

R(A) 2/92

Mr. J. J. Skinner
4.6.91

CA/490/1989

Disablement – anti-social behaviour arising from a personality disorder – whether claimant “severely disabled physically or mentally”

The claimant was given to violent and irresponsible behaviour and the evidence showed that he committed criminal acts, both of violence and dishonesty. The Attendance Allowance Board found that he was not suffering from a severe physical or mental disability and that his anti-social behaviour arose from a personality disorder and they could find no medical evidence of severe mental disability. The members of the Board directed themselves that before they could issue a certificate of attendance needs, they must be satisfied that the claimant had relevant attention or supervision needs which arose from a severe mental or physical disability. The claimant appealed against that decision and his appeal was dismissed.

Held that:

1. the phrase “severely disabled physically or mentally” relates to a condition of body or mind that can be defined medically and that it is not meant to encompass unsociable behaviour which is not related to serious mental illness;
2. where a person indulges in aggressive or serious irresponsible conduct the board has to consider whether that arises from some recognised disorder or mental condition or whether it merely arises from a defective character.

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Attendance Allowance Board on review dated 24 April 1989 is not erroneous in point of law and accordingly this appeal fails.
2. This is an appeal by the claimant to the Commissioner on a question of law from a decision on review made by the Attendance Allowance Board itself. Leave to appeal was granted by the previous Chief Commissioner on 5 January 1990.
3. In order to appreciate the point of the case it is necessary to read section 35(1) of the Social Security Act 1975, I set it out below:

“35.- (1) A person shall be entitled to an attendance allowance if he satisfies prescribed conditions as to residence or presence in Great Britain and either-

- (a) he is so severely disabled physically or mentally that, by day, he requires from another person either-
 - (i) frequent attention throughout the day in connection with his bodily functions, or
 - (ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or
- (b) he is so severely disabled physically or mentally that, at night,-
 - (i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or

(ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.”

4. The claimant was born on 1 April 1966. A certificate of attendance needs was first issued when he was aged nine years. Thereafter a number of certificates were issued. The last of these was given on 29 April 1987 when a delegated medical practitioner, acting on behalf of the Attendance Allowance Board, decided that the claimant satisfied the day and night supervision conditions and issued a certificate of attendance needs for one year from 6 February 1987. On 12 June 1987 the Secretary of State requested a review of that decision and the review was conducted by the Attendance Allowance Board itself; it is that review which is the subject of the present appeal.

5. The claimant is given to violent and irresponsible behaviour and the evidence shows that he committed criminal acts, both of violence and dishonesty. The Attendance Allowance Board found that he was not suffering from a severe physical or mental disability and that his anti-social behaviour arose from a personality disorder and they could find no medical evidence of a severe mental disability.

6. The members of the board directed themselves that before they could issue a certificate of attendance needs, they must be satisfied that the claimant had relevant attention or supervision needs which arose from a severe mental or physical disability. The previous Chief Commissioner, when granting leave to appeal, posed the following question:

“Is it right under section 35(1) Social Security Act 1975 to reframe the statutory words “so severely disabled physically or mentally that . . . he requires . . .” into a question treated as determinative whether a person is suffering from a severe mental or physical disability and to sever the language of the subsection ?”

The question posed in this direction arises from what is said with inexactitude in the grounds of appeal.

7. The Secretary of State’s representative argues that the decision of the Board should be upheld. He contends that the phrase “severely disabled physically or mentally” relates to a condition of body or mind that can be defined medically and that it is not meant to encompass unsociable behaviour and this is not related to serious mental illness. He goes on to say that the whole tenor of the Board’s decision shows that they looked at the claimant’s case in depth in order to ascertain if he was “severely disabled physically or mentally”.

8. It seems to me that the Secretary of State’s representative has correctly analysed the primary question which the Board has to determine under section 35. I can find no relevant decision relating to the criterion imposed by the words “severely disabled physically or mentally”. Messrs. Ogus and Berendt in their valuable book, the Law of Social Security, 3rd Edition at page 163 suggest that there would be no obstacle if the disability were attributable solely to age and they refer to “R(S) 2/80” (the reference should be to R(A) 2/80) where the claimant was senile. That was a case where the claimant was senile and the *ratio decidendi* relates to her inability to cook. The claimant was senile and it would be open to the Board to find both that senility severely disabled the patient and was a recognised physical or mental condition. It is

not age which disables, it is the physical or mental condition which sometimes arises with age. That case went to the Court of Appeal and is reported as *R v. National Insurance Commissioner, ex parte Secretary of State of Social Services* in an appendix to R(A) 2/80. In the course of his judgment Lord Denning said at page 16:

“In order to qualify at all, the person must be ‘so disabled physically or mentally’ that he requires attention. This conveys the thought that the attention must be required so as to enable him to cope with his disability, whatever it is.”

It is of interest that the then Master of the Rolls equated the words “disabled” with “disability” as did the Board in the case before me.

9. I have had regard to what was said by the Commissioner at paragraph 8 of R(I) 1/81 concerning the use of terms in Schedule 8 of the Social Security Act 1975 as read with regulation 2 of the Benefit Regulations. The Commissioner having set out the regulation had this to say:

“In the above quotation, and also in the Act itself, the three terms ‘loss of faculty’, ‘disability’ and ‘disablement’ are used. In some contexts these could be synonymous, but in the relevant statutory provision each is used to denote a concept distinct from that denoted by either of the others. ‘Loss of faculty’ means a loss of power or function of an organ of the body. It is not in itself a disability but is a cause, actual or potential, of one or more disabilities. ‘Disability’ means inability, total or partial, to perform a normal bodily or mental process. And ‘disablement’ is the sum total of all the separate disabilities from which the person concerned suffers as a result of the relevant industrial accident.”

But the explanation in that decision of those terms are as they are used in the Benefit Regulations and in the context in which they are used in such regulations. In so far as section 35 of the Social Security Act 1975 is concerned it does not seem to me that the same distinction applies; and in my judgment the phrase “attention or supervision needs which arise from a severe mental or physical disability”, as used by the Board, had the same sense as the phrase “so severely disabled physically or mentally that . . . he requires . . .”, the words used in the section.

10. I would answer the question posed at the time leave to appeal was given in the affirmative. Clearly where a person indulges in aggressive or seriously irresponsible conduct the Board has to consider whether that arises from some recognised disordered mental condition or whether it merely arises from a defective character. In my judgment that was what the Board did in the case before me and they are not to be faulted.

11. In addition to the ground of appeal which was rephrased by the previous Chief Commissioner when he granted leave to appeal, the claimant’s mother challenges the medical findings of the Board. I do not find it necessary to set her arguments out though I have read them with care. I have borne in mind that I can only allow the appeal if I am satisfied that the decision of the Board is erroneous in point of law. It is not for me to substitute my own view of the evidence for that of the doctors. It seems to me that the Board evaluated the evidence which was before them and drew inferences from it which they were entitled to draw. In doing so they used their expertise and it is not for me to disagree with their clinical judgment.

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Date: 4 June 1991

(signed) Mr. J. J. Skinner
Commissioner

