

AA - inadequate reasons on 'supervision' - blind child

AA - inadequate reasons on 'supervision'

LB/MB

Commissioner's File: CA/155/1985

DHSS File: SD 450/2059

see p 22 (11)

SOCIAL SECURITY ACTS 1975 TO 1986

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

Name: Linda Jean Mannering (Mrs) (Mother) on behalf of Melvin Michael Metcalfe

Reasons

1. On 3 April 1987 I made my Decision on this appeal in the following terms:-

"My decision is that the determination on review dated 18 June 1985 and made by a medical practitioner on behalf of the Attendance Allowance Board is erroneous in law and is accordingly set aside. I allow the claimant's appeal accordingly. I shall give the reasons for my decision in writing in due course."

I now set out my reasons.

2. The claimant's son M. was born on 11 January 1973. He was born blind. Down to about January 1985 he lived with his mother and father (or perhaps step-father) and since then he has been living with his grandparents. There have been some procedural complexities in this case and M.'s grandmother has herself made an application for attendance allowance in respect of him. From 1975 onwards down to 20 January 1985 attendance allowance was paid in respect of M., delegated medical practitioners having certified that he satisfied one or both of the day conditions governing entitlement of the allowance for consecutive periods of approximately 3 years, 3 years and 4 years respectively. For the last period attendance allowance was at the lower rate.

3. On 28 September 1984 the claimant made a renewal claim for the period to begin on 21 January 1985. M. was examined by a doctor on 2 November 1984 and on 5 December 1984 a delegated medical practitioner for forthcoming period. The claimant's mother asked for the decision to be reviewed. On 18 June 1985 a delegated medical practitioner decided on review that the decision of 5 December 1984 should not be revised. From that review decision the claimant has with my leave appealed to a Commissioner.

4. It needs to be borne in mind that the decision as to whether any of the prescribed conditions is satisfied is that of the medical authorities, not of the statutory authorities. My function is limited to ascertaining whether the delegated medical practitioner erred in law in his decision of 18 June 1985.

5. It is well settled that a delegated medical practitioner determining (whether on review or ab initio) in respect of a particular period is not bound by decisions in respect of other periods. However, the desirability of avoiding inconsistent medical opinions which may produce a feeling of injustice has been pointed out by Commissioners - see R(A)2/83 at paragraph 5. At the same reference there is also pointed out the care which is required in the absence of a material change to determine whether subsequent evidence warrants a different conclusion from the earlier certification. It is also settled in this jurisdiction that so far as adequacy of reasons is concerned, where there are specific contentions then it is necessary for adequate reasons to be given for rejecting them - see Decision CA/96/84 at paragraph 9.

6. In my judgment there was no error of law so far as the delegated medical practitioner's review decision dealt with need for attention throughout the day or attention or supervision by night. However, there were in my judgment errors of law in the manner in which the delegated medical practitioner dealt with the condition of continual supervision throughout the day.

7. In this connection the material provision is that in section 35(1)(a)(ii) of the Social Security Act 1975 which runs as follows:-

"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...

....

(ii) continual supervision throughout the day in order to avoid substantial danger to himself or others;"

8. In the paragraph of his decision dealing with daytime supervision the delegated medical practitioner said this:-

"So far as supervision is concerned, both the medical reports state that he can safely be left unsupervised for 2 hours at a time during the day. It is recorded in the latest medical report that "although he is intelligent and independent he cannot cope adequately as yet and gets muddled and mixed up. Risk of neglect of social needs. Risk of household dangers". I appreciate that he is given supervision when dressing, undressing, washing and when he is given supervision to avoid a substantial danger. I see the risk of household dangers but he is stated to be of normal intelligence and I can see no medical reason why he should not be aware of his surroundings. He has no physical disorder of mobility and I consider that he should be able to find his way around in the

familiar surroundings of his home. Equally, I would expect him to be aware of dangerous situations and not to involve himself in activities beyond the limits imposed upon him by his disablement. I accept that he is supervised in potentially hazardous situations such as climbing stairs or crossing a busy street but I do not accept that supervision exercised at such intermittent times can be regarded as being continual throughout the day. There is nothing to indicate that he is liable to place himself or others in positions of danger if left alone for reasonable periods during the day and I do not accept that he requires, or has required, continual supervision throughout the day in order to avoid substantial danger to himself or others".

