



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. J. Bedford

**Respondent:** Department for Work & Pensions

## PUBLIC PRELIMINARY HEARING

**Heard at:** Bury St Edmunds Employment Tribunal (remote via CVP)

**On:** 11 July 2023

**Before:** Employment Judge Mason

### Appearances

For the Claimant: Ms. D. Camadoo, Union Representative

For the Respondent: Mr. Bershadski, counsel

## RESERVED JUDGMENT

1. The Claimant had a disability (within the meaning of section 6 and Schedule 1 of the Equality Act 2010) during the period 1 January 2021 to 4 August 2022 (“the relevant period”) due to the following impairments: lower back pain; dyslexia; dyscalculia; anxiety/depression; and hypothyroidism.
2. The Claimant was not disabled during the relevant period due to deviated septum.
3. His complaints of unlawful disability discrimination contrary to the Equality Act 2010 proceed.

## REASONS

### Background

1. This hearing was listed by EJ Ord (who conducted a case management hearing on 11 May 2023) to consider and determine whether the Claimant was during the relevant period disabled within the meaning of s6 Equality Act 2010 (EqA) by reason of lower back pain; dyslexia; dyscalculia; anxiety/depression; hypothyroidism; and deviated septum.

2. EJ Ord summarised the factual background to this case as follows:  
*“(3) The Claimant is employed by the Respondent as an Administration Officer and has been in continuous employment with the Respondent since 16 March 1998.  
(4) Following a period of Early Conciliation which began on 12 August 2022, the Claimant received his Early Conciliation Certificate dated 22 September 2022 and presented a claim form to the Tribunal on 21 October 2022, making complaints of discrimination on the protected characteristics of disability and race and making a claim for unpaid/unlawful deductions from wages.”*
3. EJ Ord made various case management orders to include provision by the Claimant of an Impact Statement and medical evidence. The Claimant has complied with that order and in light of the information provided, the Respondent now accepts that the Claimant was disabled during the relevant period by reason of all impairments relied upon with the exception of deviated septum. Whilst the Respondent accepts the Claimant has been diagnosed with deviated septum it does not accept that this impairment meets the definition of “disability” in s6 EqA.
4. The parties agree that the relevant period of alleged discrimination runs from 1 January 2021 to 4 August 2022. The start of this period is taken from the Claimant’s claim form in which he states: *“I am making a claim to the Employment Tribunal due to continuing acts of race and disability discrimination I have experienced since January 2021”*. With regard to the end date, Ms. Camadoo told me the last act of discrimination the Claimant relies on was on 4 August 2022: the Claimant refers to this in his ET1 as follows: *“The most recent incident was to rescind an appeal after it upheld my original complaint of bullying, harassment and discrimination”*.
5. I was provided with a bundle of documents (178 pages), to include the pleadings, EJ Ord’s orders, the Claimant’s Impact Statement and medical evidence. The Claimant also provided a 4 page supplementary statement; we adjourned briefly to allow Mr. Bershadski time to read this. I commented to Mr. Bershadski that it was unhelpful that the bundle contained so many duplicated documents and was not in date order. The Respondent is professionally represented and should take much more care in the preparation of bundles for future hearings.
6. I heard evidence from the Claimant who confirmed (on oath) that his Impact statement and supplementary statement were accurate and truthful; he was cross-examined by Mr. Bershadski and I gave Ms. Camadoo the opportunity to re-examine and I asked some questions by way of clarification
7. Both representatives made brief verbal submissions.
8. Due to lack of time, I reserved my decision.

## Relevant Law

9. **S6 Equality Act 2010 (EqA)**

*“(1) A person (P) has a disability if –*

*(a) P has a physical or mental impairment; and*

*(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities”*

10. A tribunal must take into account any relevant aspect of :

10.1 **Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) ( “the Guidance”);** and

10.2 **The Equality and Human Rights Commission: Code of Practice on Employment 2011 (“the Code”)**

11. The question of whether a person meets the definition of disability is matter for the Tribunal and not medical experts: **Paterson v The Commissioner of Police of the Metropolis [2007] ICR 1522**. While the view of doctors on the nature and extent of claimed disability is relevant, the crucial issue is one for the tribunal itself to decide on all the evidence.

