The following Commissioner Decisions are examples of the level of expertise of our Tribunal Representatives dating back to 1992. The Northern Ireland Digest of case-Law database at www.communities-ni.gov.uk/services/northern-ireland-digest-case-law) contains all decisions from January 2000 and most of the important decisions from past years. The database is maintained by Decision Making Services (www.communities-ni.gov.uk/contacts/decision-making-services) who represent The Department in applications to the Commissioners by preparing written submissions and attending Hearings.

Of cases we take to the Social Security Commissioner we have a 71% success rate

C2/18-19(DLA) : Dated 18th July 2018

The Tribunal disallowed entitlement to the lower rate care component for the 'Main Meal Test' because of the appellant's ability to drive an automatic car. At the Hearing the appellant said "Some days I can't drive". Chief Commissioner Mullan concluded that the Tribunal were under an obligation to explore the appellant's aforementioned statement in greater detail. It had a duty to explore the frequency of the days he could not drive. He should also have been questioned on why he could not drive on these days. These are unknown issues that the Tribunal had a duty to explore in greater detail before reaching its conclusions. Its failure to fulfil its inquisitorial role renders its decision erroneous in law. The case was referred back to a newly constituted Tribunal.

C5/18-19(PIP) : Dated 4th July 2018

The case concerned Activity 5 (Managing Toilet Needs) and Activity 9 (Engaging with others face to face) of The Personal Independence Payment Regulations

(Northern Ireland) 2016. In particular the appellant sought to rely on Descriptor 5(b) due to her necessity to use incontinence pads and Descriptor 9(c) as she needed social support to be able to engage with other people. The Tribunal had awarded 2 points under Descriptor 9(b), i.e. the need for prompting to be able to engage with other people.

Chief Commissioner Mullan agreed that the Tribunal had erred in law in failing to fulfil its inquisitorial role by not making further enquiries with the appellant regarding the use and necessity of incontinence pads with the knowledge that incontinence pads are classed as an aid for the purpose of Descriptor 5(b). The Chief Commissioner also endorsed the definition of 'Social Support' in SL v The Secretary of State for Work and Pensions (PIP) (2016) UKUT 0147 (AAC) and determined that Descriptor 9(c) was more appropriate than Descriptor 9 (b). The award of 2 points for 5(b) and an additional 2 points for 9(c) led to an award of Standard Daily Living when added to existing points for Descriptors 3(b)(ii) and 4(b).

C5/17-18(PIP) : Dated 14th June 2018

The case concerned Descriptor 9(b) of The Personal Independence Payment Regulations (Northern Ireland) 2016, i.e. the need for prompting to be able to engage with other people. It was argued that the Tribunal placed an over reliance on the fact that the appellant could engage with her Solicitor and Probation Officer and failed to investigate as to how she related with these individuals or how she interacted with them. Furthermore the Tribunal should have factored into its reasoning that both a Probation Officer and a Solicitor would have extensive experience of dealing with people with complex needs. The Tribunal failed to consider other evidence concerning the appellant's aggressive behaviour and interaction with others. Decision CPIP/2685/2016 was cited as an authority for saying that Activity 9 involves the ability to function in a social environment.

Chief Commissioner Mullan accepted the view that the Tribunal's over reliance on the appellant's communication with her Probation Officer and Solicitor led it to ignore and assess her ability to engage with other people in a wider range of situations. The Tribunal erred in law with regards to this issue. The matter was referred back to a differently constituted Tribunal.

C61/17-18(DLA) : Dated 4th October 2017

The substantive issue concerned Section 73(1)(d) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which contains the statutory test in relation to the lower rate of the mobility component. The Tribunal had assessed the appellant's ability to drive in relation to the lower rate of the mobility

component. It was argued that the Tribunal approached the 'test' in a rather narrow manner and there was a clear duty on the Tribunal to not just consider an ability to drive but all other relevant circumstances.

Chief Commissioner Mullan agreed with the analysis that the Tribunal erred in law by focusing on the ability to drive, and not giving adequate consideration to his mental health problems, in particular anxiety and ability to cope outside of his car. The case was referred back to a newly constituted Tribunal.

C2/17-18(CA) : Dated 3rd October 2017

The case concerned an overpayment of Carers Allowance and Section 69(5A) of the Social Security Administration (Northern Ireland) Act 1992. In essence the Tribunal have to identify two decisions. The first is the decision which alters previous decision(s) awarding entitlement to benefit, commonly referred to as the 'Entitlement' decision or Section 69(5A) decision. The second is a decision that overpaid benefit is recoverable, commonly referred to as the 'Recovery' decision or Section 69(1) decision. It was argued that the Tribunal failed to consider the validity of the 'Entitlement' decision dated 28th July 2015, therefore the 'Recovery' decision dated 6th August 2015 is not a valid decision.

