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Commissioner's File: CA/048/1986

DHSS File: SD 450/2126

**SOCIAL SECURITY ACTS 1975 TO 1986
APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD
ON A QUESTION OF LAW**

Name: Vivienne Ann Allen (Mrs) on behalf of Tracey Marie Allen

1. My decision is that the decision of the Delegated Medical Practitioner (hereinafter called DMP) dated 11 November 1985 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by the Attendance Allowance Board or by another delegated medical practitioner to be appointed by the Board.
2. This is an appeal by the claimant on behalf of her daughter to the Commissioner on a question of law from the decision on review dated 11 November 1985 made on behalf of the Attendance Allowance Board. The Commissioner in giving leave to appeal and extending the time for leave to appeal on 18 April 1986 under special directions or comments stated "I refer to paragraph 5 of R(A)2/83."
3. The facts and history of the case are dealt with in paragraphs 1 to 3 inclusive of the submission dated 11 July 1986 made on behalf of the Secretary of State on which the claimant's representatives have had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to in the annexure to the decision of the DMP dated 11 November 1985 and nothing is to be gained by my setting out those references afresh here.
5. In my judgment the DMP has erred in point of law in that his decision cannot be seen to comply with paragraph 5 of the decision of the Commissioner in R(A)2/83 and does not comply with the Commissioner's decision R(A)1/84 at paragraph 9 which are decisions that have been followed consistently by Commissioners thereafter as correctly representing the law. (See e.g. the unreported decisions on Commissioners' files CA 96/84 and CA 3/85).

At paragraph 5 of R(A) 2/83 the Commissioner states:-

"Plainly, a person's condition might change for the better or for the worse and, even so, the DMP must consider the matter in the light of the prevailing evidence. Such determinations depend, however, largely upon individual medical opinion and, in my view, it is desirable that, when there has been a previous certification in respect of a condition relating to attendance allowance, in the absence of material change, careful consideration should be given to whether subsequent evidence warrants a different conclusion."

At paragraph 7 of the submission on behalf of the Secretary of State dated 11 July 1986 it is stated in relation to paragraph 5 of R(A) 2/83.

"In this particular case Tracey, on 11 January 1984, was awarded the lower rate attendance allowance from 27 March 1984 until she reached age 12. The decision on review dated 11 November 1985.. against which leave to appeal has been granted, details the DMP's reasons for his refusal to revise the decision of 7 June 1985.. on the renewal claim to attendance allowance.. . In Commissioner's decision R(A)1/84 it was stated that where a DMP proposes to remove an existing award of attendance allowance it is imperative the claimant be given clear and adequate reasons why that is being done. Though there is no evidence that there has been any improvement in Tracey's hearing it is submitted that the DMP clearly dealt with Tracey's capability to deal with the consequences of her deafness and therefore her need for continued frequent attention substantially in excess of that normally required by a child of the same age and sex."

However in my judgment this does not constitute compliance with paragraph 5 of R(A)1/83 or paragraph 9 of R(A) 1/84. Nowhere in the decision of the DMP, as the Secretary of State's representative concedes in her submission, is there any reference to an improvement in the claimant's capability which would explain why a different conclusion had been reached from that reached previously when an allowance had been granted, (or indeed to any other reason which would account for the different result).

In the light of the view I take, that is that the case must be remitted as indicated in paragraph 1 of this decision, I do not propose to pursue the other matters raised in this appeal. I need only add that all issues of fact are at large in respect of the remitted case.

6. Accordingly my decision is as set out in paragraph 1 of this decision.
7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

Date: 12th March 1987