I pause at this point to note that apparently by the expression "has required" the delegated medical practitioner was disagreeing with certainly the last and probably all of the preceding delegated medical practitioners who had held one or more of the conditions satisfied in respect of the previous 10 years.

9. In the renewal claim dated 29 April 1984 the claimant stated:-

"M... is blind therefore needs supervision in all areas".

The report of the medical examination on 24 November 1984 showed substantial capacity to perform a variety of functions without the help of another person and said that there had been no deterioration since early 1981 but gradual improvement. It also said in answer to the questions for how long could M. be left safely unsupervised by day and by night - 2 hours, and added by reference to the daytime:-

"Will be danger to himself, if left longer.
No danger to others".

The report of the medical examination on 2 April 1985 showed much enhanced capacity to perform various functions without the help of another person, stated the same period for that in which the claimant could safely be left unsupervised during the day but extended the night period from 2 hours to the whole night, and stated this by reference to the daytime:-

"Although he is intelligent and independent he cannot cope adequately as yet and gets muddled and mixed up. Risk of neglect of social needs. Risk of household danger needs a lot of encouragement."

The citation in the review decision is not quite complete.

10. Before the review decision M.'s grandmother wrote a letter dated 20 May 1985 in which she said, amongst other things,

"We love him very much but it is still a full time job and then later -

"... at the moment we of course do the best we can, as of course I will never be able to go to work".

The delegated medical practitioner by reference to the current evidence before him disagreed with the

practitioners who had held one or other daytime conditions satisfied for the earlier periods. The renewal claim asserted a continuing need and so did the grandmother's letter in saying that M. was "still a full-time job" and that she herself would never be able to go to work (by necessary implication through supervising M). The medical report of 24 November 1984 said that M. would be a danger to himself if left longer than the 2 hours specified. The medical report of 2 April 1985 stated that M. could not cope adequately as yet, amongst other things. In my judgment the review decision does not adequately deal with the weight of evidence pointing towards continuing need of supervision or adequately show why that evidence was rejected. In my judgment the substance of the matter was that there was a clear case being made as to a continuing need for supervision, and the reasons for the rejection of that evidence (which is by no means fully referred to in the decision) ought to have been given, particularly since the decision was itself a change from that for every previous period.

11. There is in my judgment also an error of law in the sentence -

"Equally, I would expect him to be aware of dangerous situations and not to involve himself in activities beyond the limits imposed upon him by his disablement."

The ambit of that sentence appears to me to be so unclear as to amount to an error of law. If it is meant that a blind person should not rashly engage in occupations dangerous for him (skiing or car driving come to mind) that is one thing, but if it is meant that a teenage boy such as M. should not do those things which a teenager albeit with such a disability would reasonably do, such as go to school (and M. attends a school for the blind) then the proposition is - to put it no higher, doubtful. Moreover the concept of being "aware of dangerous situations" may carry the implication that M. must not move out of his familiar surroundings such as his home; danger may lurk unexpectedly for a blind person. Again I am unclear as to the breadth of the proposition intended to be encompassed by this statement, and its uncertainty in my judgment is an error of law.

12. There has recently been decided by the Court of Appeal the case of Moran v. The Secretary of State for Social Services. On the further consideration of this matter the judgment of Nicholls L.J. (with which the other members of the Court concurred) may be material.

(Signed) Leonard Bromley
Chief Commissioner

November 1984. On 5 December 1984 a medical practitioner...
Data: 10/15/85