

Administrative Appeals Tribunal

Disability support pension: injuries not treated and stabilised

VIDOVIC and SECRETARY TO THE DFaCS
(No. 2004/1062)

Decided: 12 October 2004 by J. Handley.

Background

Vidovic qualified for disability support pension (DSP) in 2000 but payment of that pension was cancelled in 2002 upon review. Vidovic made a new application for DSP in May 2003 which was rejected. Subsequent to the cancellation of the DSP he was in receipt of parenting payment at the single rate. His wife was in receipt of DSP.

Issues

Was Vidovic qualified to receive disability support pension? Were his conditions treated or stabilised, such as to be classified as permanent? The relevant legislation is discussed in *Fanous and Secretary to the DFaCS*, also reported on this page.

Illnesses treated and stabilised?

Vidovic told the Tribunal he suffered from back pain, depression, nightmares and alcoholism which had worsened since he had previously qualified for DSP. He submitted he should again qualify for DSP. His treating psychiatrist and general practitioner had advised him that he should not undertake any employment in the next two years. He had no specific treatment plan or program for his alcoholism. Surgery had been suggested for his back injury but he had rejected it as his doctors could not guarantee that he would become pain free.

Vidovic had been employed as a process worker with a car parts manufacturer. He suffered a back injury at work and ultimately lost that employment. He had been unsuccessful in attempts to get other work. He obtained a truck licence in 1999 but found that repeated periods of sitting caused an exacerbation of his back pain.

Vidovic came to Australia from Bosnia where, as a civilian, he was exposed to civil conflict, was beaten and abused. He suffered from recurring nightmares two or three times a week which woke him up and he was scared. He often slept during the day because he

was tired. Vidovic acknowledged he was addicted to alcohol and had not attempted to reduce or eliminate consumption of alcohol despite the recommendations of his treating psychiatrist.

The Department relied on two medical assessments that had assessed Vidovic as attracting five impairment points under Table 5.2 of the Impairment Tables for the back pain and 10 points under Table 6 with respect to the depression. As the total of the impairment points was less than 20 the Department submitted that Vidovic did not qualify under the first limb of s.94 of the Act. The Department submitted that Vidovic did not attract any impairment points with respect to his alcoholism because it was a condition which had not been treated nor could it be said to be stabilised and therefore it was not a permanent injury.

The Tribunal noted the medical reports from Vidovic's treating doctors that indicated Vidovic suffered from 'a major depressive illness' manifested by recurring nightmares, back pain, concern as to his father's health and his alcoholism and that he was a chronic alcoholic who did not comply with a medication regime and who had refused detoxification treatment.

The Tribunal considered the assessments from both the Commonwealth doctors. It noted that the Commonwealth doctors had not obtained a history of the back injury and 'additionally — and probably with more concern — there would not appear to have been any adequate treatment of his back pain and the referred pain into both legs' (Reasons, para. 19). The Tribunal considered the doctors could either suggest a form of treatment or, in the event it was believed that the back injury was causing the low back pain and the referred pain was permanent, that more than five impairment points would be found.

In relation to the 'psychiatric impairment' and the relevant impairment table, the Tribunal considered it would not be hard to envisage in Vidovic's present state that the combined effects of his illnesses and symptoms would have more than a 'minor effect on work attendance' but would also suggest that with adequate treatment he may well improve and regain his capacity for employment.

The Tribunal found that it was not satisfied that the depression could be regarded as being a permanent injury and/or incapable of being treated to the extent of lessening its effect.

In relation to Vidovic's alcoholism, the Tribunal found there had not been appropriate treatment and it could not in the circumstances find that it was a permanent illness. Such a finding could only be made if there had been an attempt at treatment which had been found to have been unsuccessful.

The Tribunal noted that Vidovic would probably be unable to afford the cost of private treatment. It made several suggestions for treatment in the public system and recommended that a Departmental social worker assist Vidovic. The Tribunal considered that assistance should be made available to Vidovic to either treat the illnesses from which he suffered or to provide documented evidence of a quality and type which would demonstrate (if the conditions could not be treated) that he was qualified for DSP.

The Tribunal found that in the absence of appropriate treatment for Vidovic's illnesses it could not find that those conditions had stabilised and therefore become permanent. Vidovic did not attract 20 impairment points and in those circumstances it was not necessary to consider whether he had a continuing inability to work.

Formal decision

The Tribunal affirmed the decision under review.

[M.A.N.]

Disability support pension: entitlement at time of claim and refusal to seek treatment

FANOUS and SECRETARY TO THE DFaCS
(No. 2004/1094)

Decided: 18 October 2004 by J. Handley.

Background

In March 2004, the SSAT decided to affirm a decision previously made by the Department to reject a claim by Fanous for