The Chief Commissioner determined that The Department's decision of 28th July 2015 does not satisfy Section 69(5A) of the Social Security Administration (Northern Ireland) Act 1992. The matter was referred back to a differently constituted Tribunal.

C1/17-18(CA) : Dated 3rd October 2017

The case concerned an overpayment of Carers Allowance and is linked to C2/17-18(CA) and, in particular, Regulation 32(1A) of the Social Security (Claims and Payments) Regulations (NI) 1987, i.e. duty to disclose. It was argued that there was nothing to suggest that the Tribunal considered Regulation 32 or identified which of the duties the appellant was under to report that he had commenced work in 2005. The Tribunal erred in law in failing to adhere to the principles in C6/08-09(IS).

Chief Commissioner Mullan agreed that the Tribunal erred in law by failing to consider Regulation 32 of the Social Security (Claims and Payments) Regulations (NI) 1987. The matter was referred back to a differently constituted Tribunal.

C3/16-17(DLA) : Dated 7th September 2016

The Tribunal attributed less weight to three pieces of medical evidence submitted by the appellant on the basis that the documents were "manifestly prepared for the purpose of supporting the appeal" and that "the evidence handed in at hearing was clearly prepared specifically for the appeal".

Commissioner Stockman accepted that an impression of bias may have been created by the language used by the Tribunal and recalled the maxim that "Not only must justice be done; it must also be seen to be done". The case was sent back to a newly constituted Tribunal for determination.

C2/16-17(DLA) : Dated 1st September 2016

The case concerned Section 73(1)(d) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which contains the statutory test in relation to the lower rate of the mobility component. It was submitted that the Tribunal had drawn unjustified conclusions from the appellant's ability to drive a car when considering entitlement to low rate mobility component, and had not full regard to the specific circumstances which would prevent him from being able to walk out of doors without guidance or supervision.

Commissioner Stockman agreed that it was incumbent on the Tribunal to have further explained the appellant's ability to walk outdoors on unfamiliar routes without guidance or supervision. He also said "Whereas the tribunal has placed reliance on the fact that the appellant can drive on familiar routes, this is not necessarily incompatible with inability to walk on unfamiliar routes". The matter was referred back to a newly constituted Tribunal.

C26/14-15(ESA) : Dated 27th July 2015

The Tribunal were invited to consider Activity 17 in Schedule 2 to the Employment and Support Allowance Regulations (Northern Ireland) 2008 and various 'incidents' were related to them which they accepted. However the Tribunal went on to conclude that the appellant did not satisfy Descriptors 17(b) or (c) which would warrant 15 or 9 points respectively for either frequent or occasional uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

Chief Commissioner Mullan decided that the reasons for the decision of the appeal Tribunal were inadequate to explain why it concluded that none of the Descriptors associated with Activity 17 applied in the instant case. Furthermore there was a duty on the appeal Tribunal to assess that evidence and to indicate the outcome of that

assessment to the required standard in the Statement of Reasons for its decision. The case was sent back to be heard by a differently constituted Tribunal.

C25/14-15(ESA) : Dated 20th July 2015

It was argued that the Tribunal had sufficient evidence available to them to consider the potential application of Regulation 29 of the Employment and Support Allowance Regulations (Northern Ireland) 2008. Furthermore the appellant had raised specific concerns with respect to the manner in which the examination was conducted by the Health Care Professional and whether the Report of the medical examination was thorough and objective.

Chief Commissioner Mullan concluded that the Appeal Tribunal was under a duty to consider the potential applicability of Regulation 29 and to demonstrate that it had dealt with it. The failure to do so rendered its decision as being in error of law. Chief Commissioner Mullan also agreed with R2/04(IB)(T) that the Tribunal should have dealt with specific criticisms of the Report and explained why it did not accept them, that such an explanation need not have been extensive and the failure to deal with them left the claimant with a sense of grievance and of not being listened to. The case was referred back to a newly constituted Tribunal.

