



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mrs D Dawson

AND

**Respondent**  
More 4x4 Limited

## REASONS

The Respondent has requested reasons for the oral judgment delivered on 19<sup>th</sup> March 2021.

### ISSUES

1. The issue before me is to determine whether the claimant was a disabled person with reference to S6 Equality Act 2010 at the material time. The claimant relies on the physical impairment Sepsis Telogen Effluvium, aka Post Sepsis Syndrome (PSS).

### PROCEEDINGS AND EVIDENCE

2. I was provided with a bundle of 181 pages. I heard evidence from Mrs Dawson. I heard submissions from the legal representatives of which I have taken a full note.

### FINDINGS OF FACT

3. My findings of fact are based on the material before me taking into account contemporaneous documents where they exist. I have resolved conflicts of evidence as arose on balance of probabilities. I have taken into account my assessment of the credibility of the witness and the consistency of her evidence with surrounding facts and documents. I found the claimant to be an honest witness.

4. It is not the Tribunal's function to resolve each and every disputed issue of fact. What follows are the relevant factual findings in relation to the issue of disability.

4.1 The claimant stated in her oral testimony that she had suffered with mild depression for a long time on and off. In January 2019 the claimant was diagnosed with Lipodermatosclerosis, a skin and connective tissue disease

which is a life-long condition. She was diagnosed with depression in February 2019. At the same time the claimant suffered from cellulitis which caused ulcers on her left leg. This resulted in about August/September 2019 in a first bout of sepsis for which she was hospitalised for four weeks.

4.2 The claimant cannot remember when she was prescribed sertraline but by December 2019 the claimant was taking a reasonably high dose of Sertraline at 150mgs daily. Thereafter the claimant had her leg dressings changed daily because of the ulceration. She believes that the symptoms of PSS developed from that point in the time line of events.

4.3 The claimant first noticed loss of hair and the appearance of bald patches in about December 2019. Her other symptoms of depression and anxiety were controlled by medication but not completely; she had also experienced sensitivity to cold and insomnia since the bout of sepsis in August/September 2019. The claimant has also suffered skin peeling over her body, and broken nails.

4.4 At one of the claimant's attendances at the surgery for her leg to be dressed, the claimant mentioned the hair loss to the nurse who called in the GP. He stated that yes, hair loss could be part of PSS.

4.5 After work on 5<sup>th</sup> February 2020 the claimant attended a medical appointment. Whilst at the surgery the claimant received upsetting news concerning her work place from her husband and daughter who had been speaking to the claimant's line manager, Mrs Goring, about an incident at work earlier. The claimant was signed off sick with work related stress from 5<sup>th</sup> February 2019. She did not return to work prior to termination of employment on 24<sup>th</sup> April 2020.

4.6 The claimant had a further bout of sepsis in July 2020 when her sertraline medication was increased. She still experiences hair loss although there has been some re-growth but also hair loss in different areas.

4.7 As far as the medical records are concerned, the claimant has not had a clear diagnosis of PSS. She referred in cross examination to it being mentioned by her GP when she was having dressings on her leg changed. The claimant herself conceded that there is no diagnostic test to identify PSS.

4.8 The entries in the medical records are:

- (i) 17<sup>th</sup> September 2019 sepsis - on discharge sheet from paramedics;
- (ii) 5<sup>th</sup> February 2020 stress at work;
- (iii) 29<sup>th</sup> May 2020 depression and not coping – not seeing her family;
- (iv) 7<sup>th</sup> July 2020 letter from GP who referred to hair loss commencing beginning of January 2020 – consulted GP on 5<sup>th</sup> February 2020 –

patient reports hair growing back. This letter was written by a locum in the absence of the claimant's GP; he wrote the letter with reference to the claimant's medical records where there is no diagnosis of PSS.

The claimant therefore asked her GP on his return from holiday, for a letter confirming her condition.