12. **Does the impairment have an adverse effect on their ability to carry out normal day-to-day activities?**

12.1 EqA 2010

*“5(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—*

*(a) measures are being taken to treat or correct it, and*

*(b) but for that, it would be likely to have that effect.*

*(2) “measures” includes, in particular, medical treatment ...”*

12.2 The Guidance:

A4 Whether a person is disabled for the purposes of the Act is generally determined by reference to the **effect** that an impairment has on that person’s ability to carry out day-to-day activities.

It is the effects of the impairment(s) that need to be considered, rather than the underlying condition(s) themselves.

D3 In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading, and writing, having conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.

12.3 The Code: Appendix 1:

7. There is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause.

14. Normal day-to-day activities are activities “carried out by most men or women on a fairly regular and frequent basis”.

15. Day-to day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing, going to the toilet,

talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompasses the activities which are relevant to working life.

12.4 "Day-to-day activities" encompass activities which are relevant to participation in professional life as well as participation in personal life (**Paterson v The Commissioner of Police of the Metropolis** [2007] ICR 1522).

13. **Is that effect substantial?**

13.1 EqA: S212(1) defines "substantial" as "*more than minor or trivial*".

13.2 The Guidance:

B2 & B3: The time taken to carry out an activity and the way in which an activity is carried out are factors to be considered when assessing whether the effect of an impairment is substantial.

B4 An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

B7. Account should be taken of how far a person can **reasonably** be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities.

Appendix:

This sets out an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.

13.3 The Code: Appendix 1:

8. A substantial adverse effect is something which is more than minor or trivial.

9. Account should be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

10. An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how they carry out those activities.

13.4 In **Leonard v South Derbyshire Chamber of Commerce** [2001] IRLR 19 the EAT gave the following guidance:

- i) the focus should be on what an employee cannot do or can do only with difficulty, and not on what they can do easily;
- ii) the tribunal should look at the whole picture but should not attempt to balance what an employee can do against what they cannot do;
- iii) the statutory guidance should not be used too literally; and.
- iv) the fact that an employee is able to mitigate the effects of an impairment does not prevent there being a disability.

14. **Is that effect long-term?**

14.1 EqA Schedule 1, Part 1

- (i) "2(1) *The effect of an impairment is long-term if –*  
*(a) it has lasted for at least 12 months;*

*(b) it is likely to last for at least 12 months, or  
(c) it is likely to last for the rest of the life of the person affected.”*

- (ii) 2 (2) *If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if it is likely to recur”*

14.2 The Guidance:

- A16. Someone who is no longer disabled, but who met the requirements of the definition in the past, will still be covered by the Act.
- C2. The cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect.
- C3 “Likely” should be interpreted as meaning that it could well happen.
- C4 “In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age)”.
- C5. Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of “long-term”.
- C6. If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term.
- C7. It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the ‘long-term’ element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. It may change: for example activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect may disappear altogether.
- C9. Likelihood of recurrence should be considered taking all the circumstances of the case into account.

14.3 The Code:

- 2.9 In most circumstances a person will have the protected characteristic of disability if they have had a disability in the past, even if they no longer have the disability.

Appendix:

13. If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is, if it might well recur.

- 14.4 In **SCA Packaging Ltd v Boyle** [2009] UKHL 37, the HL held that “likely” means “could well happen”.

14.5 Recurring or fluctuating effects:

- (i) In **Swift v Chief Constable of Wiltshire Constabulary** [2004] IRLR 540, the EAT suggested four questions should be answered:

- i) was there at some stage an impairment which had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?
  - ii) Did the impairment cease to have such an effect and, if so, when?
  - iii) What was the substantial adverse effect?
  - iv) Is that substantial adverse effect likely to recur?
- (ii) The likelihood of recurrence of a disability must be assessed at the date of the act of discrimination. A tribunal must determine what the prognosis would have been in the light of information available at the time of the act of discrimination. Anything which occurs after the time of the alleged discrimination will not be relevant in assessing the likelihood of an effect lasting for 12 months.

