



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001025/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 3 February 2025

Employment Judge Brewer

10 **Mrs J Anderson**

**Claimant
In Person**

15 **Argyll & Bute Council**

**Respondent
Represented by:
Ms A Weaver -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant was not a disabled person within the meaning of section 6, Equality Act 2010 at the material times.

REASONS

25 **Introduction**

1. This case was listed for a public preliminary hearing to determine whether the claimant was disabled, within the meaning of section 6, Equality Act 2010, at the time of the events about which she complains.
 2. At the hearing the claimant represented herself and the respondent was represented by Ms Weaver, Solicitor
 3. In accordance with the order of Judge McManus made at a preliminary hearing on 18 November 2024, the claimant had provided a disability impact statement and medical evidence she relies on. There was an agreed bundle
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of documents which had been prepared by the respondent for use at the preliminary hearing.

4. At the hearing the claimant gave evidence and was cross examined by Ms Weaver. I also asked the claimant some questions.

5 5. For the reasons set out below I reserved my decision in this case and set out my findings below.

Issue

6. The issue at the hearing was whether the claimant was disabled, within the meaning of section 6, Equality Act 2010, at the time of the events about which she complains.

Relevant Law

7. The material part of s.6 is as follows:

“6 Disability

(1) *A person (P) has a disability if—*

15 (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.”*

8. For the reasons which follow I shall set out here a brief description of the law relating only to adverse effect on normal day to day activities.

20 9. In **Goodwin v Patent Office** [1999] IRLR 4, the EAT said that of the four component parts to the definition of a disability in S.1 DDA (now S.6 EqA), judging whether the effects of a condition are substantial is the most difficult. The EAT went on to set out its explanation of the requirement as follows:

25 *‘What the Act is concerned with is an impairment on the person’s ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with the greatest difficulty.*

In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves. Thus a person whose capacity to communicate through normal speech was obviously impaired might well choose, more or less voluntarily, to live on their own. If one asked such a person whether they managed to carry on their daily lives without undue problems, the answer might well be “yes”, yet their ability to lead a “normal” life had obviously been impaired. Such a person would be unable to communicate through speech and the ability to communicate through speech is obviously a capacity which is needed for carrying out normal day-to-day activities, whether at work or at home. If asked whether they could use the telephone, or ask for directions or which bus to take, the answer would be “no”. Those might be regarded as day-to-day activities contemplated by the legislation, and that person’s ability to carry them out would clearly be regarded as adversely affected.’

10. This approach reflects the advice in Appendix 1 to the EHRC Employment Code that account should be taken not only of evidence that a person is performing a particular activity less well but also of evidence that ‘a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation’ — para 9.

11. There must be a causal link between the impairment and the substantial adverse effect, but it need not be a direct link.

12. Appendix 1 to the EHRC Employment Code states that ‘normal day-to-day activities’ are activities that are carried out by most men or women on a fairly regular and frequent basis. The Code says:

‘The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard, or performing a skilled or specialised task at work. However, someone who is affected in such a

specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition'

13. The Guidance thus emphasises that the term 'normal day-to-day activities' is not intended to include activities that are normal only for a particular person or a small group of people. Account should be taken of how far the activity is carried out by people on a daily or frequent basis. In this context, 'normal' should be given its ordinary, everyday meaning (see para D4).
14. The EAT in **Paterson v Commissioner of Police of the Metropolis** 2007 ICR 1522, EAT, concluded that 'normal day-to-day activities' must be interpreted as including activities relevant to professional life.

Findings in fact

15. It is not in dispute that the claimant suffers from asthma. What was in dispute in this case was whether that amounted to a disability.
16. At the case management hearing, Judge McManus ordered the claimant to provide to the respondent's solicitors, and the Tribunal:
- "Her written position on the impact of her asthma on her day-to-day activities, in the period from 19 June 2023, including any measures or coping mechanisms she utilises to deal with that impact and the effects of those measures, as required in the attached appendix A"*
17. Appendix A is in effect a detailed order for further particulars from the claimant. Under the heading "disability status" the Judge ordered the claimant to provide an impact statement setting out in numbered paragraphs the following matters:
- a. the effect of her asthma on her day-to-day activities
 - b. for how long she has experienced those effects
 - c. details of any medications or other treatment taken for her asthma
 - d. what the effect of her asthma would be without that treatment

e. from what date the claimant says she has had the protective characteristic of disability, in terms of section 6 of the equality act 2010 and related statutory guidance.

5 18. The claimant was also ordered to set out and provide the medical evidence she relies upon to support her position that she was disabled at the relevant time.

