

NINO:

Appeal Submission for Mrs A

Mrs A had been in receipt of ESA since 2017. On 10/07/2020, following a WCA, it was decided that she did not qualify for ESA. This decision was reconsidered but not changed on 08/08/2020.

Since June 2002 MRs A has been in receipt of DLA high rate mobility and low rate care. The mobility award recognises the degree of discomfort which walking causes her in terms of increased dizziness and potential attacks of severe vertigo (which have a physical origin) and the interruptions in her ability to walk caused by her need to stop, sit or lie down to cope with attacks of dizziness/vertigo, and her inability walk at all on some days due to her condition.

Mrs A feels that the previous decisions on her ESA claim have been wrong for the following reasons:

She has been diagnosed with **vestibular migraines**. This condition causes headaches, but more seriously, it causes constant dizziness and vertigo. (please see information from the Vestibular Disorders Association at pages 97-118 in the bundle). The present problems began after a viral infection in 2017 and have not changed, other than to worsen since the initial decision regarding her ESA claim was made in 2017. Mrs A also suffers from tinnitus which affects her ability to concentrate.

Mrs A says that she has a constant sensation of dizziness of varying severity, that at best is like standing on a moving boat all the time. This is tiring and debilitating. She has attacks of vertigo, on average three times a day, when she loses her balance, the world seems to revolve around her, and she feels, and sometimes is, very sick. Mrs A is habitually careful, slow and deliberate in her movements in order to minimise the chance of an episode of vertigo. She has noticed that there are triggers to a vertigo attack such as

- physical activity
- moving her head up, down or to the side
- tiredness, stress, anxiety
- bright lights
- fast moving images on screens
- bold patterns on flooring or fabric
- illness
- using escalators or lifts.

Mrs A does her best to avoid these triggers but the vertigo attacks also happen frequently with no apparent trigger. When an attack starts she cannot stand, and has to sit or lie down. The only effective "treatment" is to keep her head as still as possible and wait for the attack to pass. This can take from 10 minutes to 4 or 5 days. Because her condition is so unpredictable, it is very difficult for her to plan activities. She does not go out on her own or drive because of the danger to herself and others of having an attack of vertigo. She only ventures out with her husband who physically supports her on uneven ground, steps, crossing roads and is there to reassure and physically support her and find her a place to sit when she is affected by the vertigo.

Mrs A reports that her condition fluctuates, but the fluctuations are very unpredictable. An average week would consist of two bad days when she can do nothing other than sit still or lie down because of severe dizziness and vertigo, four moderate days when she is able to do around half an hour of housework or do some meal preparation and perhaps watch a little TV or use her computer for half an hour or so, and one

better day. All activities are limited as the condition affects not only her physical condition but also her ability to concentrate on tasks. She says she always feels slightly removed from reality and can only concentrate on eg written material for at most half an hour. The usual pattern on a moderate day is that a period of activity is then “paid for” by a bout of more severe dizziness or vertigo later in the day which requires a lengthy period (often 4 or 5 hours) of sitting or lying still waiting for the dizziness/vertigo to lessen. The average week would contain one good day when she could venture out with the support of her husband or another person to do a bit of shopping, visit relatives or go out socially. She says she knows she will “pay for” the activity the following day with worse dizziness/vertigo but feels that not to take advantage of the odd day when her condition is a little better, leaves her with “no life”. It is not possible for her to predict when her condition will be better or worse.

Mrs A has included a diary of how her condition affects her daily life (evidence attached)

Mrs A has seen specialists over the years as well as her GP (evidence at pg 85-92) and as tried all the drug therapies and physiotherapy treatments suggested to her, but has not found anything to be effective. At the time of the decision in 2020 she was not being actively treated as her doctors had run out of options for her. She has since tried other medication which has also proved ineffective. Her GP has provided medical certificates for her covering the period from the original decision on her ESA to date.

In reassessing Mrs A’s eligibility for ESA, we would ask the Tribunal to look at the following descriptors:

LCW Descriptors

1a “Cannot unaided by another person (i) mobilise more than 50 meters on level ground without stopping in order to avoid significant discomfort of exhaustion” (15 points)

Mrs A may be able to do this on one day, but be completely unable to get out of a chair or bed the next due to the variability of her condition. If required to mobilise outside she needs support from another person.

1b “repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort of exhaustion” (9 points)

Mrs A is unable to repeatedly mobilise this distance because the physical activity of walking such a distance makes her dizziness and vertigo worse, or may trigger a severe vertigo attack. She has to sit or lie down with her head still for one to several hours following any physical activity.

2b “Cannot for the majority of the time, remain at a work station either

- (i) Standing unassisted by another person (even if free to move around) or**
- (ii) Sitting for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion” (9 points)**

Mrs A is unable to do this reliably as her condition frequently requires her to lie down to try to alleviate the symptoms of dizziness and vertigo. She is often not able to stand for more than a few minutes and even if sitting, is not able to undertake an activity because she is having to keep her head still in an attempt to alleviate dizziness/vertigo symptoms.

3c “Cannot raise either arm above head height as if to reach for something.” (6 points)

It is impractical to reach for something without looking at the reached for object. This movement of her head can trigger vertigo attacks.

4a “Cannot pick up and move a 0.5 litre carton full of liquid.” (15 points)

Mrs A may be able to do this but not repeatedly because such an action requires movement of the head which can trigger more severe dizziness or a vertigo attack. She says she is also very prone to dropping things e.g. kitchen utensils if trying to do some meal preparation.

8a “Unable to navigate around familiar surroundings without being accompanied by another person due to sensory impairment” (15 points)

or

8b “Cannot safely complete a potentially hazardous task such as crossing a road without being accompanied by another person, due to sensory impairment.” (15 points)

The vestibular system includes the parts of the inner ear and the brain that help control balance and eye movements. Mrs A's condition can be considered a sensory impairment. She is not able to go out independently and undertake tasks such as crossing the road without help, as checking for traffic involves repeated turning of her head which is one of the triggers for a vertigo attack. Crossing the road alone would endanger her and other road users if she suffered a vertigo attack and was unable to walk or collapsed in the road.

LCWRA Descriptors

- 1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be worn or used. Cannot repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.**

Such activity is one of the recognised triggers for a vertigo attack. Mrs A would therefore need to lie down or rest on most days if she attempted to mobilise 50 metres unaided. She therefore cannot do this repeatedly.

4 “Cannot pick up and move a 0.5 litre carton full of liquid.”

As described above, Mrs A may be able to do this but not repeatedly because such an action requires movement of the head which can trigger more severe dizziness or a vertigo attack. She says she is also very prone to dropping things e.g. kitchen utensils if trying to do some meal preparation.

Conclusion

We believe that Mrs A would score well in excess of 15 points in the Work Capability Assessment, and should therefore be considered to have limited capability for work, and thus be entitled to Employment Support Allowance. We also believe that she fulfils the requirements for TWO of the Limited Capability for Work Related Activity descriptors, and should therefore be placed in the Support Group.