- (v) 9<sup>th</sup> July 2020 in the letter in response to the request, the GP says that the Claimant suffered sepsis in September 2019 and stress levels have been very high since; Loss of hair due to stress; partly attributable to post sepsis syndrome which was also affecting her mental health adversely;
- (vi). 27<sup>th</sup> July cellulitis on left leg seen by Dr Zaman for urgent red flag admission to hospital for suspected sepsis and further evaluation;
- (vii) 17<sup>th</sup> August 2020 "has lost her appetite for last 3 weeks - post sepsis??"

4.9 There is therefore no clear diagnosis of PSS in the claimant's medical records. There are several references to depression and the medication of Sertraline for depression. The claimant has suffered from depression for a long time but in the last year or so it has been worse. She now feels that she has lost her life, she can't go outside, she has lost pride in herself, her health has worsened, she is unable to pursue activities such as knitting and crocheting. She feels that she has lost everything and is dependent on her family.

### **Submissions**

4.10 The respondent submitted that the claimant must identify her impairment – she did so at the case management preliminary hearing in October 2020 before EJ Rayner in which she claimed that it was PSS. The respondent submits that there is no diagnosis of PSS in the claimant's medical records and therefore the claimant has not established that she has such a disability called PSS. At its highest the medical records suggest that PSS *may be* a diagnosis. The records suggest more that PSS is part of the stress condition and not the cause of it. The submission continues, although it is clear she has suffered from stress it is not clear she has ever suffered from PSS and that it is surprising that a doctor would not record a diagnosis of PSS – instead there was a question mark over the diagnosis and so the doctor is not certain.

4.11 The claimant believes she suffers from PSS but accepts that there is no real way of knowing – no diagnostic test to establish PSS. It cannot therefore be ascertained with a degree of certainty the claimant has or had PSS. She has, as the Respondent said, pinned her colours to the mast in the case management preliminary hearing last year in that she declared her impairment was PSS.

4.12 The claimant has referred me to the guidance on matters to be taken into account in determining questions relating to the definition of disability. The relevant sections are:

*A1 the EqA 2010 defines a disabled person as a person with a disability. A person has a disability for the purposes of the Act if he or she has a physical or mental impairment and the impairment has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities.*

*A2 this means that in general:*

- The person must have an impairment that is either physical or mental*
- The impairment must have adverse effects which are substantial*
- The substantial effects must be long term*
- The long term substantial adverse effects must be effects on normal day to day activities*

*A 3 The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established nor does the impairment have to be the result of illness. In many cases there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long term. Even so it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.*

*A4 whether a person is disabled for the purposes of the Act is generally determined by reference to the effect of the impairment has on that person's ability to carry out day to day activities. An exception to this is a person with a severe disfigurement. It is not possible to provide an exhaustive list of conditions that qualify as impairments for the purposes of the Act. Any attempt to do so would inevitably become out of date as medical knowledge advanced.*

*A6 it may not always be possible nor is it necessary to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment and vice versa.*

*A7 it is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. What is important is to consider the effect of the impairment – not the cause.*

*A8 it is important to remember that not all impairment are readily identifiable . whilst some impairments particularly visible ones are easy to*

*identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities.*

## **Conclusions**

5. I ask the following questions:

- 5.1.1 Does the claimant have an impairment that is either physical or mental?  
Yes the claimant has had both physical and mental impairments, which have been identified, Lipodermatosclerosis, cellulitis, (and potentially) hair loss are physical impairments. Depression and anxiety are mental impairments.
- 5.1.2 Are these conditions long term? The mental impairments commenced long before 2019 but have been exacerbated during 2019 by the claimant's admission to hospital with sepsis in August/September 2019 and subsequently. She took medication for depression in December 2019 but probably also before that time. She had the medication increased substantially during 2020.
- 5.1.3 The physical impairment of lipodermatosclerosis is a life long condition. The resulting cellulitis is a condition which gives rise to ulceration of the legs which in turn causes sepsis. These conditions have caused the claimant two periods of hospitalisation.
6. I find that both the mental and physical impairments have had an adverse long term effect on the claimant - the physical impairments were diagnosed in January 2019 (lipodermatosclerosis and cellulitis) and after hospitalisation in August/September 2019 the conditions continued and included further conditions including sensitivity to cold, dry flaking skin and nails, poor appetite, repeated infection, repeat bout of sepsis in the original site. Increased level of depression, anxiety and insomnia.
7. The mental impairments existed prior to 2019 but have been exacerbated during 2019 and 2020.
8. I find that both the mental and physical impairments have had a substantial long term adverse effect on the claimant's ability to carry out normal day to day activities.
9. The claimant said that these symptoms she has experienced referring to hair loss and her mental deterioration to the point where she feels life isn't worth living are symptoms of Post sepsis syndrome.

