



NEWS REPORT

Date: 21 December 2010
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Title: Equality body decision on disability benefit
Country: Cyprus
Context

Issue at stake: The Equality Body decides that a disability benefit due to a person with disability having applied for it in 2005 must be paid with retroactive effect from that date onwards

Ground of discrimination: Disability

Source: Equality Body Decision dated 11/12/2010, A.K.I. 76/2010 & A/P 1840/2007

Field: Social provision

Legislative provisions: The Combating of Racial and Other Forms of Discrimination (Commissioner) Law 2004, Article 3(1)(c) and 6(2)(e); Law on Persons with Disability 2000-2007 Article 4; Opinion of the European Economic and Social Committee on the Equality of Opportunity for persons with disability; European Social Charter ratified by law N. 27(III)/2000; Public Assistance and Services Law 2006, Article 2; Law on General Principles of Administrative Law 1999, Article 7(f).

Content

Case: A complaint against the Social Welfare Services was submitted to the Equality Body by a person with disability who had applied for a disability benefit in 2005 but who was only granted this benefit from 2010 on without any retroactive effect. The complainant, aged 39, was a former athlete with an international career who had undergone a surgery on a knee injury. During the operation he was infected with gangrene and developed severe osteoarthritis of the joint that spread throughout his bones. This rendered him unable to work and to care for himself, suffering from severe pain and sometimes being unable to sleep. In September 2005 he applied for a disability benefit. The examination of his application

lasted for five years, during which the complainant was repeatedly asked to submit updated medical certificates, he was twice visited by welfare officers who testified that his condition warranted his categorisation as a person with disability (and thus confirming his eligibility to a disability benefit) and he was also examined twice by a medical council upon the request of the Social Welfare Services. In 2010 it was finally decided by the Social Welfare Services that he fell under the definition of 'person with disability' and his application for a disability benefit was eventually approved, but with effect only as from 15 June 2010.

Decision of the Equality Body: In its decision, the Equality Body referred to its mandate to promote equality of opportunity irrespective of, *inter alia*, special needs, in the field of social protection. Reference was also made to the Opinion of the European Economic and Social Committee on Equality of Opportunity for Persons with Disability¹ which encourages Member states to put emphasis on the provision of social services and personal assistance to persons with disability, so as to enable them to lead a smooth life and play an active role in society. The report further referred to the social right to welfare foreseen in the European Social Charter which guarantees the securing of a minimum subsistence level, which is not merely related to satisfying basic needs but extends to all the needs imposed by respect to human dignity. The right to a dignified standard of living, through economic provisions and social services is also provided for in the national Law on Persons with Disabilities 2000-2007 (Article 4). The definition of disability found in the Public Assistance and Services Law 2006, Article 2 covers any insufficiency or disadvantage causing physical mental or psychological restrictions which is permanent or of indefinite duration and which, taking into consideration the history and other personal data of the person in question, reduces significantly or excludes the performance of activities or functions considered normal and essential for the quality of life of a person without such insufficiency or disadvantage. Although on the basis of the medical certificates submitted by the complainant it was clear that he fitted the legal definition of a person with disability and that he was eligible for disability benefit, the Social Welfare Services unjustifiably delayed the approval of his application for five years. Reference was also made to the Social Welfare Services' precondition that the applicant be examined by a medical council in order to determine whether he was a person with disability, despite the fact that the competence to decide whether a person meets the

¹ 2007/C 93/08, 17.1.2007.



requirements of the definition of 'disability' rests with the Director of Social Welfare and not with the medical council. Finally the report concludes that since the Law on General Principles of Administrative law permits the retroactive effect of an administrative act in order to restore an unfairness resulting from the administration's omission, the disability benefit granted to the complainant should have retroactive effect from September 2005 when he submitted his application.

Internet link source:

At the time of writing, the report had not yet been uploaded on the Equality Body's website.