

s. 73(3) SSICA HR Mob. Component
Not Revised SSICA
Working Draft

NJW/CW/CM/1

Commissioner's File: CDLA/17611/1996

SOCIAL SECURITY ADMINISTRATION ACT 1992
SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992
APPEAL FROM DECISION OF A DISABILITY APPEAL TRIBUNAL ON A QUESTION
OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Disability Appeal Tribunal: Worcester

Case No: D/41/151/96/0013

1. This appeal succeeds.
2. I set aside the decision of the Worcester DAT held on 26 April 1996. I further decide that the appellant is entitled to the higher rate of mobility component from 11 July 1995 to 28 August 1998 in addition to the highest rate care component already awarded by the tribunal. Payments of lower rate mobility component already made will of course be set off against the arrears of benefit due under this award.
3. The appellant is now 15 years of age. She has a language disorder with associated autistic tendencies. The DAT accepted that her care needs were such that the highest rate of care component was appropriate but concluded that the appellant was entitled to mobility component only at the lower rate. In consequence of the award of highest rate care component, the DAT correctly proceeded to consider entitlement to higher rate mobility component under section 73(3) Social Security Contributions & Benefits Act 1992. This sub-section permits payment of higher rate mobility component to anyone entitled to highest rate care component who is severely mentally impaired and displays severe behavioural problems.
4. Those expressions are defined in regulation 12 DLA Regulations 1991. A person is severely mentally impaired if he suffers from a state of arrested development or incomplete physical development of the brain, which results in severe impairment of intelligence and social functioning. A person

displays severe behavioural problems if he "exhibits disruptive behaviour which - (a) is extreme (b) regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another or damage to property and (c) is so unpredictable that he requires another person to be present and watching over him whenever he is awake".

5. There was ample uncontested evidence before the DAT both from the appellant's parents and from a social worker of the severe difficulties which the family and others face in managing the appellant's behaviour. These are referred to and set out in the submission of the adjudication officer (AO) now concerned with the case. The evidence is such that the AO now concerned submits to me that the DAT decision was perverse and that I should substitute my own decision awarding higher rate mobility component from 11 July 1995 to 28 August 1998.

6. Before I can begin to consider my own view of the facts, I must first ask whether the DAT decision is erroneous in law.

7. The DAT accepted that the appellant's disablement was such that she came within the definition of a person who is severely mentally impaired. However, they did not accept that the appellant satisfied the definition in regulation 12(6) DLA Regulations 1991 of a person who "displays severe behavioural problems". In this respect, the tribunal's reasons were as follows:-

"The difficulty as far as the tribunal is concerned is that although (the appellant) satisfies many of these criteria she does not satisfy them all and we bear in mind that the section and regulations referred to relate to entitlement to mobility component and therefore paid particular attention to the fact that when walking out of doors (the appellant's) behaviour is not extremely disruptive. What she requires and she is provided with is supervision out of doors to preserve her from the harm which occurs because of her lack of awareness of common dangers. She does not require that supervision out of doors because of extreme disruptive behaviour but because of her lack of perception of danger. Accordingly, with reluctance, we concluded that the conditions for entitlement to higher rate mobility component were not satisfied."

8. The tribunal's reasons obviously refer back to a specific finding of fact made by the tribunal. After referring to wilful behaviour by the appellant and the fact that she is capable of using physical aggression and violence, the tribunal found:-

"5. The tribunal was not told of any instances where (the appellant) when walking out of doors, has attacked

or assaulted any person. Her family need to hold on to her when she is out of doors because she has no sense of danger. If she is taken out to shop she can be extremely unco-operative but no instances were reported to the tribunal of (the appellant) becoming violent or unmanagable when out of doors."

In a further finding of fact concerning night time care, the tribunal states:-

"If left unsupervised she is likely to cause damage either to property or to herself and accordingly on most, though not all, nights of the month one or other of her parents will be up with her for long or repeated periods both attending to her physical needs and actively intervening to prevent her from causing harm either to herself or to property."

9. It seems to me that the tribunal answered the questions in regulation 12(6) DLA Regulations by reference to the appellant's behaviour when walking out of doors. In my judgment, in so doing, they construed the regulation too narrowly or gave undue emphasis to that part of the appellant's waking hours devoted to walking out of doors.

10. Most claims to higher rate mobility component require a judgment to be made concerning the claimant's ability to make progress on foot out of doors having regard to the factors set out in regulation 12(1)(a)(ii) DLA Regulations 1991. But it seems to me that the legislation also gives a "passport" to higher rate mobility component irrespective of actual walking ability to members of the very narrowly defined group of people with severe disabilities described in section 73(3) of the Act and regulation 12(5) and (6) of the regulations. A similar passport applies in respect of care component to those who are terminally ill. They receive highest rate care component irrespective of their actual care needs.

11. I conclude that the questions posed by regulation 12(6) DLA Regulations as to whether a claimant exhibits disruptive behaviour which is extreme; regularly requires another person to intervene and physically restrain him in order to prevent him causing physical injury to himself or another or damage to property; and is so unpredictable that he requires another person to be present and watching over him whenever he is awake fall to be answered in respect of the claimant's condition generally and not with any special emphasis on behaviour when walking out of doors.

12. I therefore set aside the decision of the DAT as being erroneous in point of law.

13. As I have indicated, the AO now concerned supports the appeal to the extent of asking me to make an award of DLA

higher rate mobility component myself. I consider it expedient to do so. I accept the evidence of the parents and social worker referred to in the submission of the AO now concerned with the case and agree that the appellant is entitled to an award of higher rate mobility component for the same period as the award of highest rate care component.

(Signed) N J Warren
Deputy Commissioner

(Date) 16 March 1998