

RAS/SH/13

Commissioner's File: CDLA/8216/1995

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: Wolverhampton

Case No: D/41/141/95/0282

1. This is an appeal by the claimant against the decision of the Wolverhampton disability appeal tribunal given on 7 July 1995. The tribunal decided that the claimant was not entitled to disability living allowance.

2. It is not in issue between the parties and I agree that the tribunal's decision is erroneous in law. I accordingly allow this appeal, set aside the tribunal's decision and remit the case for rehearing by a differently constituted tribunal.

3. There is reference in the papers to whether qualifying attention can rise from two-way communication or whether it is only the intervention of a third party that counts. In this connection reference has been made to CA/249/92 but I do not regard that case as authority for the proposition that qualifying attention can never arise without the intervention of a third party.

4. As I see it, what I said on the point in CA/780/91 (Fairey) remains correct. I said -

"But where the person with whom the claimant is in communication is reasonably skilled in the use of sign language, I would not think it right to conclude that any extra effort involved in that method of communication would necessarily go towards satisfying the attention condition."

That part of the decision was the subject of a cross appeal by the claimant to the Court of Appeal but that cross appeal was unanimously rejected and was expressly abandoned in the House of Lords. In my view the position is this. Communication is a bodily function for the purposes of the provisions in question. Assistance with that bodily function may count as qualifying attention. Where the claimant and another person are for example reasonably skilled in the use of sign language the fact that such method of communication may be somewhat more laborious than ordinary speech is not ordinarily a factor to be taken into account. But where there are additional difficulties with two-way communication because for example one of the parties is not adequately skilled in sign language then, whatever extra effort may be involved in assisting the claimant with communication may be taken into account. Furthermore, as was made clear in the Court of Appeal in Fairey (and not contradicted in the House of Lords) any extra effort required of another person to initiate two-way communication with a deaf person could constitute qualifying attention. I certainly agree with the adjudication officer that "each individual case needs to be judged on the facts and available evidence".

(Signed) R A Sanders
Commissioner

(Date)