### **Findings of Fact**

15. My findings are limited to the issue of whether the Claimant at the relevant time was disabled by reason of deviated septum during the relevant period i.e. 1 January 2021 to 4 August 2022. However, I have considered the evidence outside of this period for context.
16. In his Impact Statement [pages 148-159] and supplementary statement the Claimant gives a significant amount of information and examples of how his other impairments affect his day to day activities. However, the only mention of his deviated septum is as follows:  
*“Deviated septum – breathing, congestion, sinusitis”* [page 155]  
*“Deviated nasal septum – affect breathing”* [page 159]  
He does not give any information or examples of how his day to day activities are affected by his deviated septum.
17. In a 14 page document dated 22 March 2023 prepared by the Claimant [pages 51-65] which gives further particulars of his claim, there is only one reference to a deviated nasal septum and this is at para. 2  
*“2. Before joining the Department, I did not have physical disabilities, but I now have diagnosed: lower back, sciatic pain due to swollen spinal discs as a result of the incorrect workstation equipment, chair in 1999, anxiety and depression since 2000, deviated nasal septum and dyslexia since birth.”*
18. On cross-examination, the Claimant said that the effects of his deviated septum are exacerbated by stress and it affects his breathing and sleeping which makes him drowsy in the day and “woolly headed” which affects his thinking. He told me it is sometimes difficult to breathe, he needs a spray, has to blow his nose and has facial pains.

### **Medical evidence:**

19. There is no mention of the deviated septum in Occupational Health (OH) reports on the following dates: 19 October 2007; 11 August 2008; 15 March 2009; 21 May 2010; 11 February 2011; 27 October 2014; 6 July 2018; and 22 October 2021.

20. Consultation Information Sheets from the Claimant's GP surgery (Westwood Clinic) [pages 129-132] show the Claimant had consultations regarding his deviated septum on the following dates:
- 20.1 **29 November 2018:**  
Diagnosis: nasal congestion.  
Reference to breathing difficulties.
- 20.2 **7 December 2018:**  
Diagnosis: acute maxillary sinusitis.  
Reference to a dry throat and non-productive cough.  
Signed off not fit for work 7 December 2018 to 13 December 2018.
- 20.3 **14 December 2018:**  
Diagnosis: acute maxillary sinusitis.  
Reference to sore nose, bloody discharge and a cough.  
Signed off not fit for work 14 December 2018 to 20 December 2018.
- 20.4 **29 January 2019**  
Diagnosis: nasal catarrh.  
Reference to nose bleeds, nasal discharge.
- 20.5 **13 February 2019**  
Difficulties breathing through nose and difficulty sleeping because of the breathing.  
Nasal polyp noted on right side and referred to ENT for polypectomy.
- 20.6 **21 March 2019**  
Diagnosis: sinus and breathing problems  
Signed off not fit for work 20 March 2019 to 14 May 2019.
- 20.7 **7 May 2019**  
Seen in ENT clinic (see para 21 below)
- 20.8) **16 May 2019**  
Chronic sinusitis  
Statement issued "May be fit for work" 16 May 2019 to 26 June 2019
21. **7 May 2019** [pages 123-124]: The Claimant attended Peterborough City hospital on 29 April 2023 and a report from Mr. Oliver Wakelam, ENT Registrar, states as follows:

***"Diagnosis***

*Suspected chronic rhinosinusitis without nasal polyposis and deviated nasal septum to right."*

***"Management:***

*Blood test including total IgE and rhinitis as outpatient.*

*TTO including Naseptin, Sterimar and Flixonase nasal sprays."*

*"He informs me he has had difficulty breathing through his nose for over 10 years. He has bilateral nasal obstruction which is worse on the right than the left. He has episodes of worsening obstruction with associated discharge and pressure, these have been managed with oral antibiotics by his GP. He also informs me he has a reduced sense of smell. He feels that these episodes of sinusitis are related to his new work conditions, in particular relating to the air conditioning. He informs that he has also suffered with recurrent bilateral epistaxis since November 2018 although he has had no bleeds in the last 3 weeks."*

*"Examination of the neck today revealed no cervical lymphadenopathy. Oral examination was unremarkable. Flexible nasendoscopy examination shows a deviated nasal septum to the right anteriority, No polyps were seen, there was*

*minimal mucous,, there were no prominent vessels or bleeding sources located on Little's area bilaterally."*

*"We will follow uo in 3 months time for review including consideration for possible septoplasty".*

The Claimant said on cross-examination that he thought there was a visit to hospital prior to this in 2018; he believed that he did not have all the tests carried out in 2018 and this is why there was a further assessment in April 2019 .