C5/14-15(DLA) : Dated 21st May 2014

It was argued before Commissioner Stockman that the Tribunal erred in law by not considering the appellant's submission regarding a need to stop when walking. Commissioner Stockman agreed that the Tribunal did not deal with the disputed issue of whether he could only walk 200 metres to local shops with stops. The Tribunal had a duty to investigate the stops. Commissioner Stockman also observed that the Tribunal had not made express findings regarding the distance the appellant could walk before the onset of severe discomfort, nor had it addressed the issue of whether he required to stop and, if so, for how long, in order to assess the time it might take to get from "A" to "B". The case was remitted for redetermination by a newly constituted Tribunal.

C2/13-14(HB) : Dated 24th February 2014

This case concerned Regulation 81 of the Housing Benefit Regulations (NI) 2006, i.e. 'good cause' for backdating of a claim for a Rate Rebate. The appellant had a diagnosis of moderate to severe learning disability and, as a result, was unable to manage independent living. She was not capable of managing money. The appellant became a joint owner of the property with her brother following the death of both parents within a relatively short period of time. The brother later became his Sister's

official Appointee on 5th November 2012 but, at the time of the claim on 9th May 2011, had been acting in an unofficial capacity.

Commissioner Stockman accepted that the appellant had continuous good cause for failing to make a claim for the period of six months before the date the claim was made by reason of a moderate to severe learning disability which prevented her dealing with financial matters and making a claim for Housing Benefit. The Commissioner awarded Housing Benefit back-dated six months to 9th November 2010.

C21/13-14(DLA) : Dated 24th February 2014

One of the issues before Commissioner Stockman was the ability of the appellant to self- administer an Epipen. There was conflicting evidence from various medical sources as to the appellant's ability to do so in order to avoid substantial danger within Section 72(1)(b)(ii) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

Commissioner Stockman decided that the Tribunal erred in law in failing to resolve the conflict of evidence from, on the one hand, the appellant's mother that he could use an Epipen and, on the other hand, that of the GP who suggested that the appellant's symptoms could require someone else to administer the Epipen, if needed. The matter was referred back to a newly constituted Tribunal.

C19/12-13(DLA) : Dated 6th September 2012

Possible entitlement to the higher rate mobility component and lower rate care component (Main Meal Test) were issues raised before the Tribunal. It was argued before Commissioner Stockman that the Tribunal , having regard to Mongan v Department for Social Development, in which the Court of Appeal holds that the fact that a party is represented does not relieve the Tribunal of the obligation to enquire into potentially relevant matters, should have taken a more inquisitional approach. Commissioner Stockman agreed that the Tribunal failed to address the high rate mobility component which had been clearly raised at the outset of the Hearing. The case was sent back to a differently constituted Tribunal.

C20/12-13(DLA) : Dated 5th September 2012

The Tribunal, in relation to the higher rate mobility component made findings with regard to distance and speed. It was argued before Commissioner Stockman that the Tribunal had erred in law by not referring to the time taken to walk the distances mentioned or to any stops made or any aids being used. Commissioner Stockman

determined that there was validity to such a submission. The case was sent back to a newly constituted Tribunal.

C1/10-11(TC) : Dated 15th November 2011

The issue before the Tribunal concerning back-dating of the Disability Element of Working Tax Credit under Regulation 26 of the Tax Credits (Claims and Notifications) Regulations 2002 on the basis that the appellant had made a claim for DLA which was subsequently successful. The Tribunal determined that the appellant was only entitled to three months back-dating under Regulation 25 because she had failed to notify HMRC from an earlier date that she had actually claimed DLA and so the condition in Regulation 26(3)(a) was not satisfied, i.e. "before the claim for DLA was determined, notice of the claim to DLA was given to HMRC" and "once the claim for DLA was awarded, notice of the award was given to HMRC within 3 months". Appellant awarded the Disability Element from 15th June 2008 but sought back-dating to 15th August 2007.

Before Chief Commissioner Mullan the decision of Judge Levenson in CTC/720/2010 was cited. The Chief Commissioner determined, in accordance with the principles set out in CTC/720/2010, the fact that DSD had received a claim for DLA was itself sufficient notification for the purposes of Regulation 26(3)(a). Furthermore the appellant had notified HMRC within 3 months of the date of the DLA decision. The Chief Commissioner back-dated the Disability Element to 15th August 2007.

C96/10-11(DLA) : Dated 6th June 2011

It was argued before Chief Commissioner Mullan that the Tribunal had taken into account medical evidence dated 6th September 2010 and, as the date of decision under appeal was 15th April 2010, there was nothing to indicate if the Tribunal related the information contained in the letter to the appellant's condition at 15th April 2010. Also the Tribunal had stated, outside of exacerbations, the appellant would not satisfy the test for being virtually unable to walk without making relevant findings and, despite contentions that the exacerbations had increased, failed to investigate this matter further and either accept or reject this contention and give reasons for doing so.

