 2016, the date upon which the Third Doctor had made the assessment of 20%, falls in the upper half of the Moderate Range (21 – 30 %) within the Guide to depression assessments documents, which leads to the assessment being rounded up to 30%.

Advocate B.I. Le Marquand 08 June 2017