WAOW V DEPARTMENT FOR SOCIAL DEVELOPMENT (DLA) [2012] NICom 287 DECISION NO: C1/12-13(DLA)

The applicant claimed DLA in June 2002 and was awarded the low rate of the mobility component and the middle rate of the care component for an indefinite period. The applicant’s disabling conditions were heroin dependency and arthritis. After a periodic enquiry form was sent to the applicant in November 2009, the applicant’s general practitioner indicated continuing heroin addiction and a leg ulcer. The examining medical practitioner, while noting the applicant’s heroin addiction and leg ulcer, found that the applicant had no restrictions on mobility and no requirement for attention in connection with bodily functions. The DSD superseded the applicant’s award of DLA on the basis of this relevant change in circumstances. This decision was upheld by the tribunal. The basis of the applicant’s appeal was regarded as largely incoherent by the Commissioner and a number of grounds for appeal were rejected, including: issues that may be the basis for a fresh DLA claim, his appeal hearing being conducted in an unfair manner, the EMP visit being ‘too quick’ and the applicant being a member of the Travelling community. The Commissioner examined whether the appeal tribunal failed to adequately consider the applicant’s need for supervision of his heroin use in case of overdose (accidental or otherwise).

HELD

The Commissioner, referring to *C5/03-04(IB)* and *Monagan [2005] NICA 16*, noted that there were limits to the tribunal’s responsibility to identify and examine issues not raised by the applicant. Whether such an issue is sufficiently apparent will depend on all the facts of the case. In this case, it was clear that the applicant had a long history of heroin addiction. The Commissioner, after examining the entirety of the applicant’s DLA claims, noted that the applicant throughout his DLA claim placed emphasis on his pertaining physical ill-health. Section 72 of the Social Security Contributions and Benefits (NI) Act 1992 provides that a person who is so severely disabled, physically and/or mentally, may need continual supervision in order to avoid substantial danger to himself. The Commissioner considered whether Section 72 of the 1992 Act could apply to the applicant’s circumstances. The Commissioner noted that heroin is an illegal Class A drug under the Misuse of Drugs Act 1971 and doubted that public policy could tolerate entitlement to a social security benefit based on a third party supervising and assisting in the misuse of heroin. In any event, the Commissioner held that the applicant did not require continuous care and attention throughout the day and for that reasons rejected the applicant’s submission that the appeal tribunal had erred in law.