The Chief Commissioner accepted the above arguments and set aside the decision of the DLA Appeal Tribunal. The matter was referred back to a differently constituted Appeal Tribunal.

C1/10-11(HB) : Dated 2nd June 2011

The issue concerned Regulation 9(1)(h) of the Housing Benefit Regulations (Northern Ireland) 2006. The NIHE applied same on the basis that the appellant had failed to satisfy them that she could not have continued to occupy that dwelling without relinquishing ownership. In essence the appellant had previously owned the property, sold it, and was now renting it back. Less than 5 years had elapsed between selling and renting back the property. Her son had been a joint owner of the property but made no contribution towards the mortgage payments. There was evidence that the son had placed immense pressure on his mother to sell the property as he wished to purchase another property in his sole name.

Chief Commissioner Mullan took the view that the Tribunal could and should have explored the relevance of the potential legal and beneficial interest of the appellant's son in the property and concluded that this particular issue rendered the decision as being in error of law. The Chief Commissioner substituted the decision of the Appeal Tribunal and effectively awarded Housing Benefit subject to whether the appellant satisfied the other conditions of entitlement to the benefit.

C27/10-11(IB) : Dated 14th March 2011

This decision sought to resolve a conflict in caselaw between C30/98(IS) and R(IB)2/07.
Commissioner Mullan looked at Descriptor 14 of the Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 which concerns itself with "epileptic or similar seizures". The client in C27/10-11(IB) suffered from type 1 diabetes and subsequent hypo attacks, i.e. altered period of consciousness. The Tribunal had disallowed the appeal as it was their understanding that 'hypo attacks' could not come within the remit of Descriptor 14.

In C30/98(IB) Commissioner Brown decided that it is the causes of the seizures that are important but in R(IB)2/07 it was decided that it is the effects of the seizures that are important. Commissioner Mullan in C27/10-11(IB) concluded that C30/98(IB) should no longer be followed and that the principles set out in R(IB)2/07 properly represent the law in Northern Ireland, i.e. 'hypo attacks' resulting from diabetes can be considered within the context of Descriptor 14. It is the effects of the seizures that should be considered rather than the cause. The case was referred back to a differently constituted Appeal Tribunal for re-determination.

C71/10-11(DLA) : Dated 4th November 2010

The Appeal Tribunal, on 10th February 2009, awarded lower rate care component for an open ended period from 30th April 2007 but higher rate mobility period for one year only from 30th April 2007 to 29th April 2008.

It was argued before Commissioner Mullan that the Tribunal had erred in law by not including post oral Hearing discussions in the Record of Proceedings and the Tribunal's explanation of its decision to restrict entitlement to a fixed period award fell short of the standard set out by Commissioner Williams in CDLA/2349/2008 and did not amount to 'clear justification'. Commissioner Mullan concluded that the appellant and representative were entitled to know the basis upon which the award was restricted in the manner in which it was and, in accordance with C28/09-10(DLA), that the detail of post oral Hearing discussions should be included in the Record of Proceedings. The case was referred back to a newly constituted Appeal Tribunal.

C28/08-09(DLA) : Dated 11th May 2009

It was argued before Chief Commissioner Martin QC that the evidence set out could have supported a proposition that the appellant required "frequent" attention. The Tribunal should have specified what care needs the appellant had as it is not known which parts of his evidence were rejected and which were accepted. The Tribunal had also concluded that the appellant "may well" have satisfied the test of requiring attention for a significant portion of the day but this would be academic since he already has an award of low rate care for the main meal test. It was argued that the borderline between middle and lowest rate care can be very narrow.

Chief Commissioner Martin QC concluded that the appellant did not know whether his evidence was accepted or rejected and it left the impression that the Tribunal had not fulfilled its task of adjudicating upon whether or not the claimant was entitled to any award in relation to bodily functions. The case was referred back to a differently constituted Tribunal.