22. **29 May 2019** [pages 86-87]: OH report by Natalie Davie states as follows:

**"Current Issues**

*As you are aware Mr Bedford has been absent from work since 18th March with sinusitis which he says started after the offices were moved in September 2018 into smaller rooms. He tells me everyone sits on top of each other and there is not enough space plus the room temperatures fluctuate which meant he was getting chills in his neck and he had to wear scarfs, he says he caught a virus after the office move which caused him breathing difficulties, lost voice, headaches, loss of smell, tinnitus, he was treated by his GP and returned to work in the new year but then caught another virus at work. Mr Bedford was referred to a specialist whom he saw on 29th April and diagnosed a deviated septum, he has been prescribed medication and has a review in July. Mr Bedford says he has personal and work related stress which impact other health conditions, however, he tells me he feels 80% better apart from suffering with hay fever at present. He is signed off work until 15th June and until work place adjustments are in place. Mr Bedford cites the air con units need cleaning and filters replaced, he is concerned he will catch other viruses when he returns to work due to the air con units spreading bacteria and other colleagues passing infections.*

**OH Opinion**

*Mr Bedford sounded well, he was able to speak in clear sentences without any obvious difficulty. He would like to remain sitting in the main office and doesn't want to be isolated from his team. If Mr Bedford were to catch another virus he is likely to have further absences. He uses an ionizer at home which he says helps his breathing and clears the air, air ionizers create negative ions using electricity and then discharge them into the air. These negative ions attach to positively charged particles in the room, such as dust, bacteria, pollen, smoke, and other allergens. I cannot guarantee it will resolve Mr Bedford's concerns and be effective in a large area, further research would be encouraged. A deviated septum is a condition in which the nasal septum (the bone and cartilage that divide the nasal cavity of the nose in half) is significantly off center, or crooked, making breathing difficult, an altered airflow pattern within the nose can cause the skin of the nasal septum to become dry and cracked, which can cause frequent nosebleeds.*

**Management Advice**

*Mr Bedford is fit to return to work before the expiry of his current sick certificate, his future attendance is likely to mirror previous attendance, should you not be able to accommodate these attendance rates please refer to your sickness absence policy. It remains a management decision regarding waiting for adjustments to be completed before he returns to work. It is not necessarily within the remit of OH to comment on the validity of his account of events, however in my opinion it is clear that there is more that could be achieved by management, rather than clinical*



*intervention in this case in the first instance. Mr Bedford has underlying health conditions where relapses in the future can occur, potentially leading to sickness absence. You may wish to take this into consideration when managing his future sickness absence. With correct treatment and self management, the Mr Bedford should be able to control his symptoms and should continue to be able to offer a regular and effective service with little impact upon his capabilities or attendance at work.”*

**Review Date**

*No routine occupational health review is required.”*

23. **27 June 2019** [page 89- 90 and 139]: OH report by Ginenne Algar states as follows:

**“Current Issues**

*Jeremy advised, as you are aware, that he has suffered with symptoms relating to his nose since 2010. Jeremy talked about the past and how he was seen by ENT in 2010 where his deviated septum was picked up. He remarked that it is the right side of the nose that is narrow. This then leads onto him experiencing bouts of sinusitis seasonal rhinitis, headaches, facial pains and on occasional problems speaking. Jeremy then went on to disclose a collection of problems since November 2018 which resulted in an up to date referral to ENT through his GP and he tells me he was seen for a more thorough examination in April 2019. He explained his new treatment regime and while at first he thinks the nasal sprays and creams made a difference he thinks this has now plateaued out. He described suffering with tiredness and that OSA had been mooted in the past but back in 2010 his GP did not think he met the criteria. He shared he is now waiting for a follow up appointment to get his recent blood test for allergies and to discuss going forward if surgery would be a future option. Jeremy reports all of this is having a significant impact on his day to day life and as such he thinks he would meet the meaning for disability under the remit of the Equality Act 2010. He also mentioned that he has raised some concerns at work about air quality and temperatures under Health & Safety legislation.*

**OH Opinion**

*It is my clinical opinion following today’s assessment and discussion that Jeremy is fit for work”*

(Ms. Algar then describes in general terms the conditions and possible signs and symptoms of this condition including difficulty in breathing through the affected nostril, nosebleeds, facial pain, noisy breathing during sleep. She does not comment on whether and to what extent the Claimant suffers from any of these signs and symptoms.)

