Commissioner's
Decisions

Attendance
Allowance

CA
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/
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JGM/LS

Commissioner's File: CA/96/1984

DHSS File: SD450/1793

SOCIAL SECURITY ACTS 1975 TO 1984

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

1. My decision is that the determination of the delegated medical practitioner (DMP) of the Attendance Allowance Board dated 12 December 1983 is erroneous in point of law and it is set aside. The matter must be referred back to the Board or another DMP.

2. The claimant is the mother of a girl (Emma) who was at the date of the present claim aged 8; and it is in respect of Emma that the claim is made. Awards of the attendance allowance had been made in respect of Emma for about two years from the age of two. Two DMP's had each certified that Emma satisfied the medical conditions for an award first at the higher and then at the lower rate. At that time her disabilities included disabilities resulting from a dislocated hip. When the claim was renewed however, first one DMP and then on review another DMP were unable to certify that she satisfied either the day or the night condition for an award. By that time the condition of the hip was better.

3. A further claim for the allowance in respect of Emma was dated 1 September 1981, the effective date being taken to be 4 September 1981. On this claim a DMP gave an undated certificate that the night conditions were satisfied for a period ending a year from the day of the certificate. The date of expiry of this appears to have been 1 December 1982. On 9 September 1982 a renewal claim was made. On this renewal claim one DMP originally and another on review refused a certificate that either condition was satisfied. It is against the latter determination that Emma's mother now appeals.

4. The principal matter calling for attention (or supervision) is that Emma suffers from nocturnal enuresis. The evidence in respect of this in the form DS 4 was that Emma required a change of sheets and clothing twice in the night four times per week and that the changes took 20 to 30 minutes. Her mother had said that it is more frequent. The DMP might I suppose have concluded that this even taking into account what the mother said was not sufficient to constitute a need for frequent or prolonged attention during the night. But he deals with the matter as follows:

> "I have noted that because of nocturnal enuresis bed sheets and undergarments are changed twice during the night, on four nights of the week, taking 20-30 minutes at a time.

It is my medical opinion, however, that nocturnal enuresis is relatively common at Emma's age and in the absence of serious neurological deficit is not harmful. It is also my opinion that enuresis can be to some extent controlled by a suitable regimen in respect of fluids, by incontinence pads and rubber sheets and that in the absence of any sign of or tendency to skin vulnerability Emma can safely be left to sleep through until the morning."

5. Regulation 6 of the Social Security (Attendance Allowance) (No 2) Regulations 1975 provides that the attention required by a child under that age of 16 has to be attention substantially in excess of the attention normally required by a child of the same age and sex, if it is to be taken into account. In granting leave to appeal I indicated some concern that the DMP might be taken to have equated something which was relatively common with that which was not in excess of what was normal. If he had done so he would clearly have erred in law. But the Secretary of State submits (correctly I think) that the DMP did not do this. He concluded that the attention in question was not required because Emma would come to no harm if she was left in her wet bedding and nightclothes. Why then did he bother to mention that nocturnal enuresis was relatively common at Emma's age? The question was whether the enuresis meant that the relevant attention was required or whether it could be dispensed with. I cannot help thinking that in answering this question the DMP allowed himself to be influenced by the irrelevant consideration that the condition was relatively common.

6. In my judgment the word "required" in section 35 of this Act means "reasonably required" and the question that has to be asked is whether the claimant reasonably required the relevant attention and if so whether it was frequent or prolonged. "Reasonably required" does not mean "medically required". If it did it might be said of a person who could nor dress himself and was housebound that he did not require assistance with dressing as he could easily remain without medical harm in his dressing gown all day. But if it was reasonable that he should expect to dress in day clothes assistance required in dressing would fall to be taken into account. The question here was whether Emma reasonably required the attention that she actually got in connection with her bed-wetting and if so whether it was frequent or prolonged. I hold that the DMP erred in taking into account an irrelevant factor and that his determination was on that account erroneous in point of law.

7. This conclusion strictly makes it unnecessary to go into other points that have been made. But I will mention two of them. First it is urged on the behalf of the claimant that the DMP ought not to have made his determination without waiting for a medical report of a well-known children's hospital. The determination was in fact held up on account of the claimant's having indicated her wish to produce such a report. Enquiries led to the news that Emma had not yet been to the hospital as her mother had not been well enough to take her there. It was thus entirely uncertain whether the report, if obtained, would contain anything that might assist the claimant's case. In the end when nothing appeared to be forthcoming the DMP gave his determination. In my judgment he did not err in law in doing so.

8. The second matter is that Emma had immediately previously been awarded the allowance by reference among other things to enuresis. And in Decision R(A) 2/83 at paragraph 5 (endorsed in Decision R(A) 1/84) it was pointed out that it was desirable, where there had been a previous certification in respect of a condition in relation to attendance allowance, in the absence of material change, that consideration should be given to whether subsequent evidence warrants a different conclusion. And the case papers in fact contain copies of a number of Commissioner's decisions bearing on the question how far it is necessary for a DMP to look into the evidence that was before previous DMP's.

9. I do not propose to generalise on this matter. It is a well known principle enunciated in relation to medical appeal tribunals in Decision R(I) 18/61 at paragraph 13, that in cases where some specific contention is put to the tribunal it is certainly essential for the tribunal to give reasons for its rejection. In my judgment this applies equally to the Attendance Allowance Board. If there has been a previous award in a period running down to the commencement of the period under consideration, the view that the conditions for the award are not satisfied can be sustained either on the ground that the previous certification was mistaken or on the ground that there has been a change of circumstances. If a claimant (as did this claimant in her letter of 11 April 1983) makes the point that there has been no change since the previous award, I do not see how the Board or its DMP can meet that specific point except by expressing disagreement with the previous certification or by pointing out that there has been a change. All the evidence that was before the maker of the previous certificate is available; as these certificates are not given as a result of any views formed as the result of personal examination, I do not in that case see how the Board or its DMP can deal with the submission without looking at the previous evidence. It may well be different if no submission has been made by reference to the previous award.

10. The appeal succeeds.

(Signed): J G Monroe
Commissioner

Date: 16 December 1985