C10/07-08(IS) : Dated 4th March 2009

The substantive issue before Deputy Commissioner Powell was the fact that The Department had made two 'Entitlement' decisions regarding an overpayment of Income Support. The first 'Entitlement' decision was made on 1st June 2006 and notified to the appellant. The second 'Entitlement' decision was made on 5th June 2006 but had not been notified to the appellant by the time of the Tribunal Hearing on 3rd September 2007. Both 'Recoverability' decisions were notified to the appellant. The Department argued that the Tribunal erred in law in that it ought to have dismissed the appeal to the extent of the period covered by the first 'Entitlement'

decision and gone on to calculate the amount owing in respect of that period. Deputy Commissioner Powell agreed that the Tribunal's failure to do so was an error in law.

The Decision in C10/07-08(IS) was appealed to the Court of Appeal in North Ireland (Bridget Hamilton v Department for Social Development). Two important questions were put forward by the Commissioner for the opinion of the Court: -

"(1) Did I err in law in holding that the requirements of section 69(5)(a) of the Social Security Administration (Northern Ireland) Act 1992 (the Act) were satisfied in circumstances where a decision superseding the determination in pursuance of which benefit was paid to the appellant was made but was not communicated to the appellant until after a determination that benefit was recoverable from her under section 69(1) of the Act was made and communicated to the appellant?

(2) Although the specific point was not raised in argument before me, did I err in law in failing to hold that Article 13(8)(b) of the Social Security (Northern Ireland) Order 1998 required the Tribunal not to take into account the communication of the decision superseding the determination under which benefit was paid to the appellant as the communication of that decision was a circumstance not obtaining a the time when the decision appealed against was made?"

The Court of Appeal concluded "We must reject the claimant's contention that because the second entitlement decision had not been brought to her notice prior to the recoverability decision there was no operative recoverability decision. Insofar as the second entitlement decision indicated that the claimant had not been entitled to income support from 4 October 2004 to 30 January 2006 it was not in itself a decision having the character of a determination with binding legal effect and consequences. For the decision to have a legal outcome for the claimant it had to be followed by a decision that the sum in question was recoverable from the claimant. There was no reason why the Department could not at the same time decide (a) that the claimant was not entitled to the benefit from a given date and (b) that a sum was recoverable. Such a two pronged decision made at the same time would be both logical and administratively sensible. There is no logical reason why the Department must decide that the claimant was not entitled to a benefit from a given date, give notice of the decision to the claimant and await the outcome of an appeal before moving to the stage of deciding whether the monies are recoverable, a stage which might never be reached if the Department concluded that recovery was inappropriate. In that event the supersession decision would ex hypothesi have no legal outcome for the claimant. A claimant faced with such a two pronged decision could appeal both decisions at the one time. The tribunal would logically have to decide the validity of the supersession decision first before moving to the question whether the moneys were recoverable. Thus communication of the supersession

decision contemporaneously with the recoverability decision in no way prejudices the claimant whose appeal rights are protected. The claimant in this case had a full opportunity to challenge the correctness of the second entitlement decision as a necessary first question in relation to her challenge to the recoverability decision. As has been noted, the claimant does not in fact challenge the correctness of the second entitlement decision. For these reasons we must answer the first question posed in the case stated "No". The second question does not arise in view of the conclusions we have reached".

C13/08-09(DLA) : Dated 7th January 2009

It was submitted that the Tribunal erred in law in failing to explain adequately why the attention appellant required during the day did not amount to frequent attention which would warrant an award of the middle rate care component of Disability Living Allowance. Chief Commissioner Martin QC agreed with the submission put forward and referred the matter back to a differently constituted Tribunal.

C9/05-06(DLA) : Dated 20th June 2005

It was submitted that the Tribunal erred in law by not dealing with the possibility of the claimant's entitlement to lower rate mobility component in light of the decision of the Court of Appeal in Mongan v Department for Social Development. Chief Commissioner Martin QC agreed and referred the case to a differently constituted Tribunal for determination.

C32/00-01(IB)(T) : Dated 2nd August 2001

It was argued before Chief Commissioner Martin QC, Deputy Commissioner Powell and Commissioner Brown that the Tribunal erred in law by not addressing the appellant's very detailed written submission relating to specific complaints in relation to the Examining Medical Practitioner's Report.

The Tribunal of Commissioners accepted that the Tribunal's reasoning was inadequate as the written submission claimed inaccuracies in the Report and it was obvious that the Tribunal did not accept the Report in full. The Tribunal had not commented in any way on the specific contentions of the appellant. Therefore the decision was not understandable. The matter was referred to a differently constituted Tribunal for re-hearing.

