

SOCIAL SECURITY ACTS 1975 TO 1984

APPEAL FROM DECISION ON REVIEW OF ATTENDANCE ALLOWANCE BOARD
ON A QUESTION OF LAW

Name: Jack Dexter

1. My decision is that the decision of the delegated medical practitioner of the attendance allowance board dated 30 November 1983 is not erroneous in point of law.
2. The claimant is a man now aged 62 who made a claim for the attendance allowance dated 15 August 1980 which was unsuccessful in that on an original determination dated 23 September 1980 and on a review determination dated 10 April 1981 the delegated medical practitioner of the attendance allowance board decided that the claimant satisfied neither of the day conditions and neither of the night conditions for an award of the allowance. He made an application for review of the second decision on 16 September 1982; such an application could not succeed unless one of the conditions for review specified in section 106(1)(a) of the Social Security Act 1975 was satisfied. The delegated medical practitioner who considered the application was of opinion that no such condition was satisfied, but he treated the application as a fresh claim, on which he gave a determination dated 11 February 1983 to the effect that neither of the day conditions and neither of the night conditions for an award of the attendance allowance was satisfied. The claimant applied for a review of this determination and another delegated medical practitioner gave a determination dated 30 November 1983 again to the effect that neither of the day conditions and neither of the night conditions was satisfied. It is against this last determination that the claimant now appeals. I can disturb the determination only if I find it to have been erroneous in point of law.
3. The claimant suffers from a number of complaints recorded in the case papers. But the complaint which has the potential relevance to his claim for attendance allowance is that of grand mal epilepsy coupled with petit mal epilepsy. The relevant facts about these two conditions are set out in the determination appealed from. The claimant has daytime attacks of petit mal epilepsy on approximately five (or by another account) seven days per month, having one or two attacks on an affected day. The attack is preceded by some sort of warning (an aura) consisting of an uneasy feeling in the stomach after which the claimant sits down for a few minutes and it passes. The claimant suffers grand mal attacks on about one day in six months, there being no aura or other preliminary warning of the onset. Following the onset of such an attack the claimant staggers about, and has attempted to go out of doors. As for the night the claimant has infrequent petit mal attacks (possibly they are barely noticed when he is in bed) and more frequent grand mal attacks than in the daytime, about one per month. The claimant has described an occasion when he fell down stairs.
4. Apart from the matter of the epilepsy the claimant is able to be up all day and does not require assistance with any of the matters listed as attention needs listed in the form DS 4 save perhaps that he baths under what is referred to as his wife's supervision. He is described in medical reports as a rational and well oriented man and the delegated medical practitioner clearly took the view that he was a sensible person aware of dangerous situations and was able to regulate his

activities to avoid those situations which, because he suffers from epilepsy might be thought to present him with an element of danger.

5. The delegated medical practitioner accepted that during and following attacks the claimant required attention but that, there being no other requirement of attention the attention required by day was not "frequent attention throughout the day" in terms of section 35(1)(a)(i) or "prolonged or repeated attention during the night" in terms of section 35(1)(b)(i). Having regard to the evidence as to the intervals at which attacks occurred it is impossible to suggest that the conclusion of the delegated medical practitioner on this issue were wrong in law.

6. As to the requirement of supervision section 35(1)(a)(ii) and (b)(ii) refer alike to a person's requiring "continual supervision", during the day and during the night respectively, to avoid substantial danger to himself or others. The delegated medical practitioner appears to have accepted that during attacks it was desirable that there should be supervision of the claimant. But he made somewhat light of the attendant dangers, in reliance on his experience of epileptics, and on the general evidence of the claimant's own history. He expressed the view that the only injuries that the claimant had sustained were bumps and bruises and minor injuries, none of which in his view constituted substantial danger and it would seem on that ground did not consider that during attacks the claimant required continual supervision to avoid substantial danger to himself. In the course of reaching this conclusion he said:

"I accept that in theory considerable danger may attend any and every fit which is accompanied by loss of consciousness but it is my experience that in practice these dangers are very seldom experienced."

I confess myself to be somewhat concerned about this approach to the question of relatively improbable dangers. The claimant says that on one occasion he fell down stairs; and he might obviously have damaged himself seriously. The question is whether supervision is required to avoid substantial danger. "Required" in this context must mean "reasonably required"; and the question is whether the danger, however remote, is one that you can reasonably insist should be guarded against by supervision. I am not entirely convinced that that is the question that the delegated medical practitioner asked himself in dealing with the matter in the way that he did.

7. I shall not however hold the decision to be erroneous in law on this account because the point relates only to supervision during attacks; and on no view can the requirement of supervision during attacks be regarded as a requirement of continual supervision; and it is only if there is a requirement of supervision in between attacks that there could, having regard to the relative infrequency of attacks, be said to be a requirement of continual supervision to avoid danger to the claimant. On this issue the delegated medical practitioner basing his conclusions on paragraph 9 of Decision R(A) 1/83, declined to accept that a person who might have to intervene in the event of an attack was for that reason exercising continual supervision between attacks. In my judgment he properly applied that decision. There is in my judgment a difference between a requirement of someone to stand by and a requirement of someone to supervise. A person exercising supervision has to be constantly alert and ready to intervene to prevent the person supervised from doing something that would give rise to danger or, more rarely, to ensure that the person supervised does something the omission of which (eg taking some medicine or drug) might give rise to danger. A person who is standing by in case an emergency arises (whether it be an epileptic fit or the house catching fire) does not require to be constantly on the alert; he may well be asleep in the case of night stand-by and a much less exacting standard is required of him. The relevant provisions of the Act do not provide that a person who requires continual stand-by

shall for that reason be entitled to the attendance allowance, but only a person who requires continual supervision.

8. It was submitted on behalf of the claimant that paragraph 9 of decision R(A) 1/83 is wrong in law. That is not a point on which I can adjudicate as I am bound by the decision. It was on account of this submission that I granted leave to appeal notwithstanding decision R(A) 1/83. This was not because I considered that decision to be wrong, but in order to avoid cutting the claimant off from all opportunity of taking the matter higher with the leave of either the Commissioner or of the Court of Appeal.

9. The appeal fails.

(Signed) J G Monroe
Commissioner

Date: 9 May 1985