**Management Advice**

*Jeremy is assessed as fit for work on the normal contracted hours in their substantive role. I understand the employer has ordered an ionizer. Beyond this I have no further recommendations*

*A Disability Checklist has been completed today which indicates it is **unlikely** this individual would be considered to have a disability for the purposes of UK discrimination legislation ...*

**Review Date**

*No standard follow up appointment is required”*

24. **24 July 2019** [pages 125-126]: The Claimant had a consultation with Dr SF Syeda, Speciality Doctor ENT Peterborough City Hospital on 19 July 2019. On 24 July 2019, Dr Syeda wrote to the Claimant's GP:

***“Diagnosis***

*Nasal septal deviation with chronic rhinosinusitis.*

***Investigation***

*CT scan of paranasal sinuses”*

*“... history of headaches, facial pains, nasal obstruction and anosmia” and ...  
“recurrent epistaxis bilaterally”*

*“In view of the anosmia and sinus symptoms he was advised to undergo a CT scan of the paranasal sinuses and will be reviewed in due course with the CT scan results. In the meantime he was advised to continue with the nasal spray, He may need to undergo a septoplasty with reduction of inferior turbinates in the future, We will keep you informed”*

25. **27 August 2019** [page 133]: The results of a CT scan prepared by Dr. Syeda show:

*“All the sinuses are open and clear, There is no mucosal thickening, All of the drainage passages are clear. The nasal septum is clear. Turbinates normal. Nasal conchae appear normal. Bony skeleton normal and there is no signs of any chronic inflammatory change. Conclusion: Normal”*

On cross-examination, the Claimant said he had no recollection of attending the CT scan or of the results being explained to him.

26. **22 November 2019** [page 127]: The Claimant having not attended a clinic appointment at Peterborough Hospital on 4 November 2019, Mr. Amen Consultant ENT Surgeon wrote to the Claimant's GP:

*“The above named patient failed to attend for their appointment and we have heard no reason for this, It is trust policy to discharge patients who fail to attend without cancelling their appointments.*

*We have therefore discharged your patient from the ENT clinic but would be happy to see this patient again if you feel it is appropriate”*

On cross-examination, the Claimant said he did not attend the appointment (on 4 November 2019) as he did not know about it having not received an appointment letter. I accept his evidence on this point.

27. **24 March 2021** [page 115]: Dr. Ahmed, GP wrote “To whom it may Concern”:

*“Please find enclosed consultations we have related to sinus symptoms...  
Mr Bedford has been prescribed medications for nasal symptoms since at least 1995 with the first electronic consultation noted from October 2007. Mr. Bedford still continues to prescribed a nasal spray. Please find enclosed specialist ENT letters which provide further information requested.”*

28. **22.10.2021** [page 66] : OH Consultation Report by Ingo Torbohm following a telephone consultation refers only to the following conditions: dyscalculia, dyslexia, underactive thyroid and depression. There is no mention of deviated septum.

29. On cross-examination, the Claimant said he did not ask to be referred back to ENT during the relevant period because the problems were due to aircon at work; he

understood that there was nothing that could be done other than to break/restructure his nose and there was less than an even chance that this would resolve the problem; during covid he didn't think he would get anything done, and the hospitals were overwhelmed; he was under a lot of stress at the time and was struggling and didn't want to take anything else on; he was looking after his parents who needed his help and support due to their own medical issues

30. **3 March 2023** [pages 70 & 71]: The Claimant wrote to his GP:  
*"Dear all  
I am writing to ask for a letter from the doctor confirming my conditions which include dyslexia, I am having further problems with deviated septum and congestion and breathing and how they affect me for case for the union in the next 5 days please or by 13/03/2023"*
31. **6 March 2023** [pages 67-69]: The Claimant's GP at Westwood Clinic provided a Patient Summary which lists under the heading "*Active Major Problems*" only "*mixed anxiety and depressive disorder*" (24.11.2000 and ongoing) and "*Hypothyroidism*" (23.12.04 and ongoing). There is no mention of his deviated septum.

