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HMCTS reference: SC124/18/xxxx

NI: xxxxxxxx

CAB reference: CL-xxxxxxx/ps

**AA Appeal of Mr R W**

**Submission by Epping Forest District Citizens Advice**

**Introduction**

1. Mr W’s case is that he satisfies the day attendance condition for attendance allowance because “he is so severely disabled… that, by day, he requires from another person …frequent attention throughout the day in connection with his bodily functions.” (s64(2)(a) of the Social Security Contributions and Benefits Act 1992).
2. Supervision under s64(2)(b) is not an issue we wish to raise, nor the night attendance condition under s64(3).
3. We respectfully refer the tribunal to the leading case on this provision: the judgment of the House of Lords in *Mallinson v Secretary of State,* reported as R(A)3/94. The questions to be posed are set out in Lord Woolf’s speech. They are: (1) Has the clai­mant a serious disability? (2) If so, what bodily functions does it impair? (3) Does he reasonably require attention in connection with those functions? (4) Is that attention frequent?
4. Our answers are: (1) Yes. He is registered as blind. His sight is severely impaired. (2) the bodily function of seeing. (3) Yes. (4)Yes.
5. This submission therefore lists the attention he requires in relation to his loss of sight. We submit that together they aggregate to a need for frequent attention.
   1. getting out of bed **[19-20].**
   2. washing and shaving **[22]**
   3. selecting clothes **[23]**
   4. going out **[24]**. This is discussed in more detail in paragraphs 6-7.
   5. locating and cutting up food **[25-26]**. See paragraph 8.
   6. managing medication **[26-27]**
   7. reading and writing **[27-28]**

**Going out**

1. This is what Mr W has told us about going out. If he goes to an unfamiliar place he needs someone with him. He does go out on his own in that he takes the bus. He cannot see the number or destination indicator on the bus and he cannot tell when he has reached his destination so he needs the bus driver or another passenger to tell him which bus it is and when he has reached his destination. He then needs to be met by someone.
2. The decision maker, on mandatory reconsideration **[46-48]**, accepts that Mr W needs supervision when out of doorsbut does not seem to have addressed the question of whether the needs constitute attention. In fairness to the decision maker he appears to have had rather less detail to go on than we have as Mr W’s representatives. We submit, following the *Mallinson* judgment, that this kind of need constitutes attention in relation to the bodily function of seeing, even if supervision is required as well. That was, we submit, one of the key points in that decision.

**Locating and cutting up food**

1. The decision maker observes that help with cooking and other domestic tasks cannot be considered. We accept that that is right as a general proposition but the point in this case is not that Mr W needs help to cook, it is that he needs someone to substitute for the loss of the bodily function of seeing, without which cooking and cutting up food is impossible for him. This distinction is covered in Lord Woolf’s speech in *Mallinson.*

**Aids**

1. The decision maker concludes that Mr W needs help to choose appropriate clothes and to deal with paperwork but that he could manage all his other care needs independently, with suitable aids where necessary. He has not specified what those aids are and it is not obvious what they might be.
2. We submit that if the respondent considers aids are appropriate the response should specify what they are. This is based on the Upper Tribunal case *JM v SSWP* [2017] UKUT 419 (AAC). That was a PIP case but we submit the same principle should apply in AA.

**Conclusion**

1. We invite the tribunal to allow this appeal.

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