C38/99(IB) : Dated 3rd April 2000

The Tribunal accepted that the appellant suffered from a degree of back pain but discounted his foot pain. The Medical Report on behalf of Medical Support Services accepted a degree of pain in the legs and feet but discounted the back pain. It was submitted that the Tribunal erred in law by not going further and explaining why it discounted limitations in relation to Activity 1 ('Walking') and Activity 2 ('Stairs'). Furthermore it was submitted that the Tribunal had erred in law by not giving an assessment of a Consultant's Medical Report which a previous Tribunal had adjourned for. The Tribunal's reasoning was therefore inadequate.

Chief Commissioner Martin QC agreed with the above submissions and remitted the case for re-hearing by an entirely differently constituted Social Security Appeal Tribunal.

C1/98(IS) : Dated 17th February 1999

The appellant had been disallowed entitlement to Income Support following the death of her late husband on the basis that she had capital in excess of the prescribed amount in the form of unsold land still in her possession. The land was later sold and the monies divided equally between the appellant's five children. A repeat claim for Income Support was made. This claim was disallowed on the basis that she was to be treated as having notional capital of £15,000, i.e. deprivation of capital.

Chief Commissioner Martin QC decided that the Tribunal had erred in law in that it failed to consider whether there were costs in selling the land or whether there were any incumbrances secured on the land. It was also determined by the Chief Commissioner that the Tribunal failed to consider the effect of the diminishing notional capital rule. Finally the Chief Commissioner decided that the Tribunal erred in law by failing to confirm the legal and beneficial ownership of the land as contradictory evidence emerged as to whether the appellant owned all or part of the land. The case was sent back to be reheard by a differently constituted Tribunal.

C30/99(IB) : Dated 17th August 1999

It was argued before Commissioner Mc Nally that the Tribunal had largely dismissed all the evidence before it, particularly a written submission handed into the Tribunal on the day of the Hearing, without any proper findings of fact being made.

Commissioner Mc Nally found it difficult to understand how the Tribunal was able to dismiss all the evidence before it in such a summary fashion. He agreed that no proper findings of fact were made and the Tribunal erred in law in not giving proper

reasons for its decision in light of all the evidence and the written submissions. The matter was referred back to be reheard by a differently constituted Tribunal.

R1/97(DLA) : Dated 13th February 1997

It was argued before Chief Commissioner Chambers that it was not clear from the Tribunal's findings and decision in relation to the night attention condition whether the evidence from the mother in relation to her son was accepted or rejected. This was an essential step before it could be considered whether the required attention was "prolonged or repeated". There was also a doubt as to whether the Tribunal had considered the position after the time at which the household had retired to bed.

Chief Commissioner Chambers accepted that the uncertainty in respect of these matters was sufficient to render the Tribunal's decision erroneous in point of law. The Chief Commissioner also accepted the argument, in the case of a child of 10 who would not normally require any night attention, the second test in Section 72(6)(b)(ii) applied. i.e. "Substantial" instead of "Substantially in excess of". Chief Commissioner Chambers set out how Tribunals might approach the 'additional' tests in Sections 72(6)(b) and Section 73(4). The case was referred back for determination by another Tribunal. The decision by Chief Commissioner Chambers is now a reported decision, indicating that it is of a wider and greater significance.

C11/96(DLA) : Dated 21st March 1996

It was argued before Commissioner Mc Nally that the Tribunal made little or no findings of fact. In particular, with regard to the higher rate mobility component, there was no reference to speed, distance, manner or time. The findings in relation to the care component were inadequate.

Commissioner Mc Nally determined that the Tribunal made no findings of fact relevant to the claim and no reasons for its decision. The case was referred back to a differently constituted Tribunal.

C3/95(IS) : Dated 1st March 1996

The case concerned an overpayment of Income Support from 4th December 1993 to 24th February 1994 by reason of the appellant ceasing to attend a Training Course and failing to disclose the material fact to The Department.

It was submitted to Commissioner Mc Nally that the Training Centre had notified the Unemployment Section on 17th December 1993 that the appellant was no longer attending the Course. It was also argued that the appellant had been overpaid a

'Training Allowance' and not Income Support and therefore not recoverable under Section 69 of the Social Security Administration (NI) Act 1992. Furthermore the issue was raised as to whether or not the Adjudication Officer had made an 'Entitlement' decision to terminate the award of Income Support.

Commissioner Mc Nally decided that a Job Training Programme Allowance is paid under the Employment and Training (NI) Act 1950 and that the Social Security Agency is involved solely in an administrative role. The case was referred back to a differently constituted Tribunal to consider whether or not a valid 'Entitlement' decision had been made and whether or not the notification from the Training Centre was a sufficient notification of a change in circumstances and if the failure of the appellant to inform the Agency resulted in the overpayment.