## **Submissions**

### **Respondent**

32. Mr Bershadski made the following submissions:
- 32.1 It is for the Claimant to prove his deviated septum had a substantial long-term adverse effect on his day to day activities at the relevant time and he has failed to do so.
- 32.2 The Claimant has provided this information regarding his other conditions and his failure to do so with regard to his deviated septum suggests this condition does not have a substantial adverse effect on his day to day activities. This is a natural inference to draw.
- 32.3 The Occupational Health Reports dated 29 May 2019 [page 86] and 27 June 2019 [page 139] also suggest that this condition does not have an adverse effect and in June OH concluded that it was unlikely this condition met the criteria for being a disability (s6 EqA). It is a question for the Tribunal to determine but this conclusion is a piece of evidence to be taken into account and carries some weight.
- 32.4 The medical records do not suggest any significant symptoms and the CT scan report [page 133] shows there was nothing giving rise to significant symptoms.
- 32.5 The Claimant did not reattend the hospital during the relevant period. The Claimant says he did not receive notice of the appointment but even if this is correct, he did not chase this up with his GP or the hospital. This suggests that this condition was not having substantial impact on his day to day activities. Covid restrictions only applied from January/February 2020 onwards.
- 32.6 For all these reasons, the Respondent says the impairment of deviated septum does not meet the definition of disability in s6 EqA.

Claimant

33. Ms. Camadoo made the following submissions on behalf of the Claimant:
- 33.1 The deviated septum was diagnosed in 2019 and the Claimant continues to have symptoms and treatment.
- 33.2 With regard to Mr. Bershadski's submission regarding lack of follow up by the Claimant, Ms. Camadoo says the Claimant was told he may have to have his nose broken and reset. At this time, he was looking after his parents and they needed his help and support. Due to Covid, he was having difficulties liaising with the medical professionals. He was not aware of the hospital appointment.
- 33.3 With regard to the OH reports, she says these are just "snapshots" of the Claimant's condition on that day and it could have been a good day.
- 33.4 The Claimant's condition is significant and he is sometimes "woolly headed"
- 33.5 The Claimant continues to need treatment; the sprays are no longer as effective as they were.
- 33.6 She says the Claimant did not give further details in his Impact Statement because he has dyslexia.

Conclusions

34. Applying the relevant law to the findings of fact to determine the issues, I have reached the following conclusions.
35. I have no doubt that the Claimant has been diagnosed with a deviated septum (September 2019) and I accept that he has experienced a range of symptoms associated with that condition for many years, going back to 1995.
36. I also accept that the symptoms include breathing difficulties, altered sense of smell, nose bleeds, a hoarse throat, occasionally a cough, facial pains. I also accept that these symptoms fluctuate and are continuing.
37. However, the Claimant has not described how this collection of symptoms affects (or affected) his day to day activities despite providing detailed examples with regard to his other conditions. I accept that lack of sleep may make him drowsy in the day and "woolly headed" but he simply does not say how often he experiences these difficulties or how this affects (or affected) his normal day to day activities.
38. The Claimant did not seek further medical help from the hospital after August 2019. I accept that the Claimant assisted his parents but his mother died in October 2020 and his father died a few years before [page 51]. With regard to the impact of the Covid pandemic, I accept that this would have made it difficult to seek medical help after 26 March 2020 but all restrictions were lifted by January 2022. This therefore only partially explains why he did not seek help during the relevant period (January 2021 to 4 August 2022) although I accept he believed the only option going forward was to have his nose broken and reset.

39. I am satisfied that the Claimant understand what information he was required to provide despite not being legally represented. I do not accept Ms. Camadoo's submission that this was because of his dyslexia; the Claimant himself did not state this and this is fatally undermined by the fact he has given details of his other conditions.
40. There is insufficient evidence before me to support a finding that the deviated septum substantially adversely affected the Claimant's normal day-to-day activities during the relevant period (1 January 2021 to 4 August 2022) and indeed at any time; he was therefore not disabled by reason of the deviated septum during the relevant period.

Employment Judge Mason

Date: 14 July 2023

Sent to the parties on:

28 July 2023

For the Tribunal Office: