

CA 1/1978

RSL/PF

(A)

SOCIAL SECURITY ACTS 1975 TO 1977

APPLICATION FOR LEAVE TO APPEAL FROM DECISION
ON REVIEW OF ATTENDANCE ALLOWANCE BOARD ON A
QUESTION OF LAW

Name: Keith Francis Whitfield Armstrong

1. This is an application by the claimant for leave to appeal from the decision dated 27 April 1977 of a delegate of the Attendance Allowance Board who refused to revise the decision dated 7 October 1974 of another such delegate in which it was certified that the claimant satisfied the conditions for an award of an attendance allowance at the lower rate.

2. I refuse the leave to appeal which the claimant requests.

3. The claimant, who is a man aged 28, is, unfortunately, a severely disabled person consequent upon an attack of poliomyelitis which he suffered at the age of 6 months. The above mentioned certificate dated 7 October 1974 recognised that he was a person who satisfied the day time conditions for an award of attendance allowance, and the proceedings leading to the present application arose out of a claim by the claimant that he also satisfied the night time conditions for such an award and was therefore entitled to attendance allowance at the higher rate. The relevant night time conditions are found in section 35(1)(b) of the Social Security Act 1975 and are as follows:-

That the person concerned is "so severely disabled physically or mentally that, at night, he requires from another person either-

- (i) prolonged or repeated attention during the night in connection with his bodily functions, or
- (ii) continual supervision throughout the night in order to avoid substantial danger to himself or others."

4. I must at the outset point out that the jurisdiction of a National Insurance Commissioner to interfere with a decision of the Attendance Allowance Board, or of one of its delegates, is severely limited. It is confined to setting aside such a decision if a question of law has been wrongly determined: see section 106(2) of the Social Security Act 1975

and Regulation 10(1) of the Social Security (Attendance Allowance) (No.2) Regulations 1975 [SI 1975 No 598]. A Commissioner has no power to intervene on the ground that he considers that the Attendance Allowance Board or its delegate came to a wrong conclusion of fact, or to determine the case himself. He may only intervene if the decision in question contained or was arrived at by means of a mistake of law, and he must then remit the case for redetermination by the Board or one of its delegates.

5. In dealing with the night conditions quoted in paragraph 3 above, the author of the decision dated 27 April 1977 (referred to below as "the Board's delegate") came to the conclusion that there was nothing in the medical evidence to indicate that attention was required by the claimant with sufficient frequency to enable him to find that the night attention condition was satisfied; ie he concluded that the evidence did not show that the claimant required "prolonged or repeated attention during the night in connection with his bodily functions". This conclusion has not been challenged by the claimant and I need not therefore further discuss it.

6. Accordingly, the present application depends upon the contention that it is arguable that the Board's delegate made a mistake of law in holding that the claimant did not satisfy the above-quoted condition concerning "continual supervision throughout the night in order to avoid substantial danger to himself or others". In my judgment it is not possible to present a viable argument that there was any such mistake of law. It seems to me clear that the facts related in the evidence considered by the Board's delegate were capable of supporting his conclusion. Possibly another mind might have reached a different conclusion, but it is impossible to hold that on the evidence presented to him the Board's delegate could not in law reach the conclusion which in fact he did reach.

7. It must be borne in mind that supervision must be required by the person concerned and must be "in order to avoid substantial danger to himself or others". The suggestion made in this case is that there is danger to the claimant, not to others, and that this danger arises because he might injure himself in the course of or after getting out of bed when there was nobody at hand to assist him. The claimant is, however, a sane and intelligent man and such a man does not normally subject himself to the risk of injury. It is a tenable view that the claimant in this case does not require supervision in order to avoid danger to himself. Moreover, in my view, the Board's delegate was well entitled, on the facts presented to him, to conclude that the suggested requirement of supervision was not related to the need to avoid danger, but to the need for attention in connection with the claimant's bodily functions.

8. In my judgment, therefore, no viable argument can be presented on the claimant's behalf to the effect that the delegated medical practitioner made a mistake of law in reaching his conclusions. Accordingly the application is refused.

(Signed) R S Lazarus
Commissioner

Date: 2 October 1978

Commissioner's File: C.A. 1/1978
DHSS File: SD 450/967