C27/95(DLA) : Dated 17th July 1995

A claim for DLA had been made on behalf of the child who was 9 years old. The Tribunal disallowed the appeal. It was argued before Commissioner Mc Nally that the Tribunal had made findings that help was needed about 4 nights per week with medication, changing bedclothes and bathing for bedwetting but erred in law by not considering if such attention amounted to prolonged or repeated attention. It was also argued that the Tribunal applied the 'wrong' additional test for children in Section 72 of the Contributions and Benefits Act 1992, i.e. "substantially in excess of" instead of "substantial" as the child was at an age were normally no attention would be required.

Commissioner Mc Nally agreed that the Tribunal's findings were inadequate and that they had applied the wrong test. The matter was referred back to a differently constituted Tribunal.

C19/95(DLA) : Dated 30th May 1995

The Tribunal awarded the lowest rate of the care component for three years. It was submitted before Chief Commissioner Chambers that, in accordance with the principles set out in C8/94(DLA), the Tribunal should have made it clear that they had given active consideration to the question of the duration of the award and explained, in brief terms, why it should be for a fixed period of three years rather than for life. It was also submitted that the Tribunal's findings of fact were less than adequate with regard to both care and mobility.

Chief Commissioner Chambers agreed with the arguments put forward and referred the case for determination by another Tribunal.

C5/95(DLA) : Dated 24th February 1995

The appellant was originally awarded both lower rates of DLA and sought a review of that decision. The review removed entitlement to both lower rates and the Tribunal upheld the decision of the Appeal Tribunal. It was argued before Chief Commissioner Chambers that, for some unknown reason, the Tribunal had omitted to consider whether the appellant was entitled to the lowest rate of the care component or the lower rate of the mobility component.
Chief Commissioner Chambers decided that the Tribunal erred in law in failing to consider and record relevant findings of fact in relation to the appellant's possible entitlement to both lower rates. The case was referred back to a differently constituted Tribunal.

C9/94(IS) : Dated 5th December 1994

The appellant appealed against a decision of the Adjudication Officer that she had been overpaid Income Support by failing to disclose the material fact that her mortgage interest rate had changed. Before the appeal Tribunal the appellant argued that her Building Society only informed her every January of such a change and this change took effect from 1st February each year. The Tribunal disallowed the appeal.

It was submitted to Commissioner Mc Nally that the Tribunal erred in law by not considering Paragraph 7(8) of Schedule 3 to the Income Support (General) Regulations (Northern Ireland) 1987, i.e. reduction in interest rates shall be deemed not to be a change of circumstances if the amount of the instalments payable to the lender remain constant. In this case the appellant had an endowment mortgage and her monthly payments, despite changes in the interest rate, did not always change.

Commissioner Mc Nally agreed that the Adjudication Authorities were either unaware of or ignored the provisions of Paragraph 7(8) of Schedule 3, although upon further investigation, it was discovered that the appellant had failed to disclose the material fact relating to a shorter period of time. Commissioner Mc Nally gave the decision he felt the Tribunal ought to have made and reduced the total overpayment from £723.08 to £226.16.

C3/93(DLA) : Dated 15th June 1994

In relation to the higher rate mobility component there was evidence before the Tribunal that the appellant could only walk 30 yards in a slow manner with severe discomfort, had to hold on to do so and it would take a good minute to do that. The medical evidence from her own GP detailed that her walking ability was severely restricted. Before Commissioner Mc Nally the Tribunal were said to have erred in law

by not making sufficient findings of fact relating to the appellant's ability to walk taking into account distance, speed, manner and length of time.

Commissioner Mc Nally accepted the argument adding, if the Tribunal was rejecting all this evidence, then it should not only have said so, but have said why it was rejecting the evidence. The matter was referred back to be reheard by a differently constituted Disability Appeal Tribunal.

C6/94(IVB) : Dated 10th June 1994

The appellant was disallowed entitlement to Invalidity Benefit on the strength of one Medical Report which considered him capable of suitable alternative work but not capable of his old occupation as a farmer. The appellant had previously suffered a heart attack. The case was put to Commissioner Mc Nally that the Tribunal made no or inadequate findings of fact and had failed to record or consider a letter from the GP handed into the Tribunal.