10. PSS is difficult to diagnose. The doctors have suggested it but have not given a concrete diagnosis; the claimant is not a doctor and certainly I am not. So having pinned her colours to the mast with PSS as the label for her impairments, does that mean she must fail on her claim of satisfying S6(1) of the EqA 2010 because there is nothing in her medical records that does more than suggest a diagnosis of PSS?
11. If the claimant had listed her worsened mental impairments and her physical impairments singly, instead of saying they were collectively symptoms of PSS would she have succeeded in establishing disability? I find it highly likely that she would. Her various illnesses/conditions were not disputed by the respondent. The medical evidence is clear and supports the claimant's oral testimony of her various conditions.
12. We have the reverse situation here to the one envisaged in the Guidance which says in many cases there will not be a dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long term.
13. Here we have little disagreement about the effects, the symptoms, but no agreement about the actual name of the impairment itself.
14. A6 states that it may not always be possible, nor is it necessary to categorise a condition as either a physical or a mental impairment, and the underlying cause of the impairment may be hard to establish. This fits with a situation where the claimant described the lipodermatosclerosis, cellulitis, hair loss, insomnia, etc. etc. as impairments, her depression and anxiety as impairments, and the underlying cause of the impairment being hard to establish. The claimant's symptoms are all listed as physical and psychological or emotional symptoms of PSS in the information provided by the Sepsis Trust (page 181 of the bundle). The claimant says it is PSS. Her doctor thinks it might be PSS. Clearly the diagnosis of PSS depends on the reaction of each individual to PSS and there is a range of symptoms falling within PSS, as there are a range of symptoms falling in the range of Long Covid – symptoms vary according to the individual.
15. I question whether this is really a matter of description and applying the right label to the body of symptoms that the claimant has. The PSS is a title covering various conditions and so is not easily diagnosed. There is no diagnostic test, it is a matter of assessment. The claimant could have avoided the issue of correct diagnosis of PSS by listing her mental and physical impairments singly. Is it appropriate that she has bundled them

**Case Numbers: 1401026/2020/V & 1403824/2020/V**

together under one title for a medical condition with variable symptoms, many of which she has, and that her claim to disability must fail because there is no medical record which states categorically that it is PSS?

16. I step back and look at the evidence. I find that the claimant has satisfied the burden of proof that she has disabilities which are and were existent at the material time and are clearly long term and adversely affect her ability to carry out day to day tasks. I find that she has attributed the body of various conditions she has experienced over the relevant period to a cover-all title of PSS. The condition of Sepsis she experienced on two occasions were not long term, in that after several weeks of hospitalisation and recuperation and administration of anti biotics, the condition subsides, until it is prompted again by the claimant's underlying health condition vis a vis her condition of lipodermatosclerosis and cellulitis. I cannot say that PSS is the correct medical title, but the claimant has suffered considerably following two bouts of sepsis, a life threatening condition. Her doctor thought it was possibly PSS because the conditions, the symptoms closely followed the first bout of sepsis. I find that it would not be the interests of justice to dismiss her claim that she was disabled at the relevant time because of possibly a wrong label?
17. There seems to be no exact definition of PSS – it is variable according to the individual's response to sepsis occurring in the first place. The term Post Sepsis Syndrome is wide enough and ambiguous enough to incorporate the conditions that the claimant has described and I therefore find she was disabled for a multitude of mental and physical impairments many of which singly could amount to a disability and collectively could be reasonably described as falling within the label of PSS.
18. The claimant's satisfies the definition of disability under S6(1)EqA 2010.

**Employment Judge A Richardson**  
**Date: 06 July 2021**

Reasons sent to the Parties: 16 July 2021

FOR THE TRIBUNAL OFFICE