10 19. The claimant did provide a disability impact statement, and it appears at pages 51 and 52 of the bundle. The statement runs to some 20 paragraphs, but the paragraphs which deal with the required information set out by Judge McManus are contained in paragraphs 4, 5, 6 and 7. I set these out in full:

“4. *I am diagnosed with Asthma which I have had since childhood. Most of my life I have been vulnerable to infections but have managed to hold down long term jobs.*

15 5. *I rely on a repeat prescription of two inhalers, Serotide and Salbutamol Sulphate. I take these twice a day. This has been a constant routine most of my life.*

20 6. *I never and cannot leave the house without my Salbutamol as this gives me instant relief when struggling to breathe and could potential (sic) save my life. If I fall ill due to an infection, I am prescribed additional medication.*

7. *My inhalers and indeed my lifeline (sic). Without them I would have no normality in life and would most likely not be alive.”*

25 20. The only medical evidence provided by the respondent is at page 70 of the bundle. It is a letter dated 29 November 2024 from a Dr Norrie at the Campbeltown medical practice.

21. This letter confirms that the claimant does indeed suffer from asthma and also describes the fact that she has 2 inhalers. However, other than a reference to the claimant’s asthma being exacerbated by stress at work, the letter says

very little and says nothing about the impact of the claimant's asthma on her ability to carry out day-to-day activities, either with or without medication.

22. We discussed this at length at the hearing. I pointed out to the claimant that her impact statement says nothing about any impaired day-to-day activities. I also pointed out that her medical evidence did not support her statement that without her inhalers she would “most likely not to be alive”. The claimant gave no examples of impaired day to day activities in her oral evidence.
23. At this point in the hearing the claimant claimed that she had not understood what had been required of her following the case management hearing, although I took her to the orders of Judge McManus and pointed out that they were extremely clear about what was required and I was surprised that she was now stating that she did not understand. At this point it was around 10:30 am. The claimant said she could obtain the required information from her GP on the day of the hearing. In the circumstances I agreed to adjourn for 30 minutes to see whether the claimant could make any progress on obtaining the required information. On resumption the claimant said that she could have further medical documents by 2:00 pm and I agreed to adjourn further discussion about this issue until that time.
24. On resumption the claimant provided an updated version of the GP letter at page 70 of the bundle, but it took the matter no further. Essentially, the updated letter simply confirms that the claimant's inhalers assist her breathing and says that the claimant relies on salbutamol on a “near daily basis”.
25. At this point the respondent submitted that the claimant had had more than enough time to provide the required information to assist the Tribunal in making a decision, but given that the claimant is a litigant in person and given the possibility that she might well have sufficient information to satisfy the requirements of section 6, I decided that I would reserve my decision and give the claimant one further opportunity to provide me with any further evidence she wished to rely on. I ordered that she had until 4:00 pm on Wednesday 5 February 2025 to provide any further evidence she wished me to consider. I

then gave the respondent leave to provide further submissions on anything provided by the claimant by 4:00 pm on Thursday 6 February 2025.

26. In response to my order the claimant sent the following email:

“Dear Judge

5 *In response to the respondents submission regarding medical evidence*

I believe I said at the preliminary I have always known my asthma was covered by section 6 of the equality act.

I believe I said I have worked in care for 30 years and I’ve never had to bring up this act.

10 *I believe I never said I don’t have an illness.*

I have emails to managers explaining what occupational health had said also explaining I should phone them back if I was having problems

I was left to believe my rota was being addressed this didn’t happen

As my 2nd occupational health reports I was left extremely ill with stress.

15 *I explained I had made a mistake and wasn’t aware my full medical report was needed which I could still provide*

20 *On average I have a chest infection twice a year I always attend A and E for the nebuliser also on most occasions would have been prescribed several courses of steroids and antibiotics, Also on many occasions I’ve been admitted to hospital.”*

27. The respondent has provided a response to the claimant’s latest email and i have considered all of the evidence.

Decision

25 28. As I explained to the claimant at the hearing, the burden of proof is on her to show that, on the balance of probabilities, she falls within the definition of disability set out in s.6.

29. As the respondent has pointed out, there are many cases dealing with whether asthma is a disability, and each case turns on its own particular facts. There is, for example, a difference between chronic and severe asthma and they may have different effects depending on the precise circumstances. The evidence presented by the claimant, such as it is, is very limited and insufficient to support a finding that she was a disabled person at the material time, being the period from 19 June 2023.

30. I do note that, as she said at the hearing, the claimant says she could provide a “ full medical report”, but she has now had since November 2024 to do this in preparation for the preliminary hearing and two further opportunities afforded her by me first at the hearing on 3 February and second before 4.00 pm on 4 February, and on each occasion she has provided woefully inadequate details.

31. In all the circumstances I conclude that the claimant has failed provide evidence to show that her asthma had a substantial adverse effect on her ability to undertake day-to-day activities either with or without medication at the material time and therefore I conclude that she has failed to establish that at the material time she met the definition of disabled in section 6 of the Equality Act 2010

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Date sent to parties

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M Brewer

Employment Judge

7 February 2025

Date

13 February 2025