Commissioner Mc Nally concluded that the only evidence which the Tribunal based their findings was the incomplete Medical Report, a new form of Report and even the Adjudication Officer's representative is sceptical of its efficiency. Commissioner Mc Nally was satisfied that the Tribunal failed to make any relevant findings of fact upon which to base a decision. Commissioner Mc Nally substituted the decision of the Tribunal for his own and reinstated entitlement to Invalidity Benefit.

C4/94(IVB) : Dated 6th April 1994

The appellant was found incapable of his own occupation but capable of work for a number of other specified occupations. The appellant had been to a number of medical examination over the duration of his claim from April 1989 onwards and all those examinations were carried out by the same Doctor. In August 1992 the Doctor stated that there was no material change since the previous examination but there had been a minimal change. In all other Reports the same Doctor stated "No material change".

It was argued before Commissioner Mc Nally that it was difficult to see how the Report could come to a different conclusion from all the previous Reports and the Tribunal were obliged to explain why it considered that there was such an improvement as to render the appellant fit for some work now, even though the Medical Report is contradictory on whether or not there has been any change in his condition. The Commissioner agreed and referred the matter back to be heard by a differently constituted Social Security Appeal Tribunal.

C11/93(SUPP BEN) : Dated 7th January 1994

The appellant's Appointee had made a claim for Exceptional Needs/Additional Requirements Payments for baths, laundry, clothing and footwear under Supplementary Benefit. The Tribunal allowed same except for footwear.

It was submitted to Commissioner Mc Nally that, although the Tribunal had gone into the matter in a painstaking and thorough manner, it had simply missed the footwear aspect of the claim without any reason for not awarding same. Commissioner Mc Nally agreed with the position and decided that the appellant was entitled to an extra two pairs of shoes per year from 28th November 1966.

C26/92(IS) : Dated 21st December 1992

The appellant was awarded the Severe Disability Premium from 8th November 1990 but argued before the Tribunal that it should be awarded from 11th April 1988. The Tribunal disallowed the appeal believing that arrears were limited to 12 months by virtue of Regulation 69 and 72 of the Social Security (Adjudication) Regulations (Northern Ireland) 1987.

Commissioner Mc Nally agreed that the Tribunal made no actual findings in relation to this point and awarded the Severe Disability Premium from 11th April 1988 on the basis that entitlement was not restricted to 12 months.

C3/92(IS) : Dated 29th January 1992

The appellant was disallowed entitlement to Income Support from 27th November 1989 as it was held that he had transferred the ownership of land/property on 23rd February 1990 to his daughter for the purpose of securing entitlement to Income Support.

It was argued before Commissioner Mc Nally that the process of transferring ownership of the land/property into the appellant's name commenced in 1980 and, due to various legal challenges, was only completed on 31st January 1990. He then transferred ownership to his daughter, which had been his intention from the outset in 1980. Commissioner Mc Nally decided that there was not one shred of evidence to support a finding that the appellant had deprived himself of the land/property for the purpose of securing entitlement to Income Support. The Commissioner awarded Income Support from 27th November 1990 (the appellant went into a Nursing Home in November 1989 and the value of the land/property was disregarded from November 1989 to November 1990. Sadly the appellant had died prior to the Tribunal Hearing and the matter was pursued by his daughter).

C10/92(AA) : Dated 28th May 1992

Prior to the introduction of DLA the appellant was disallowed entitlement to Attendance Allowance despite the Tribunal accepting that he needed supervision during attacks of menieres disease and, to a lesser degree, supervision which is precautionary and anticipatory between bouts of vertigo. It was argued before Commissioner Mc Nally that it was difficult to understand, in light of the Tribunal's findings, why the benefit was refused.

Commissioner Mc Nally agreed with the arguments put forward and awarded Attendance Allowance for a period of two years from 30th May 1990 by reason of continual supervision from another person throughout the day in order to avoid substantial danger to himself or others.

C9/91(AA) : Dated 17th April 1991

The Tribunal upheld the decision of the Adjudication Officer that the appellant did not require continual supervision from another person. However it was accepted that the appellant required continual supervision during an attack of menieres disease. It was argued before Commissioner Mc Nally that the Tribunal did not spell out why precautionary supervision was not a factor.

Commissioner Mc Nally determined that the Tribunal erred in law by not dealing with the issue of precautionary supervision given the acceptance of supervision during attacks and further stated that the Tribunal had also erred in law by not explaining why it accepted the evidence of the second Medical Officer who said that no supervision was required and rejected the evidence of the first Medical Officer who said that supervision was required. The case was referred back to the Attendance Allowance Board to be reconsidered.